

# Chapter 30

## 1977 REPLACEMENT PART

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## ACTIONS FOR INJURY OR DEATH

**30.010 Who may maintain action for injury or death of child.** (1) A parent having custody of his or her child may maintain an action for the injury of the child.

(2) A parent may recover damages for the death of his or her child only under ORS 30.020.

[Amended by 1961 c 344 §102, 1973 c 718 §1]

**30.020 Action for wrongful death; when commenced; damages.** (1) When the death of a person is caused by the wrongful act or omission of another, the personal representative of the decedent, for the benefit of the decedent's surviving spouse, surviving children, surviving parents and other individuals, if any, who under the law of intestate succession of the state of the decedent's domicile would be entitled to inherit the personal property 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 three years after the occurrence of the injury causing the death of the decedent.

(2) In an action under this section damages may be awarded in an amount which:

(a) Includes reasonable charges necessarily incurred for doctors' services, hospital services, nursing services, other medical services, burial services and memorial services rendered for the decedent;

(b) Would justly, fairly and reasonably have compensated the decedent for disability, pain, suffering and loss of income during the period between injury to the decedent and the decedent's death;

(c) Justly, fairly and reasonably compensates for pecuniary loss to the decedent's estate;

(d) Justly, fairly and reasonably compensates the decedent's spouse, children and parents for pecuniary loss and for loss of the society, companionship and services of the decedent; and

(e) Separately stated in finding or verdict, the punitive damages, if any, which the decedent would have been entitled to recover from the wrongdoer if the decedent had lived.

(3) The court shall reduce recovery under this section by the amount of recovery, if any, by the decedent or the decedent's personal representative under ORS 30.075 because of

the act or omission which caused the decedent's death.

[Amended by 1953 c 600 §3, 1961 c 437 §1, 1967 c 544 §1, 1973 c 718 §2]

**30.030 Distribution of damages.** (1) Upon settlement of a claim, or recovery of judgment in an action, for damages for wrongful death, by the personal representative of a decedent under ORS 30.020, the amount of damages so accepted or recovered shall be distributed in the manner prescribed in this section.

(2) The personal representative shall make payment or reimbursement for costs, expenses and fees incurred in prosecution or enforcement of the claim, action or judgment.

(3) The personal representative shall make payment or reimbursement for reasonable charges necessarily incurred for doctors' services, hospital services, nursing services or other medical services, burial services and memorial services rendered for the decedent.

(4) If under ORS 30.040 or 30.050 or by agreement of the beneficiaries a portion of the damages so accepted or recovered is apportioned to a beneficiary as recovery for loss described in paragraph (d) of subsection (2) of ORS 30.020, the personal representative shall distribute that portion to the beneficiary.

(5) The remainder of damages accepted or recovered shall be distributed to the beneficiaries in the proportions prescribed under the laws of intestate succession of the state of decedent's domicile, but no such damages shall be subject to payment of taxes or claims against the decedent's estate.

[Amended by 1973 c 718 §3]

**30.040 Apportionment among dependents upon settlement.** Except when all beneficiaries otherwise agree, if settlement, with or without action, is effected and there is more than one beneficiary, the amount to be distributed to each beneficiary as recovery for loss described in paragraph (d) of subsection (2) of ORS 30.020 shall be apportioned by the probate court to each beneficiary in accordance with the beneficiary's loss.

[Amended by 1973 c 718 §4]

**30.050 Apportionment among dependents after judgment.** Except when all beneficiaries otherwise agree, if the action described in ORS 30.020 is brought, and a judgment for the plaintiff is given, and there is more than one beneficiary, the amount to be distributed to each beneficiary as recovery for loss described in paragraph (d) of subsection (2) of ORS 30.020 shall be apportioned by the

trial court to each beneficiary in accordance with the beneficiary's loss.

[Amended by 1973 c.718 §5]

**30.060 Appeal from order of distribution or apportionment.** In the case of an order of distribution under subsection (5) of ORS 30.030 or an order of apportionment made under either ORS 30.040 or 30.050, any individual who in the probate court or trial court claims to be a beneficiary may appeal therefrom, or from any part thereof, to the Court of Appeals, within the time, in the manner and with like effect as though such order was a judgment of the circuit court.

[Amended by 1973 c.718 §6]

**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 the limitations established in ORS 12.110 by the injured person himself and continued by his personal representatives under this section, or within three years by his personal representatives, if not commenced prior to death. Damages recoverable under 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; 1971 c.473 §2]

**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.

[Amended by 1953 c.600 §3; 1961 c.437 §2; 1967 c.544 §2, 1973 c.742 §1]

**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 (30.115 enacted in lieu of 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 (30 115 enacted in lieu of 30 110 and 30 120)]

**30.120** [Repealed by 1961 c 578 §1 (30 115 enacted in lieu of 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.

### ACTION ON CERTAIN CONSTRUCTION AGREEMENTS

**30.140 Effect of indemnification provision in construction agreement.** (1) Any provision in a construction agreement which requires a person to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused or contributed to by the negligence of the indemnitee in the design or by the sole negligence of the indemnitee in the inspection of the work that is the subject of the construction agreement is enforceable only if the indemnitee secures or maintains insurance covering such risks for the protection of the indemnitor.

(2) In no event shall the indemnification obligation under such provisions be greater

than the limits of the insurance secured by the indemnitee.

(3) As used in this section, "construction agreement" means any written agreement for the construction, alteration, repair, improvement or maintenance of any building, highway, road excavation or other structure, project, development or improvement attached to real estate including moving, demolition or tunneling in connection therewith. No provision of this section shall be construed to apply to a "railroad" as defined in ORS 763.010.

[1973 c 570 §§1, 2]

### 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 ORS 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. "Public body" includes any intergovernmental agency, department, council or other like entity which is created under ORS 190.003 to 190.110, and which does not act under the direction and control of any single member government.

(3) "State" means the state or any branch, department, agency, board or commission of the state.

(4) "Local public body" means any public body other than the state.

[1967 c 627 §1, 1975 c 609 §11, 1977 c 823 §1]

**30.265 Scope of liability of public body, officers, employes and agents.** (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. As used in ORS 30.260 to 30.300, "tort" includes any violation of 42 U.S.C. section 1983.

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

(3) Every public body and its officers, employes and agents acting within the scope of their employment or duties are immune from liability for:

(a) Any claim for injury to or death of any person covered by any workmen's compensation law.

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

(c) 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.

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

(e) Any claim 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.

(f) Any claim arising out 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 or its officers, employes or agents acting within the scope of their employment 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.

(5) The amendments to ORS 30.270 and 30.285 enacted by chapter 609, Oregon Laws 1975, do not apply to any claim against the state or its officers, employes or agents acting within the scope of their employment or duties, arising before July 2, 1975. Any such claim may be presented and enforced to the same extent and is subject to the same restrictions as if chapter 609, Oregon Laws 1975, had not been adopted, but the procedure set forth in ORS 278.120 shall be applicable thereto.

(6) The amendments to ORS 30.270 and 30.285 enacted by chapter 609, Oregon Laws 1975, do not apply to any claim against any local public body or its officers, employes or agents acting within the scope of their employment or duties, arising before December

31, 1975. Any such claim may be presented and enforced to the same extent and subject to the same restrictions as if chapter 609, Oregon Laws 1975, had not been adopted.

[1967 c 627 §§2, 3, 10, 1969 c 429 §1, 1975 c 609 §12, 1977 c 823 §2]

**30.266 Liability for damages caused by persons under care of Children's Services Division; conditions; exemptions.** (1)

Notwithstanding the provisions of ORS 30.285 and 126.080, but subject to the applicable provisions and procedures in ORS 30.260 to 30.300 and 278.100 to 278.135, while the Children's Services Division has the properly granted powers and duties of a custodian or guardian of a minor child, or both, having been so appointed by the court under the provisions of ORS chapter 126 or 419, or having accepted physical custody of the child by voluntary agreement with the parent under the provisions of subsection (1) of ORS 418.015, or, pending hearing, the child has been placed in a certified foster home by anyone the division has authorized to do so, the division may be found liable for damages done by such child to other persons or to property, subject to each of the following conditions which shall apply to each claim brought under this subsection:

(a) The child is residing in a foster home certified by the division under the provisions of ORS 418.625 to 418.645, even though the child may be temporarily absent from such home, but is not residing elsewhere with approval of the division;

(b) The damages were in fact done wholly or partly by such child acting singly or in concert with other persons and were done by such child intentionally or wilfully and maliciously; and

(c) The damages are not attributable to any adult in a manner or to a degree that would, in the opinion of the Department of Justice or if necessary as determined by a court of competent jurisdiction, reasonably relieve the child of culpability.

(2) (a) Theft itself shall not be considered damages for the purpose of this section; and

(b) Bodily injury and property damage claims arising out of the operation of a motor vehicle by a foster child are not covered by the provisions of this section.

(3) Nothing in this section shall prevent or inhibit any court of competent jurisdiction from hearing other charges or actions which may be brought against such child, for the acts covered by this section or for others, or

from rendering such lawful judgments as the court may deem necessary.

[1977 c 781 §2]

**30.267 Liability for certain medical treatment at University of Oregon Health Sciences Center facilities.** (1) For the purposes of ORS 30.260 to 30.300, all services constituting patient care, including, but not limited to, inpatient care, outpatient care and all forms of consultation, that are provided on the University of Oregon Health Sciences Center campus or in any University of Oregon Health Sciences Center clinic are within the scope of their state employment or duties when performed by:

(a) Salaried physicians or dentists employed at any full-time equivalent by the University of Oregon Health Sciences Center;

(b) Nonsalaried or courtesy physicians or dentists affiliated with the University of Oregon Health Sciences Center;

(c) Medical, dental or nursing students or trainees affiliated with the University of Oregon Health Sciences Center;

(d) Volunteer physicians or dentists affiliated with the University of Oregon Health Sciences Center; or

(e) Any nurses, students, orderlies, volunteers, aides or employes of the University of Oregon Health Sciences Center.

(2) As used in this section:

(a) "Nonsalaried or courtesy physician or dentist" means a physician or dentist who receives a fee or other compensation for those services constituting patient care which are within the scope of state employment or duties under this section. The term does not include a physician or dentist described under paragraph (a) of subsection (1) of this section.

(b) "Volunteer physician or dentist" means a physician or dentist who does not receive a salary, fee or other compensation for those services constituting patient care which are within the scope of state employment or duties under this section.

[1977 c 851 §2]

**30.268 Liability for certain medical treatment at facilities other than University of Oregon Health Sciences Center.** (1)

For the purposes of ORS 30.260 to 30.300, all services constituting patient care, including, but not limited to, inpatient care, outpatient care and all forms of consultation that are provided at a location other than the University of Oregon Health Sciences Center campus or one of the University of Oregon Health

Sciences Center clinics are within the scope of state employment or duties when:

(a) Provided by members of the University of Oregon Health Sciences Center faculty or staff, University of Oregon Health Sciences Center students under prior written express authorization from the President of the University of Oregon Health Sciences Center or his representative to provide those services at that location;

(b) The services provided are within the scope of the express authorization; and

(c) The University of Oregon Health Sciences Center:

(A) Derives revenue in the same amount as it would for fee-for-services care rendered on the University of Oregon Health Sciences Center campus or at a University of Oregon Health Sciences Center clinic; or

(B) Is performing a salaried, nonfee-generating or volunteer public community or nonfee-generating educational service by providing the services.

(2) For the purposes of ORS 30.260 to 30.300, services constituting patient care that are provided at a location other than the University of Oregon Health Sciences Center campus or one of the University of Oregon Health Sciences Center clinics are not within the scope of state employment or duties when:

(a) Such services constitute an exclusively private relationship between the patient and a person described in paragraph (a) of subsection (1) of this section; and

(b) The requirements of subsections (b) and (c) of subsection (1) of this section are not met.

[1977 c 851 §3]

**30.270 Amount of liability.** (1) Liability of any public body or its officers, employes or agents acting within the scope of their employment or duties on claims within the scope of ORS 30.260 to 30.300 shall not exceed:

(a) \$50,000 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) \$100,000 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 individu-

al 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.

(4) Liability of any public body and one or more of its officers, employes or agents, or two or more officers, employes or agents of a public body, on claims arising out of a single accident or occurrence, shall not exceed in the aggregate the amounts limited by subsection (1) of this section.

[1967 c 627 §4, 1969 c 429 §2, 1975 c 609 §13]

**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 or from an officer, employe or agent of a public body acting within the scope of his employment or duties 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, the name of the claimant and his representative or attorney, if any, and the amount of compensation or other relief demanded. Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with subsection (3) of ORS 15.080. Notice of claim shall be served upon the Attorney General or local public body's representative for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than herein provided, is invalid, except that 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, 1975 c 604 §1a, 1975 c 609 §14, 1977 c 823 §3]

30.280 [1967 c 627 §6, repealed by 1975 c 609 §25]

**30.282 Local public body insurance against liability; payment of assessment to state Liability Fund.** (1) The governing body of any local public body may procure insurance against liability of the public body and its officers, employes and agents acting within the scope of their employment or duties, and in addition to, or in lieu thereof, may establish a self-insurance fund against such liability of the public body and its officers, employes and agents and if the public body has authority to levy taxes, it may include in its levy an amount sufficient to establish and maintain such a fund on an actuarially sound basis.

(2) Notwithstanding any other provision of law, two or more local public bodies may jointly provide by intergovernmental agreement for anything which subsection (1) of this section authorizes individually.

(3) As an alternative or in addition to establishment of a self-insurance fund or purchase of insurance or both, the governing body of any local public body and the Department of General Services may contract for payment by the public body to the department of assessments determined by the department to be sufficient, on an actuarially sound basis, to cover the potential liability of the public body and its officers, employes or agents acting within the scope of their employment or duties under ORS 30.260 to 30.300, and costs of administration, or to cover any portion of potential liability, and for payment by the department of valid claims against the public body and its officers, employes and agents acting within the scope of their employment or duties.

(4) Assessments paid to the Department of General Services under subsection (3) of this section shall be paid into the Liability Fund created under ORS 278.100, and claims paid and administrative costs incurred under subsection (3) of this section shall be paid out of the Liability Fund, and moneys in the Liability Fund are continuously appropriated for those purposes. Assessments made under subsection (3) of this section shall be determined on the same basis as contributions of state agencies are determined under ORS 278.110 unless otherwise provided by agreement between the local public body and the Department of General Services, and after notice of any claim is furnished as provided in the agreement the claim shall be handled and paid, if appropriate, in the same manner as a claim against a state agency, officer, employe or agent, without regard to the amount the local public body has been assessed.

[1975 c 609 §19, 1977 c 428 §1]

**30.285 Public body shall indemnify public officers; procedure for requesting counsel; extent of duty of state; obligation for judgment and attorney fees.** (1) The governing body of any public body shall 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) If any civil action, suit or proceeding is brought against any state officer, employe or agent which on its face falls within the provisions of subsection (1) of this section, or which the state officer, employe or agent asserts to be based in fact upon an alleged act or omission in the performance of duty, he may file a written request for counsel with the Attorney General. The Attorney General shall thereupon appear and defend the officer, employe or agent unless after investigation he finds that the claim or demand does not arise out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of amounted to malfeasance in office or wilful or wanton neglect of duty, in which case the Attorney General shall reject defense of the claim.

(4) Any officer, employe or agent of the state against whom a claim within the scope of this section is made shall cooperate fully with the Attorney General in the defense of

such claim. If the Attorney General determines that such officer, employe or agent has not so cooperated or has otherwise acted to prejudice defense of the claim, the Attorney General may at any time reject the defense of the claim.

(5) If the Attorney General rejects defense of a claim under subsection (3) of this section or this subsection, or if it is established by the judgment ultimately rendered on the claim that the act or omission complained of was not in the performance of duty or amounted to wilful or wanton neglect of duty, no public funds shall be paid in settlement of said claim or in payment of any judgment against such officer, employe or agent. Such action by the Attorney General shall not prejudice the right of the officer, employe or agent to assert and establish an appropriate proceedings that the claim or demand in fact arose out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of did not amount to malfeasance in office or wilful or wanton neglect of duty, in which case he shall be indemnified against liability and his reasonable costs of defending the claim, cost of such indemnification to be a charge against the Liability Fund established by ORS 278.100.

(6) If the officer, employe or agent has been defended by the Attorney General and it is established by the judgment ultimately rendered on the claim that the act or omission complained of was not in the performance of duty, the judgment against the officer, employe or agent shall provide for payment to the state of its costs including a reasonable attorney fee.

(7) Nothing in subsection (3), (4) or (5) of this section shall be deemed to increase the limits of liability of any public officer, agent or employe under ORS 30.270, or obviate the necessity of compliance with ORS 30.275 by any claimant, nor to affect the liability of the state itself or of any other public officer, agent or employe on any claim arising out of the same accident or occurrence.

[1967 c 627 §7, 1975 c 609 §16]

**30.287 Counsel for public officer; when public funds not to be paid in settlement; recovery of attorney fee by public body; effect on liability limit; defense by insurer.** (1) If any civil action, suit or proceeding is brought against any officer, employe or agent of a local public body other than the state which on its face falls within the provisions of subsection (1) of ORS 30.285, or which the officer, employe or agent asserts

to be based in fact upon an alleged act or omission in the performance of duty, he may file a written request for counsel with the governing body of the public body. The governing body shall thereupon engage counsel to appear and defend the officer, employe or agent unless after investigation it is determined that the claim or demand does not arise out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of amounted to malfeasance in office or wilful or wanton neglect of duty, in which case the governing body shall reject defense of the claim.

(2) Any officer, employe or agent of a local public body against whom a claim within the scope of this section is made shall cooperate fully with the governing body and counsel in the defense of such claim. If the counsel determines and certifies to the governing body that such officer, employe or agent has not so cooperated or has otherwise acted in prejudice defense of the claim, the governing body may at any time reject the defense of the claim.

(3) If the governing body rejects defense of a claim under subsection (1) of this section, or if it is established by the judgment ultimately rendered on the claim that the act or omission complained of was not in the performance of duty or amounted to wilful or wanton neglect of duty, no public funds shall be paid in settlement of said claim or in payment of any judgment against such officer, employe or agent. Such action by the governing body shall not prejudice the right of the officer, employe or agent to assert and establish in an appropriate proceedings that the claim or demand in fact arose out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of did not amount to malfeasance in office or wilful or wanton neglect of duty, in which case he shall be indemnified by the public body against liability and his reasonable costs of defending the claim.

(4) If the officer, employe or agent has been defended by counsel engaged by the governing body and it is established by the judgment ultimately rendered on the claim that the act or omission complained of was not in the performance of duty or amounted to wilful or wanton neglect of duty, the judgment against the officer, employe or agent shall provide for payment to the local public body its costs including a reasonable attorney fee.

(5) Nothing in subsection (1), (2) or (3) of this section shall be deemed to increase the

limits of liability of any public officer, agent or employe under ORS 30.270, or relieve any claimant of the necessity of compliance with ORS 30.275, nor to affect the liability of the local public body itself or of any other public officer, agent or employe on any claim arising out of the same accident or occurrence.

(6) The provisions of this section may be superseded to the extent that the claim against the public officer, employe or agent may be defended by any insurer, or may be subject under ORS 30.282 to agreement with the state Department of General Services, in which case the provisions of the policy of insurance or other agreement are applicable.

[1975 c 609 §20]

**30.290 Settlement of claims by local public body; approval of court if settlement more than \$5,000.** The governing body of any local public body may, subject to the provisions of any contract of liability insurance existing, compromise, adjust and settle tort claims against the public body or its officers, employes or agents acting within the scope of their employment for damages under ORS 30.260 to 30.300 and may, subject to procedural requirements imposed by law or other charter, appropriate money for the payment of amounts agreed upon. When the amount of settlement exceeds \$5,000, the settlement shall not be effective until approved by the circuit court, unless such settlement is not to be paid from funds of the local public body

[1967 c 627 §8, 1975 c 609 §17]

**30.295 Payment of judgment or settlement; remedies for nonpayment; tax levy for payment; instalment payments.** (1) 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, including claims against officers, employes or agents required to be indemnified under ORS 30.285, 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 except as otherwise provided in this section.

(2) If the public body is authorized to levy taxes which could be used to satisfy a judgment or settlement within the scope of ORS 30.260 to 30.300, and it has, by resolution, declared that the following conditions exist, interest shall accrue on the judgment or settlement, but the same shall not be due and payable until after the canvass and certification of an election upon a special tax levy for

purposes of satisfying the judgment or settlement:

(a) The amount of the judgment or settlement would exceed amounts budgeted for contingencies, tort claims and projected surplus in the current budget;

(b) The amount of the judgment or settlement would exceed 10 percent of the total of the next fiscal year's projected revenues which are not restricted as to use, including the maximum amount of general property tax which could be levied without election but excluding any levy for debt service;

(c) Payment of the judgment or settlement within less than a certain number of years would seriously impair the ability of the public body to carry out its responsibilities as a unit of government; and

(d) The public body has passed an appropriate ordinance or resolution calling a special election to submit to its voters a special levy in an amount sufficient to satisfy the judgment or settlement.

(3) A certified copy of the resolution provided for in subsection (2) of this section shall be filed with the clerk of the court in which an order permitting instalment payments could be entered.

(4) If the public body is not authorized to levy taxes as provided in subsection (2) of this section, and it has, by resolution, declared that the applicable conditions specified in paragraphs (a) to (c) of subsection (2) of this section exist, it may petition for an order permitting instalment payments as provided in subsection (6) of this section.

(5) The provisions of subsections (2) and (4) of this section do not apply to the State of Oregon; provided, however, that if the conditions specified in subsection (4) of this section exist, the Secretary of State may, under Seal of the State of Oregon, attest thereto in lieu of a resolution, and the State of Oregon may thereafter petition for an order permitting instalment payments as provided in subsection (6) of this section.

(6) If the procedure specified in subsections (2) to (5) of this section has been followed, and, with respect to public bodies subject to subsection (2) of this section, the tax levy failed, the public body may petition for an order permitting instalment payments. The petition shall be filed in the court in which judgment was entered or, if no judgment has been entered, it shall be filed in the circuit court of the judicial district in which the public body has its legal situs. Petitions by the

State of Oregon where no judgment has been entered shall be filed in Marion County Circuit Court.

(7) The court in which a petition is filed shall order that the judgment or settlement be paid in quarterly, semiannual or annual instalments over a period of time not to exceed 10 years. The court shall determine the term of years based upon the ability of the public body to effectively carry out its governmental responsibilities, and shall not allow a longer term than appears reasonably necessary to meet that need. The order permitting instalment payments shall provide for annual interest at the judgment rate.

[1967 c 627 §9, 1977 c 823 §4]

**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 Department of Transportation providing for arbitration.**

The provisions of ORS 30.310 and 30.320 shall not apply to contracts made by the Department of Transportation 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 civil actions where the defendant is subject to arrest.

[Amended by 1973 c 836 §320]

**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 complainant.** 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.** 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, without any distinction, discrimina-

tion or restriction on account of race, religion, sex, marital status, color or national origin.  
[1953 c 495 §1, 1973 c 714 §1]

**30.675 Place of public accommodation defined.** (1) A place of public accommodation, subject to the exclusion in subsection (2) of this section, means any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements or otherwise.

(2) However, a place of public accommodation does not include any institution, bona fide club or place of accommodation which is in its nature distinctly private.

[1953 c 495 §2, 1957 c 724 §1, 1961 c 247 §1, 1973 c 714 §2]

**30.680 Action for damages by person discriminated against.** All persons against whom any distinction, discrimination or restriction on account of race, religion, sex, marital status, color or national origin has been made by any place of public accommodation, as defined in ORS 30.675, by any person acting on behalf of such place or by any person aiding or abetting such place or person in violation of ORS 30.685 shall have a cause of action to recover compensatory and punitive damages from the operator or manager of such place or the employe or person acting on behalf of such place or the aider or abettor of such place or person. In the action the operator or manager of such place, the employe or person acting on behalf of such place or the aider or abettor of such place or person shall be jointly and severally liable. Any person recovering damages under this section shall be entitled to reasonable attorney fees as determined by the court in addition to costs and necessary disbursements.

[Amended by 1953 c 495 §3, 1957 c 724 §2, 1973 c 714 §3]

**30.685 Aiding or abetting certain discrimination prohibited.** It is unlawful for any person to aid or abet any place of public accommodation, as defined in ORS 30.675 or any person acting on behalf of such place to make any distinction, discrimination or restriction on account of race, religion, color, sex, marital status or national origin.

[1973 c 714 §14]

## MISCELLANEOUS ACTIONS

**30.710** [Amended by 1961 c 344 §103, repealed by 1973 c 640 §1]

**30.720** [Repealed by 1973 c 640 §1, amended by 1973 c 823 §§88, 155]

**30.725** [Repealed by 1974 s s c 36 §28]

**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 employee 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 unlawful game described in ORS 167.117, 167.122 and 167.127 shall have a cause of action to recover from the dealer 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. [Amended by 1971 c 743 §308, 1977 c 850 §4]

**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]

**30.765 Liability of parents for tort by child; effect on foster parents.** (1) In addition to any other remedy provided by law, the parent or parents of an unemancipated minor child shall be liable for actual damages to person or property caused by any tort intentionally committed by such child. However, a parent who is not entitled to legal custody of the minor child at the time of the intentional tort shall not be liable for such damages.

(2) The legal obligation of the parent or parents of an unemancipated minor child to pay damages under this section shall be

limited to not more than \$5,000, payable to the same claimant, for one or more acts.

(3) When an action is brought under this section on parental responsibility for acts of their children, the parents shall be named as defendants therein and, in addition, the minor child shall be named as a defendant. The filing of an answer by the parents shall remove any requirement that a guardian ad litem be required.

(4) Nothing in subsections (1) to (3) of this section applies to foster parents. [1975 c 712 §§1, 4, 1977 c 419 §1]

**30.770** [1959 c 310 §1, 1965 c 587 §1, 1973 c 827 §8, repealed by 1975 c 712 §5]

**Note:** Section 3, chapter 712, Oregon Laws 1975, provides

**Sec. 3.** Any action pending under ORS 30 770 on the effective date of this Act [September 13, 1975] may be decided as if ORS 30 770 was in force

**30.780 Liability for damages caused by gambling.** Any person violating ORS 167.117 to 167.162 shall be liable in a civil suit for all damages occasioned thereby. [1959 c 681 §3, 1971 c 743 §309]

**30.790** [1963 c 524 §§1, 2, repealed by 1971 c 780 §7]

**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) A person licensed under any law of a state or of the United States to practice medicine and surgery, professional nursing, osteopathy or chiropractic; and

(B) A person who has completed successfully, within three years prior to the date on which emergency medical assistance is rendered by him, a state or federal-sponsored training program for persons engaging in the rendering of emergency medical assistance or who has completed successfully the aforesaid training program and, within three years prior to the date on which emergency medical assistance is rendered by him, regularly has

engaged in the rendering of emergency medical assistance, and who possesses proof of the successful completion of such a training program; and

(C) A person who has completed, within three years prior to the date on which emergency medical assistance is rendered by him, a course sponsored by the American Red Cross and is qualified to render emergency first-aid and who possesses proof of the completion of such first-aid training; and

(D) A person who, within three years prior to the date on which emergency medical assistance is rendered by him, has been trained or who has been trained and, within three years prior to the date on which emergency medical assistance is rendered by him, has served as a medical assistant or medical corpsman in the Armed Services of the United States.

(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 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, 1973 c 635 §1]

**30.810 Right to include medical expenses paid by parent or conservator 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 conservator 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 the 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 conservator for doctor, hospital or medical expenses caused by the injury.

[1969 c 387 §1, 1973 c 823 §89]

**30.820 Action against seller of drugged horse; attorney fees.** In addition to and not in lieu of the penalty provided in subsection (2) of ORS 165.825, any person who buys a horse sold in violation of subsection (1) of ORS 165.825 may bring an action against the seller for any damages the buyer incurs as a result of the sale. If the buyer prevails in any such action, there shall be taxed and allowed to the buyer, as a part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees.

[1971 c 175 §3]

**30.830 Action against judicial officer for failure to make certain payments.** If any money described in ORS 156.650, 305.830, 484.250, 488.865, 496.715 and 506.630 is not paid to the Department of Revenue within the time provided therein, the court or judicial officer who collected the money shall be deemed delinquent in the payment of the money. An action may be maintained in the name of the Department of Revenue, State of Oregon, to recover the unpaid amounts with interest at the legal rate.

[1971 c 186 §7]

**30.840 Action for alienation of affections abolished.** There shall be no civil cause of action for alienation of affections.

[1975 c 562 §1]

**30.850 Action for criminal conversation abolished.** There shall be no civil cause of action for criminal conversation.

[1975 c 562 §2]

**30.860 Action for trade discrimination; treble damages; attorney fees.** (1) No person or governmental entity shall discriminate against, boycott, blacklist, refuse to buy from, sell to or trade with any person because of foreign government imposed or sanctioned discrimination based upon the national origin, race or religion of such person or of such person's partners, members, directors, stockholders, agents, employes, business associates, suppliers or customers.

(2) Any person directly injured in its business or property by a violation of subsec-

tion (1) of this section may sue whoever knowingly practices, or conspires to practice, activities prohibited by subsection (1) of this section, and shall recover threefold the damages sustained, the costs of suit and reasonable attorney fees.

[1977 c 395 §§1, 2]

### PRODUCTS LIABILITY ACTIONS

**30.900 "Product liability civil action" defined.** As used in ORS 30.900 to 30.915, "product liability civil action" means a civil action brought against a manufacturer, distributor, seller or lessor of a product for damages for personal injury, death or property damage arising out of:

(1) Any design, inspection, testing, manufacturing or other defect in a product;

(2) Any failure to warn regarding a product; or

(3) Any failure to properly instruct in the use of a product.

[1977 c 843 §1]

**30.905 Time limitation for commencement of action.** (1) Notwithstanding ORS 12.115 or 12.140 and except as provided in subsection (2) of this section, a product liability civil action shall be commenced not later than eight years after the date on which the product was first purchased for use or consumption.

(2) A product liability civil action shall be commenced not later than two years after the

date on which the death, injury or damage complained of occurs.

[1977 c 843 §3]

**30.910 Product disputably presumed not unreasonably dangerous.** It is a disputable presumption in a products liability civil action that a product as manufactured and sold or leased is not unreasonably dangerous for its intended use.

[1977 c 843 §2]

**30.915 Defenses.** It shall be a defense to a product liability civil action that an alteration or modification of a product occurred under the following circumstances:

(1) The alteration or modification was made without the consent of or was made not in accordance with the instructions or specifications of the manufacturer, distributor, seller or lessor;

(2) The alteration or modification was a substantial contributing factor to the personal injury, death or property damage; and

(3) If the alteration or modification was reasonably foreseeable, the manufacturer, distributor, seller or lessor gave adequate warning.

[1977 c 843 §4]

**Note:** ORS 30 900 to 30 915 take effect and apply as follows

**Sec. 5.** This Act takes effect on January 1, 1978, and applies only to causes of action, claims, rights or liabilities accruing after December 31, 1977

### CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173 170, I, Thomas G Clifford, 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,  
October 1, 1977

Thomas G Clifford  
Legislative Counsel