Chapter 30

1969 REPLACEMENT PART

Actions and Suits in Particular Cases

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ACTIONS FOR INJURY OR DEATH

30.010 Who may maintain action for injury or death of child. A father, or in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child.

30.020 Action for wrongful death; when commenced; damages. When the death of a person is caused by the wrongful act or omission of another, the personal representatives of the decedent, for the benefit of the surviving spouse and dependents and in case there is no surviving spouse or dependents, then for the benefit of the estate of the decedent, may maintain an action against the wrongdoer, if the decedent might have maintained an action, had he lived, against the wrongdoer for an injury done by the same act or omission. Such action shall be commenced within three years after the occurrence of the injury causing the death of the decedent, and in every such action such damages may be awarded as, in all the circumstances of the case, may be just, and will reasonably and fairly compensate the spouse, dependents or estate for the actual pecuniary loss, if any, to such spouse, dependents or estate and for all reasonable expenses paid or incurred for funeral, burial, doctor, hospital or nursing services for the decedent.
[Amended by 1953 c.600 §3; 1961 c.437 §1; 1967 c.544 §1]

30.030 Distribution of damages. Upon settlement of a claim, or recovery of judgment in an action, for damages for wrongful death, by the personal representative of a decedent, for the benefit of the surviving spouse or dependents, or both, the amount of damages so accepted or recovered shall be distributed as follows:

(1) One-half to the surviving spouse and one-half to the dependents.

(2) If there is no surviving spouse, all to the dependents.

(3) If there is no dependent, all to the surviving spouse.

30.040 Apportionment among dependents upon settlement. If settlement, with or without action, is effected and there is more than one dependent, the amount to be distributed to the dependents shall be apportioned among them in accordance with their respective expectancies of dependency as determined by the probate court of appointment by order entered in the matter of the estate.

30.050 Apportionment among dependents after judgment. If the action described in ORS 30.030 is brought, and a judgment for the plaintiff is given, and there is more than one dependent, the amount to be distributed to the dependents shall be apportioned among them in accordance with their respective expectancies of dependency as determined by the trial court by order entered in such action.

30.060 Appeal from order of apportionment. In the case of an order of apportionment made under either ORS 30.040 or 30.050, any dependent may appeal therefrom, or from any part thereof, to the Supreme Court, within the time, in the manner and with like effect as though such order was a judgment of the circuit court.

30.070 Settlement; discharge of claim. The personal representative of the decedent, with the approval of the court of appointment, shall have full power to compromise and settle any claim of the class described in ORS 30.030, whether the claim is reduced to judgment or not, and to execute such releases and other instruments as may be necessary to satisfy and discharge the claim. The party paying any such claim or judgment, whether in full or in part, or in an amount agreed upon in compromise, shall not be required to see that the amount paid is applied or apportioned as provided in ORS 30.030 to 30.060, but shall be fully discharged from all liability on payment to the personal representative.

30.075 Death of injured person. (1) Causes of action arising out of injuries to a person, caused by the wrongful act or omission of another, shall not abate upon the death of the injured person, and the personal representatives of the decedent may maintain an action against the wrongdoer, if the decedent might have maintained an action, had he lived, against the wrongdoer for an injury done by the same act or omission. The action shall be commenced within two years by the injured person himself, as provided in ORS 12.110, and continued by his personal representatives under ORS 115.305 and this section, or within three years by his personal representatives, if not commenced prior to death. Damages recoverable under ORS 115.305 and this section shall not exceed $25,000, and shall be limited to reasonable expenses paid or incurred for doctor, hospital or nursing services for the deceased and for his loss of earnings.

(2) In any such action if the plaintiff prevails, there shall be taxed and allowed to the plaintiff, as a part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action, if the court finds that written demand for the payment of such claim was made on the defendant either in the form of an action filed or a letter 10 days before commencement of the action; provided, that no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, at least 20 days before trial in an action that was pending at the death of the injured party, or otherwise prior to the commencement of the action, an amount not less than the damages awarded to the plaintiff.
[1965 c.620 §4]

30.080 Effect of death of wrongdoer. Causes of action arising out of injury to or death of a person, caused by the wrongful act or negligence of another, shall not abate upon the death of the wrongdoer, and the injured person or the personal representatives of the one meeting death, as above stated, shall have a cause of action against the personal representatives of the wrongdoer for such damages as, in all the circumstances of the case, may be just, and will reasonably and fairly compensate the spouse, dependents or estate for the actual pecuniary loss, if any, to such spouse, dependents or estate and for all reasonable expenses paid or incurred for funeral, burial, doctor, hospital or nursing services for the decedent; however, the injured person shall not recover judgment except upon some competent satisfactory evidence other than the testimony of the injured person.
[Amended by 1953 c.600 §3; 1961 c.437 §2; 1967 c.544 §2]

30.090 Appointment of administrator of estate of wrongdoer. If no probate of the estate of the wrongdoer has been instituted within 60 days from the death of the wrongdoer, the court, upon motion of the injured person, or of the personal representatives of one meeting death, as stated in ORS 30.080, shall appoint an administrator of the estate of the wrongdoer.

30.100 Substitution of personal representative as party defendant. In the event of the death of a wrongdoer, as designated in ORS 30.080, while an action is pending, the court, upon motion of the plaintiff, shall cause to be substituted as defendant the personal representative of the wrongdoer, and the action shall continue against such personal representative.

ACTIONS BY GUEST PASSENGERS

30.110 [Repealed by 1961 c.578 §1 (ORS 30.115 enacted in lieu of ORS 30.110 and 30.120)]

30.115 Motor vehicle, aircraft and watercraft guest passengers; definitions. No person transported by the owner or operator of a motor vehicle, an aircraft, a watercraft, or other means of conveyance, as his guest without payment for such transportation, shall have a cause of action for damages against the owner or operator for injury, death or loss, in case of accident, unless the accident was intentional on the part of the owner or operator or caused by his gross negligence or intoxication. As used in this section:

(1) "Payment" means a substantial benefit in a material or business sense conferred upon the owner or operator of the conveyance and which is a substantial motivating factor for the transportation, and it does not include a mere gratuity or social amenity.

(2) "Gross negligence" refers to negligence which is materially greater than the mere absence of reasonable care under the circumstances, and which is characterized by conscious indifference to or reckless disregard of the rights of others.
[1961 c.578 §2 (ORS 30.115 enacted in lieu of ORS 30.110 and 30.120)]

30.120 [Repealed by 1961 c.578 §1 (ORS 30.115 enacted in lieu of ORS 30.110 and 30.120)]

30.130 Public carriers by aircraft and prospective aircraft purchasers. ORS 30.115 shall not relieve a public carrier by aircraft, or any owner or operator of aircraft while the same is being demonstrated to a prospective purchaser, of responsibility for any injuries sustained by a passenger.

ACTIONS FOR DEFAMATION

30.150 Liability of radio or television station personnel for defamation. (1) The owner, licensee or operator of a radio or television broadcasting station, and the agents or employes of the owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in a radio or television broadcast, by one other than the owner, licensee or operator, or agent or employe thereof, unless it is alleged and proved by the complaining party that the

owner, licensee, operator, agent or employe failed to exercise due care to prevent the publication or utterance of such statement in such broadcast.

(2) In no event shall any owner, licensee or operator of a radio or television broadcasting station, or any agent or employe thereof, be liable for any damages for any defamatory statement published or uttered by one other than such owner, licensee, operator, agent or employe, in or as part of a radio or television broadcast by any candidate for public office, which broadcast cannot be censored by reason of federal statute or regulations of the Federal Communications Commission.

[Formerly 30.760]

30.155 Damages recoverable for defamation by radio, television, motion pictures, newspaper or printed periodical. Except as provided in ORS 30.160, in an action for damages on account of a defamatory statement published or broadcast in a newspaper, magazine, other printed periodical, or by radio, television or motion pictures, the plaintiff may recover any general and special damages which, by competent evidence, he can prove to have suffered as a direct and proximate result of the publication of the defamatory statement.

[1955 c.365 §1]

30.160 When general damages allowed. (1) In an action for damages on account of a defamatory statement published or broadcast in a newspaper, magazine, other printed periodical, or by radio, television or motion pictures, the plaintiff shall not recover general damages unless:

(a) A correction or retraction is demanded but not published as provided in ORS 30.165; or

(b) The plaintiff proves by a preponderance of the evidence that the defendant actually intended to defame the plaintiff.

(2) Where the plaintiff is entitled to recover general damages, the publication of a correction or retraction may be considered in mitigation of damages.

[1955 c.365 §2]

30.165 Publication of correction or retraction upon demand. (1) The demand for correction or retraction shall be in writing, signed by the defamed person or his attorney and be delivered to the publisher of the defamatory statement, either personally or by registered mail at the publisher's place of business or residence within 20 days after the defamed person receives actual knowledge of the defamatory statement. The demand shall specify which statements are false and defamatory and request that they be corrected or retracted. The demand may also refer to the sources from which the true facts may be ascertained with accuracy.

(2) The publisher of the defamatory statement shall have not more than two weeks after receipt of the demand for correction or retraction in which to investigate the demand; and, after making such investigation, he shall publish the correction or retraction in:

(a) The first issue thereafter published, in the case of newspapers, magazines or other printed periodicals.

(b) The first broadcast or telecast thereafter made, in the case of radio or television stations.

(c) The first public exhibition thereafter made, in the case of motion picture theatres.

(3) The correction or retraction shall consist of a statement by the publisher substantially to the effect that the defamatory statements previously made are not factually supported and that the publisher regrets the original publication thereof.

(4) The correction or retraction shall be published in substantially as conspicuous a manner as the defamatory statement.

[1955 c.365 §3]

30.170 Effect of publication of correction or retraction prior to demand. A correction or retraction published prior to notice of demand therefor shall have the same effect as a correction or retraction after demand, if the requirements of subsections (2), (3) and (4) of ORS 30.165 are substantially complied with.

[1955 c.365 §4]

30.175 Publisher's defenses and privileges not affected. Nothing in ORS 30.155 to 30.170 shall be deemed to affect any defense or privilege which the publisher may possess by virtue of existing law.

[1955 c.365 §5]

ACTIONS ON OFFICIAL BONDS

30.210 To whom official bonds are security. The official undertaking or other security of a public officer to the state, or to any county, city or other public corporation of like character therein, is a security to the state, county, city or public corporation, as the case may be, and also, to all persons severally for the official delinquencies against which it is intended to provide.

30.220 Parties. When a public officer by official misconduct or neglect of duty forfeits his official undertaking or other security, or renders his sureties liable thereon, any person injured by the misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action thereon in his own name, against the officer and his sureties, to recover the amount to which he may by reason thereof be entitled.

30.230 Leave to begin action. Before an action can be commenced by a plaintiff other than the state, or the public corporation named in the undertaking or security, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certified copy of the undertaking or security, and an affidavit of the plaintiff or some person on his behalf showing the delinquency; but if the matters set forth in the affidavit are such that, if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that leave has been granted, the defendant on motion shall be entitled to judgment of nonsuit; if it does, the defendant may controvert the allegation, and if the issue be found in his favor, judgment shall be given accordingly.

30.240 Subsequent delinquencies on same bond. A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same undertaking or security for another delinquency.

30.250 Amount of judgment. In an action upon an official undertaking or security, if judgments have already been recovered on the same undertaking or security against the surety therein, other than by confession, and if such recovery is established on the trial, judgment shall not be given against the surety for an amount exceeding the difference between the amount of the penalty and the amount that already has been recovered against the surety.

TORT ACTIONS AGAINST PUBLIC BODIES

30.260 Definitions for 30.260 to 30.300. As used in ORS 30.260 to 30.300, unless the context requires otherwise:

(1) "Governing body" means the group or officer in which the controlling authority of any public body is vested.

(2) "Public body" means the state and any department, agency, board or commission of the state, any city, county, school district or other political subdivision or municipal or public corporation and any instrumentality thereof.

[1967 c.627 §1]

30.265 Scope of liability of public body for torts. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is liable for its torts and those of its officers, employes and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

(2) Every public body is immune from liability for:

(a) Any claim for injury to or death of any person or injury to property resulting from an act or omission of an officer, employe or agent of a public body when such officer, employe or agent is immune from liability.

(b) Any claim for injury to or death of any person covered by the Workmen's Compensation Law.

(c) Any claim in connection with the assessment and collection of taxes.

(d) Any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.

(e) Any claim which is limited or barred by the provisions of any other statute.

(3) Neither a public body nor its officers, employes and agents acting within the scope of their employment or duties are liable for injury or damage:

(a) Arising out of riot, civil commotion or mob action or out of any act or omission in connection with the prevention of any of the foregoing.

(b) Because of an act done or omitted under apparent authority of a law, resolution, rule or regulation which is unconstitutional, invalid or inapplicable except to the extent that they would have been liable had the law, resolution, rule or regulation been constitutional, valid and applicable, unless such act was done or omitted in bad faith or with malice.

(4) ORS 30.260 to 30.300 do not apply to any claim against any public body arising before July 1, 1968. Any such claim may be presented and enforced to the same extent and subject to the same procedure and restrictions as if ORS 30.260 to 30.300 had not been adopted.

[1967 c.627 §§2, 3, 10; 1969 c.429 §1]

30.270 Amount of liability. (1) Liability of a public body on claims within the scope of ORS 30.260 to 30.300 shall not exceed:

(a) $25,000 to any claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence.

(b) $50,000 to any claimant for all other claims arising out of a single accident or occurrence.

(c) $300,000 for any number of claims arising out of a single accident or occurrence.

(2) No award for damages on any such claim shall include punitive damages. The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

(3) Where the amount awarded to or settled upon multiple claimants exceeds $300,000, any party may apply to any circuit court to apportion to each claimant his proper share of the total amount limited by subsection (1) of this section. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims arising out of the occurrence.

[1967 c.627 §4; 1969 c.429 §2]

30.275 Content of notice of claim; who may present claim; time of notice; time of action. (1) Every person who claims damages from a public body for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, and the amount of compensation or other relief demanded. Claims against the State of Oregon shall be presented to the state agency against whom the claim is made or to the Attorney General. Claims against any other public body shall be presented to a person upon whom process could be served in accordance with subsection (2) of ORS 15.080. Failure to state the amount of compensation or other relief demanded does not invalidate the notice.

(2) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had he lived, an action for wrongful death may be brought without any additional notice.

(3) No action shall be maintained unless such notice has been given and unless the action is commenced within two years after the date of such accident or occurrence. The time for giving such notice does not include the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

[1967 c.627 §5; 1969 c.429 §3]

30.280 Insurance against liability; effect of insurance; payment of premiums. (1) The governing body of any public body may procure insurance against liability of the public body and its officers, employes and agents.

(2) Such insurance may include coverage for the claims specified in subsection (2) of ORS 30.265. The procurement of such insurance shall not be deemed a waiver of immunity.

(3) If the public body has authority to levy taxes, it may include in its levy an amount to pay the premium costs for such insurance.

[1967 c.627 §6]

30.285 Public body may indemnify public officers. (1) The governing body of any public body may defend, save harmless and indemnify any of its officers, employes and agents, whether elective or appointive, against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty.

(2) The provisions of subsection (1) of this section do not apply in case of malfeasance in office or wilful or wanton neglect of duty.

(3) This section does not repeal or modify ORS 243.510 to 243.620.

[1967 c.627 §7]

30.290 Settlement of claims; approval of court if settlement more than $2,500. The governing body of any public body may, subject to the provisions of any contract of liability insurance existing, compromise, adjust and settle tort claims against the public body for damages under ORS 30.260 to

30.300 and may, subject to procedural requirements imposed by law or charter, appropriate money for the payment of amounts agreed upon. When the amount of settlement exceeds $2,500, the settlement shall not be effective until approved by the circuit court, unless such settlement is not to be paid from public funds.
[1967 c.627 §8]

30.295 Payment of judgment or settlement; remedies for nonpayment; tax levy for payment. When a judgment is entered against or a settlement is made by a public body for a claim within the scope of ORS 30.260 to 30.300, payment shall be made and the same remedies shall apply in case of nonpayment as in the case of other judgments or settlements against the public body. If the public body has the authority to levy taxes and the judgment or settlement is unpaid at the time of the annual tax levy, the governing body shall, if it finds that other funds are not available for payment of the judgment, levy a tax sufficient to pay the judgment or settlement and interest accruing thereon to the expected time of payment, subject to any levy for debt service and within any limits imposed by law.
[1967 c.627 §9]

30.300 ORS 30.260 to 30.300 exclusive. ORS 30.260 to 30.300 is exclusive and supersedes all home rule charter provisions and conflicting laws and ordinances on the same subject.
[1967 c.627 §11]

ACTIONS AND SUITS BY AND AGAINST GOVERNMENTAL UNITS AND OFFICIALS

30.310 Actions and suits by governmental units. A suit or action may be maintained by the State of Oregon or any county, incorporated city, school district or other public corporation of like character in this state, in its corporate name, upon a cause of suit or action accruing to it in its corporate character, and not otherwise, in the following cases:

(1) Upon a contract made with the public corporation.

(2) Upon a liability prescribed by law in favor of the public corporation.

(3) To recover a penalty or forfeiture given to the public corporation.

(4) To recover damages for injury to the corporate rights or property of the public corporation.

30.312 Actions by governmental units against contractors conspiring to destroy competition or acting in violation of federal antitrust laws. The State of Oregon, any city, county, school district, municipal or public corporation, political subdivision of the State of Oregon or any instrumentality thereof, or any agency created by two or more political subdivisions to provide themselves governmental services may bring an action in behalf of itself and others similarly situated for damages under ORS 279.032 or under section 4 of the Act of October 15, 1914, ch. 323, as amended prior to January 1, 1965 (15 U.S.C. 15).
[1965 c.465 §1]

30.315 Proceedings by cities and charter counties to enforce ordinances and resolutions. (1) An incorporated city or a county having a charter adopted pursuant to ORS 203.710 to 203.790 may, instead of penal enforcement, maintain civil proceedings in courts of this state against any person to enforce requirements or prohibitions of its ordinances or resolutions when it seeks:

(a) To collect a fee or charge;

(b) To enforce a forfeiture;

(c) To require or enjoin the performance of an act affecting real property;

(d) To enjoin continuance of a violation that has existed for 10 days or more; or

(e) To enjoin further commission of a violation that otherwise may result in additional violations of the same or related penal provisions affecting the public morals, health or safety.

(2) The court shall not impose a penal fine in a civil proceeding under subsection (1) of this section.

(3) The remedies provided by this section shall not be used to enforce any requirement or prohibition of an ordinance or resolution that is also specifically defined as a crime and made punishable under the statutes of this state.

(4) The remedies provided by this section are supplementary and in addition to those described in ORS 30.310.
[1961 c.313 §2; 1963 c.338 §1]

30.320 Contract and other actions and suits against governmental units. A suit or action may be maintained against any county and against the State of Oregon by and

through and in the name of the appropriate state agency upon a contract made by the county in its corporate character, or made by such agency and within the scope of its authority; provided, however, that no suit or action may be maintained against any county or the State of Oregon upon a contract relating to the care and maintenance of an inmate or patient of any county or state institution. An action or suit may be maintained against any other public corporation mentioned in ORS 30.310 for an injury to the rights of the plaintiff arising from some act or omission of such other public corporation within the scope of its authority. An action may be maintained against any governmental unit mentioned in ORS 30.310 for liability in tort only as provided in ORS 30.260 to 30.300.
[Amended by 1959 c.614 §1; 1969 c.429 §4]

30.330 Contracts of State Highway Commission providing for arbitration. The provisions of ORS 30.310 and 30.320 shall not apply to contracts made by the State Highway Commission that provide for arbitration under the provisions of ORS 33.210 to 33.340.

30.340 Title of proceedings by or against county; control of proceedings by county court. All actions, suits or proceedings by or against a county shall be in the name of the county, but the county is represented by the county court, which has the power to control the proceeding as if it were plaintiff or defendant, as the case may be.

30.350 Verification of pleadings. In the actions and suits described in ORS 30.310 and 30.315 to 30.330, the pleadings of the public corporation shall be verified by any of the officers representing it in its corporate capacity, in the same manner as if such officer was a party, or by the agent or attorney thereof, as in ordinary actions or suits.

30.360 State as defendant in actions involving liens on realty. (1) In any suit, action or proceeding brought in any circuit court of this state, affecting the title to real property on which the state or a state agency has, or claims to have, a lien, other than a suit, action or proceeding to foreclose tax liens or special improvement liens, the state may be made a party defendant, and its rights or interests adjudicated. When property has been or is acquired in the name of the state upon which there are valid, unpaid special improvement liens at the time of the acquisition, the state may be made a party defendant in a suit to foreclose the lien.

(2) In any suit, action or proceeding brought in any circuit court of this state involving the title to real property where the state or a state agency has record title to contested real property, the state may be made a party defendant, and its rights or interests adjudicated.

(3) In no event shall any money judgment be rendered or recovery made against the state in any suit, action or proceeding brought under the provisions of this section.
[Amended by 1959 c.586 §1]

30.370 Service of summons on Attorney General. In any suit, action or proceeding commenced under the provisions of ORS 30.360 to which the state is made a party, service of summons upon the state shall be made upon the Attorney General. In addition to the requirements of ORS 15.040, any summons served pursuant to this section shall state the state agency involved in the suit, action or proceeding.
[Amended by 1959 c.586 §2]

30.380 Action by assignee of claim for money illegally charged or exacted. No assignee of any claim against any county, city or municipal corporation of this state or any county, city or municipal officer in this state, for money claimed to have been illegally charged or exacted by such county, city or municipal corporation or such officer, except money collected as taxes or license, or money due on contract, shall have the right to institute or maintain any action or suit for the recovery thereof in any court in this state.

30.390 Satisfaction of judgment against public corporation. If judgment is given for the recovery of money or damages against a public corporation mentioned in ORS 30.310, no execution shall issue thereon for the collection of such money or damages, but the judgment shall be satisfied as follows:

(1) The party in whose favor the judgment is given may, at any time thereafter, when an execution might issue on a like judgment against a private person, present a certified transcript of the docket thereof, to the officer of the public corporation who is authorized to draw orders on the treasurer thereof.

(2) On the presentation of the transcript, the officer shall draw an order on the treasurer for the amount of the judgment, in favor of the party for whom the judgment was given. Thereafter, the order shall be presented for payment, and paid, with like effect and in like manner as other orders upon the treasurer of the public corporation.

(3) The certified transcript provided for in subsection (1) of this section shall not be furnished by the clerk, unless at the time an execution might issue on the judgment if the same was against a private person, nor until satisfaction of the judgment in respect to such money or damages is acknowledged as in ordinary cases. The clerk shall include in the transcript a memorandum of such acknowledgment of satisfaction and the entry thereof. Unless the transcript contains such a memorandum, no order upon the treasurer shall issue thereon.

30.400 Actions by and against public officers in official capacity. An action may be maintained by or against any public officer in this state in his official character, when, as to such cause of action, the officer does not represent any of the public corporations mentioned in ORS 30.310, for any of the causes specified in such section and ORS 30.320. If judgment is given against the officer in such action, it may be enforced against him personally, and the amount thereof shall be allowed to him in his official accounts.

RECOVERY OF FINES AND FORFEITURES

30.410 In whose name action brought. Fines and forfeitures may be recovered by an action at law in the name of the officer or person to whom they are by law given, or in the name of the officer or person who by law is authorized to prosecute for them.

30.420 Venue of action for forfeiture. Whenever, by law, any property is forfeited to the state, or to any officer for its use, the action for the recovery of such property may be commenced in any county where the defendant may be found, or where such property may be.

30.430 Amount of recovery. When an action is commenced for a penalty, which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment is given for the plaintiff, it may be for such amount or less, in the discretion of the court, in proportion to the offense.

30.440 Judgment by collusion not a bar. A recovery of a judgment for a penalty or forfeiture by collusion between the plaintiff and defendant, with intent to save the defendant, wholly or partially, from the consequences contemplated by law, in case where the penalty or forfeiture is given wholly or partly to the person who prosecutes, shall not bar the recovery of the same by another person.

30.450 Disposition of fines and forfeitures. Fines and forfeitures not specially granted or otherwise appropriated by law, when recovered, shall be paid into the treasury of the proper county.

ACTIONS FOR USURPATION OF OFFICE OR FRANCHISE; TO ANNUL CORPORATE EXISTENCE; TO ANNUL LETTERS PATENT

30.510 Action for usurpation of office or franchise. An action at law may be maintained in the name of the state, upon the information of the district attorney, or upon the relation of a private party against the person offending, in the following cases:

(1) When any person usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this state, or any office in a corporation either public or private, created or formed by or under the authority of this state; or,

(2) When any public officer, civil or military, does or suffers an act which, by the provisions of law, makes a forfeiture of his office; or,

(3) When any association or number of persons acts within this state, as a corporation, without being duly incorporated.

30.520 Joinder of defendants. Several persons may be joined as defendants in an action for the causes specified in subsection (1) of ORS 30.510, and in such action their respective rights to such office or franchise may be determined.

30.530 Determining right of person claiming an office or franchise. Whenever an action is brought against a person for any of the causes specified in subsection (1) of ORS 30.510, the district attorney, in addition to the statement of the cause of action, may separately set forth in the complaint the name of the person rightfully entitled to the office or franchise, with a statement of the facts constituting his right thereto. In such case, judgment may be given upon the right of the defendant, and also upon the right of the person so alleged to be entitled, or only upon the right of the defendant, as justice may require.

30.540 Rights of person adjudged entitled to office or franchise. If judgment is given upon the right of and in favor of the person alleged in the complaint to be entitled to the office or franchise, he shall be entitled to the possession and enjoyment of the franchise, or to take upon himself the execution of the office, after qualifying himself therefor as required by law, and to demand and receive the possession of all the books, papers and property belonging thereto.

30.550 Action for damages; arrest of defendant. If judgment is given upon the right of and in favor of the person alleged in the complaint to be entitled to the office or franchise, he may afterwards maintain an action to recover the damages which he has sustained by reason of the premises. In such action the defendant may be arrested and held to bail in the same manner and with like effect as in other actions where the defendant is subject to arrest.

30.560 Judgment against usurper; imposition of fine. When a defendant, whether a natural person or a corporation, against whom an action has been commenced for any of the causes specified in subsection (1) of ORS 30.510, is determined to be guilty of usurping, or intruding into, or unlawfully holding or exercising any office or franchise, judgment shall be given that such defendant be excluded therefrom. The court may also impose a fine upon the defendant not exceeding $2,000.

30.570 Action to annul corporate existence on direction of Governor. An action may be maintained in the name of the state, whenever the Governor shall so direct, against a corporation either public or private, for the purpose of avoiding the Act of incorporation, or an Act renewing or modifying its corporate existence, on the ground that such Act was procured upon some fraudulent suggestion or concealment of a material fact by the persons incorporated, or some of them, or with their knowledge and consent; or for annulling the existence of a corporation formed under any general law of this state, on the ground that such incorporation, or any renewal or modification thereof, was procured in like manner.

30.580 Action to annul corporate existence on leave of court. An action may be maintained in the name of the state against a corporation, other than a public one, on leave granted by the court or judge thereof where the action is triable, for the purpose of avoiding the charter or annulling the existence of such corporation, whenever it shall:

(1) Offend against any of the provisions of an Act creating, renewing, or modifying such corporation, or the provisions of any general law under which it became incorporated;

(2) Violate the provisions of any law, by which such corporation forfeits its charter, by abuse of its powers;

(3) Whenever it has forfeited its privileges or franchises, by failure to exercise its powers;

(4) Whenever it has done or omitted any act, which amounts to a surrender of its corporate rights, privileges and franchises; or,

(5) Whenever it exercises a franchise or privilege not conferred upon it by law.

30.590 Judgment against corporation. If it is determined that a corporation, against which an action has been commenced pursuant to ORS 30.570 or 30.580, has forfeited its corporate rights, privileges and franchises, judgment shall be given that the corporation be excluded therefrom, and that the corporation be dissolved.

30.600 Action to annul letters patent. An action may be maintained in the name of the state for the purpose of vacating or annulling letters patent, issued by the state, against the person to whom the letters were issued, or those claiming under him, as to the subject-matter thereof, in the following cases:

(1) When the letters patent were issued by means of some fraudulent suggestion or concealment of a material fact by the person to whom the letters were issued, or with his knowledge and consent;

(2) When the letters patent were issued through mistake or in ignorance of a material fact; or,

(3) When the patentee, or those claiming under him, have done or omitted an act, in violation of the terms and conditions on which the letters patent were issued, or have by any other means forfeited the interest acquired under the letters.

30.610 Prosecutor; verification of pleadings; affidavit for leave of court; relator as coplaintiff. The actions provided for in ORS 30.510 to 30.640 shall be commenced and prosecuted by the district attorney of the district where the same are triable. When the action is upon the relation of a private party, as allowed in ORS 30.510, the pleadings on behalf

of the state shall be verified by the relator as if he were the plaintiff, or otherwise as provided in ORS 16.070; in all other cases the pleadings shall be verified by the district attorney in like manner or otherwise as provided in ORS 16.070. When an action can only be commenced by leave, as provided in ORS 30.580, the leave shall be granted when it appears by affidavit that the acts or omissions specified in that section have been done or suffered by the corporation. When an action is commenced on the information of a private person, as allowed in ORS 30.510, having an interest in the question, such person, for all the purposes of the action, and as to the effect of any judgment that may be given therein, shall be deemed a coplaintiff with the state.

30.620 Duty of district attorney. When directed by the Governor, as prescribed in ORS 30.570, it shall be the duty of the district attorney to commence the action therein provided for accordingly. In all other actions provided for in ORS 30.510 to 30.640 it shall be the duty of the proper district attorney to commence such action, upon leave given where leave is required, in every case of public interest, whenever he has reason to believe that a cause of action exists and can be proven, and also for like reasons in every case of private interest only in which satisfactory security is given to the state to indemnify it against the costs and expenses that may be incurred thereby.

30.630 Filing copy of judgment roll with Corporation Commissioner. If judgment is given against a corporation, the effect of which is that the corporation ceases to exist, or whereby any letters patent are determined to be vacated or annulled, it shall be the duty of the district attorney to cause a copy of the judgment roll to be filed with the Corporation Commissioner.

30.640 Enforcement of judgment. A judgment given in any action provided for in ORS 30.510 to 30.640, in respect to costs and disbursements, may be enforced by execution as a judgment which requires the payment of money, and in all other respects obedience thereto may be enforced by attachment of the body of the defendant, or if the defendant is a corporation, the body of any or all of the officers or members of the corporation refusing or neglecting obedience thereto.

ACTIONS FOR UNLAWFUL DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

30.670 Right of all persons to equal facilities in places of public accommodation, resort or amusement. All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, resort or amusement, without any distinction, discrimination or restriction on account of race, religion, color or national origin.
[1953 c.495 §1]

30.675 Place of public accommodation, resort or amusement defined. (1) A place of public accommodation, resort or amusement, subject to the exclusion in subsection (2) of this section, means:

(a) Any hotel, motel, motor court, trailer park or campground.

(b) Any place offering to the public food or drink for consumption on or off the premises.

(c) Any place offering to the public entertainment, recreation or amusement.

(d) Any place offering to the public goods or services.

(2) However, a place of public accommodation, resort or amusement does not include any institution, bona fide club or place of accommodation, resort or amusement, which is in its nature distinctly private.
[1953 c.495 §2; 1957 c.724 §1; 1961 c.247 §1]

30.680 Action for damages by person discriminated against. All persons against whom any distinction, discrimination or restriction on account of race, religion, color or national origin has been made by any place of public accommodation, resort or amusement as defined in ORS 30.675 or by any person acting on behalf of such place shall have a cause of action to recover damages in the sum of not to exceed $500 from the operator or manager of such place or the employe or person acting on behalf of such place. In the action the operator or manager of such place or the employe or person acting on behalf of such place shall be jointly and severally liable.
[Amended by 1953 c.495 §3; 1957 c.724 §2]

MISCELLANEOUS ACTIONS

30.710 Seduction; action brought by parent. A father, or in case of his death or desertion of his family, the mother, may maintain an action as plaintiff for the seduction

of a daughter, though the daughter is not living with or in the service of the plaintiff at the time of the seduction or afterward, and there is no loss of service.
[Amended by 1961 c.344 §103]

30.720 Seduction; action brought by woman seduced. An unmarried female over 21 years of age may maintain an action as plaintiff for her own seduction, and recover damages; but the prosecution of an action to judgment by the father, mother or guardian, as prescribed in ORS 30.710, shall be a bar to an action by such unmarried female.

30.730 Liability of person supplying liquor to intoxicated person or habitual drunkard. Any person who shall bargain, sell, exchange or give to any intoxicated person or habitual drunkard spirituous, vinous, malt or intoxicating liquors shall be liable for all damage resulting in whole or in part therefrom, in an action brought by the wife, husband, parent or child of such intoxicated person or habitual drunkard. The act of any agent or employe shall be deemed the act of his principal or employer for the purposes of this section.

30.740 Right of gambling loser to recover double his losses. All persons losing money or anything of value at or on any game described in ORS 167.505 shall have a cause of action to recover from the dealer or player winning the same, or proprietor for whose benefit such game was played or dealt, or such money or thing of value won, twice the amount of the money or double the value of the thing so lost.

30.750 Liability of abstractors. Any person who, after May 24, 1923, certifies to any abstract of title to any land in Oregon, shall be liable for all damages sustained by any person who, in reliance on the correctness thereof, acts thereon with reference to the title of such land, and is damaged in consequence of any errors, omissions or defects therein, regardless of whether the abstract of title was ordered by the person so damaged. Nothing in this section shall be construed to prevent the maker of any abstract of title to land from limiting in the certificate to the abstract his liability thereunder to any person named in such certificate, but such limitation of liability must be expressly set forth in the certificate.

30.760 [Amended by 1953 c.565 §2; renumbered 30.150]

30.770 Liability of parents for tort to property by child. In addition to any other remedies allowed by law, the parent or parents having legal custody of a child 18 years of age or younger shall be liable in an action for damages, not exceeding $300, resulting to person or to real or personal property caused by any tort intentionally committed by such child.
[1959 c.310 §1; 1965 c.587 §1]

30.780 Liability for damages caused by illegal interception of communications. Any person violating ORS 165.540 shall be liable in a civil suit for all damages occasioned thereby.
[1959 c.681 §3]

30.790 Liability of owner or person in possession of land used for recreational purposes. (1) Except as provided by subsection (2) of this section, when the owner or person in possession of land which may be used for recreational purposes, including but not limited to hunting, fishing, trapping, camping or hiking, has granted permission to any person to enter upon or use the land for recreational purposes, neither the owner nor the person in possession of the land shall be liable for the injury, death or loss sustained by any person entering upon or using the land for recreational purposes, resulting from the condition, structures or activities on or uses of the land or as a result of an act or omission of the owner or person in possession of the land.

(2) Subsection (1) of this section is not intended to limit the duty owed by or liability of an owner or person in possession of the land:

(a) When there has been a direct business benefit conferred to the owner or person in possession of the land as a substantial motivating factor in the grant of permission for entry or use of the land for recreational purposes.

(b) In cases of wilful or wanton misconduct of the owner or possessor of the land.

(c) Where an affirmative obligation exists dependent upon a relationship other than that arising from the entry or use of the land for recreational purposes.

(3) This section is not intended to apply to or affect the so-called doctrine of attractive nuisance.

(4) As used in this section, "owner or

person in possession" does not include a governmental body or political subdivision or a public corporation.
[1963 c.524 §§1, 2]

30.800 Liability for emergency medical assistance limited. (1) As used in this section:

(a) "Emergency medical assistance" means medical care not provided in a place where emergency medical care is regularly available, including but not limited to a hospital, industrial first-aid station or a physician's office, given voluntarily and without the expectation of compensation to an injured person who is in need of immediate medical care and under emergency circumstances that suggest that the giving of assistance is the only alternative to death or serious physical aftereffects.

(b) "Medically trained person" means a person licensed under any law of a state or of the United States to practice medicine and surgery, professional nursing, osteopathy or chiropractic.

(2) No person may maintain an action against a medically trained person for damages for injury, death or loss that results from acts or omissions of the medically trained person while rendering emergency medical assistance unless it is alleged and proved by the complaining party that the acts or omissions violate the standards of reasonable professional care under the circumstances in which the emergency medical assistance was rendered.

(3) The giving of emergency medical assistance by a medically trained person does not, of itself, establish the relationship of physician and patient or nurse and patient between the medically trained person giving the assistance and the person receiving the assistance in so far as the relationship carries with it a duty of a physician or nurse to provide or arrange for further medical care for the injured person after the giving of emergency medical assistance.

(4) Subsections (1) to (3) of this section do not apply to any cause of action arising prior to September 13, 1967.
[1967 c.266 §§1, 2]

30.810 Right to include medical expenses paid by parent or guardian in action to recover for damages to child; effect of consent to inclusion. (1) When the guardian ad litem of a child maintains a cause of action for recovery of damages to the child caused by a wrongful act, the parent, parents, or guardian of the estate of the child may file a consent accompanying the complaint of the guardian ad litem to include in the cause of action such damages as, in all the circumstances of the case, may be just, and will reasonably and fairly compensate for the doctor, hospital and medical expenses caused by the injury.

(2) If the consent is filed as provided in subsection (1) of this section and the court allows the filing, no court shall entertain a cause of action by the parent, parents or guardian for doctor, hospital and medical expenses caused by the injury.
[1969 c.387 §1]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1969.

Robert W. Lundy
Legislative Counsel