

Chapter 30

1981 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. (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 ORS 30.020 (2)(d), 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 ORS 30.020 (2)(d) 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 ORS 30.020 (2)(d) 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 ORS 30.030 (5) 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 Procedure upon 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 the decedent 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 and continued by the personal representatives under this section, or within three years by the personal representatives if not commenced prior to death.

(2) In any such action if the plaintiff prevails, there shall be taxed and allowed to the plaintiff, at trial and on appeal, 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 defen-

dant 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; 1981 c.810 §1; 1981 c.897 §6]

Note: Section 2, chapter 810, Oregon Laws 1981, provides:

Sec. 2. The amendment of ORS 30 075 by section 1 of this Act does not apply to civil actions commenced before the effective date of this Act [August 21, 1981].

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 Aircraft and watercraft guest passengers; definitions. No person transported by the owner or operator of an aircraft or a watercraft 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); 1979 c 866 §7]

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.

ACTIONS 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 defama-

tory 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 ORS 30.165 (2), (3) and (4) 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 FOR INTIMIDATION

30.190 Civil action for intimidation; remedies; liability of parents. (1) Irrespective of any criminal prosecution or the result thereof, any person injured by a violation of ORS 166.155 or 166.165 shall have a civil action to secure an injunction, damages or other appropriate relief against any and all persons whose actions are unlawful under this section and ORS 30.200, 166.155 and 166.165.

(2) Upon prevailing in such action, the plaintiff may recover:

(a) Both special and general damages, including damages for emotional distress;

(b) Punitive damages; and

(c) Reasonable attorney fees and costs.

(3) The parent, parents or legal guardian of an unemancipated minor shall be liable for any judgment recovered against such minor under this section, in an amount not to exceed \$5,000. [1981 c 785 §3]

30.200 Action by district attorney; effect on others. If any district attorney has reasonable cause to believe that any person or group of persons is engaged in violation of ORS 166.155 or 166.165, the district attorney may bring a civil claim for relief in the appropriate court, setting forth facts pertaining to such violation, and request such relief as may be necessary to restrain or prevent such violation. Any claim for relief under this section does not prevent any person from seeking any other remedy otherwise available under law. [1981 c 785 §4]

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 behalf of the plaintiff 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 dismissal without prejudice; if it does, the defendant may controvert the allegation, and if the issue be found in favor of the defendant, judgment shall be given accordingly. [Amended by 1979 c 284 §63]

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) "Department" means the Department of General Services.

(2) "Director" means Director of the Department of General Services.

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

(4) "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.

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

(6) "Local public body" means any public body other than the state. [1967 c 627 §1, 1975 c 609 §11, 1977 c 823 §1, 1981 c.109 §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 or while operating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598. 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, or while operating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598, are immune from liability for:

(a) Any claim for injury to or death of any person covered by any workers' 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) ORS 30.287 and 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, 1981 c.490 §4]

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 ORS 418.015 (1), 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 General Services 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, 1981 c 109 §2]

30.267 Liability for certain medical treatment at Oregon Health Sciences University 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 Oregon Health Sciences University campus or in any Oregon Health Sciences University 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 Oregon Health Sciences University;

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

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

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

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

(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 Oregon Health Sciences University. (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 Oregon Health Sciences University campus or one of the Oregon Health Sciences University clinics are within the scope of state employment or duties when:

(a) Provided by members of the Oregon Health Sciences University faculty or staff, Oregon Health Sciences University students under prior written express authorization from the President of the Oregon Health Sciences University 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 Oregon Health Sciences University:

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

(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 Notice of claim; time of notice; time of action. (1) No action arising from any act or omission of a public body or an officer, employe or agent of a public body within the scope of ORS 30.260 to 30.300 shall be maintained unless notice of claim is given as required by this section.

(2) Notice of claim shall be given within the following applicable period of time, not including the period, 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:

(a) For wrongful death, within one year after the alleged loss or injury.

(b) For all other claims, within 180 days after the alleged loss or injury.

(3) Notice of claim required by this section is satisfied by:

(a) Formal notice of claim as provided in subsections (4) and (5) of this section;

(b) Actual notice of claim as provided in subsection (6) of this section;

(c) Commencement of an action on the claim by or on behalf of the claimant within

the applicable period of time provided in subsection (2) of this section; or

(d) Payment of all or any part of the claim by or on behalf of the public body at any time.

(4) Formal notice of claim is a written communication from a claimant or representative of a claimant containing:

(a) A statement that a claim for damages is or will be asserted against the public body or an officer, employe or agent of the public body;

(b) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant; and

(c) The name of the claimant and the mailing address to which correspondence concerning the claim may be sent.

(5) Formal notice of claim shall be given by mail or personal delivery:

(a) If the claim is against the state or an officer, employe or agent thereof, to the office of the Director of the Department of General Services.

(b) If the claim is against a local public body or an officer, employe or agent thereof, to the public body at its principal administrative office, to any member of the governing body of the public body, or to an attorney designated by the governing body as its general counsel.

(6) Actual notice of claim is any communication by which any individual to whom notice may be given as provided in subsection (5) of this section or any person responsible for administering claims on behalf of the public body acquires actual knowledge of the time, place and circumstances giving rise to the claim, where the communication is such that a reasonable person would conclude that a particular person intends to assert a claim against the public body or an officer, employe or agent of the public body. A person responsible for administering claims on behalf of a public body is one who, as an officer, employe or agent of a public body or as an employe or agent of an insurance carrier insuring the public body for risks within the scope of ORS 30.260 to 30.300, engages in investigation, negotiation, adjustment or defense of claims within the scope of ORS 30.260 to 30.300, or in furnishing or accepting forms for claimants to provide claim information, or in supervising any of those activities.

(7) In an action arising from any act or omission of a public body or an officer, em-

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 and the department in the defense of such claim. If the Attorney General after consulting with the department 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 the officer, employe or agent shall be indemnified against liability and 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 department 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.

(8) As used in this section, "state officer, employe or agent" includes district attorneys but does not include any employe of the office of district attorney or of the justice, district or circuit courts whose salary is paid wholly or in part by the county. [1967 c.627 §7; 1975 c.609 §16; 1981 c.109 §5; 1981 c.913 §2]

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 ORS 30.285 (1), 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

30.275

ploye or agent of a public body within the scope of ORS 30.260 to 30.300, the plaintiff has the burden of proving that notice of claim was given as required by this section.

(8) Except as provided in ORS 12.120 and 12.135, but notwithstanding any other provision of ORS chapter 12 or other statute providing a limitation on the commencement of an action, an action arising from any act or omission of a public body or an officer, employe or agent of a public body within the scope of ORS 30.260 to 30.300 shall be commenced within two years after the alleged loss or injury. [1967 c 627 §5; 1969 c 429 §3; 1975 c 604 §1a, 1975 c 609 §14; 1977 c 823 §3; 1979 c.284 §64, 1981 c 350 §1]

Note: Sections 2 and 4, chapter 350, Oregon Laws 1981, provide

Sec. 2. The amendments to ORS 30 275 by section 1 of this Act do not permit commencement of an action on or after the effective date of this Act in respect to a claim for damages arising out of an accident or occurrence before the effective date of this Act for which notice was not presented before the effective date of this Act as required by ORS 30 275 and the time for presenting that notice prescribed by ORS 30.275 expired before the effective date of this Act

Sec. 4. This Act takes effect on January 1, 1982

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. The department may provide the public body evidence of insurance by issuance of a certificate or policy.

(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. When 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; 1981 c 109 §4]

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, the state officer, employe or agent may, after consulting with the Department of General Services 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 the Attorney General finds that the claim or

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 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 203.770 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 [Repealed by 1979 c.284 §199]

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; content. 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 other required content, 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; 1979 c.284 §65]

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.

30.395 Settlement of certain claims against municipal corporations; when circuit court approval required; manner of payment. (1) The governing body of any municipal corporation, as defined in ORS 297.405, may compromise, adjust and settle claims other than tort claims against the municipal corporation, its officers, employees or agents acting within the scope of their employment, 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 \$10,000, the settlement shall not be effective until approved by the circuit court, unless such settlement is not to be paid from the funds of the municipal corporation.

(2) When a judgment is entered or a settlement is made pursuant to subsection (1) of this section, payment therefor may be made in the same manner as payment for tort claims under ORS 30.295. [1979 c 630 §2]

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.

Note: The amendments to 30.450 by section 110, chapter 3, Oregon Laws 1981 (special session), become operative January 1, 1983. See section 5, chapter 3, Oregon Laws 1981 (special session). 30.450, as amended, is set forth for the users' convenience.

30.450. Fines and forfeitures not specially granted or otherwise appropriated by ORS 46.800 (4), 137.017, or other 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 ORS 30.510 (1), 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 ORS 30.510 (1), 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. 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, the person

may afterwards maintain an action to recover the damages which the person has sustained by reason of the premises. [Amended by 1973 c 836 §320; 1981 c.898 §35]

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 ORS 30.510 (1), 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 signed by the relator as if the relator were the plaintiff, or otherwise as provided in ORCP 17; in all other cases the pleadings shall be signed by the district attorney in like manner or otherwise as provided in ORCP 17. 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. [Amended by 1979 c 284 §66]

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. [Amended by 1981 c.898 §36]

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, discrimination 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 at trial and on appeal 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; 1981 c.897 §7]

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

30.700 Procedure to recover damages on dishonored check. (1) In any action against a person who makes any check, draft or order for the payment of money which has been dishonored for lack of funds or credit to pay the same, or because the maker has no account with the drawee, the plaintiff may recover from the defendant damages in an amount equal to \$100 or triple the amount for which the check, draft or order is drawn, whichever is greater. However, damages recovered under this section shall not exceed by more than \$500 the amount of the check, draft or order and may be awarded only if the plain-

tiff made written demand of the defendant for payment of the amount of the check, draft or order not less than 30 days before commencing the action and if the defendant failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the amount demanded.

(2) Subsequent to the commencement of the action but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check and the incurred court and service costs.

(3) If the court or jury determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court or jury has the discretion to waive all or part of the statutory damages. However, if the court or jury waives all or part of the statutory damages, the court or jury shall render judgment against defendant in the amount of the dishonored check plus incurred court and service costs. [1981 c.670 §§1, 2]

30.710 [Amended by 1961 c.344 §103; repealed by 1973 c.640 §1]

30.715 Successive actions or suits. Successive actions or suits may be maintained upon the same contract or transaction, whenever, after the former action or suit, a new cause of action or suit arises therefrom. [Formerly 11 030]

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 [Repealed by 1979 c.801 §4]

30.740 Right of gambling loser to recover double 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]

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]

30.795 Liability for emergency medical assistance while in custody of law enforcement officer. (1) An individual who receives emergency medical services while in the custody of a law enforcement officer is liable:

(a) To the provider of the emergency medical services for the charges and expenses therefor; and

(b) To the public agency by which the law enforcement officer is employed for any charges or expenses paid by the public agency for the emergency medical services.

(2) A person providing emergency medical services to an individual described in paragraph (a) of subsection (1) of this section shall first make reasonable efforts to collect the charges and expenses thereof from the individual before seeking to collect them from the public agency.

(3)(a) If the provider has not been paid within 45 days of the date of the billing, the provider may bill the public agency who shall pay the account.

(b) A bill submitted to the public agency under this subsection must be accompanied by evidence documenting that:

(A) The provider has billed the individual or the individual's insurer or health care contractor for the charges or expenses owed to the provider; and

(B) The provider has made a reasonable effort to collect from the individual or the individual's insurer or health care contractor the charges and expenses owed to the provider.

(c) If the provider receives payment from the individual or the insurer or health care contractor after receiving payment from the public agency, the provider shall repay the public agency the amount received from the public agency less any difference between payment received from the individual, insurer or contractor and the amount of the billing.

(4) As used in this section:

(a) "Law enforcement officer" means an officer who is commissioned and employed by a public agency as a peace officer to enforce the criminal laws of this state or laws or ordinances of a public agency.

(b) "Public agency" means a city, port, school district, mass transit district or county. [1981 c 690 §2]

30.800 Liability for emergency medical assistance by medically trained persons. (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, naturopathy or chiropractic;

(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;

(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;

(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; and

(E) A person who possesses an emergency medical technician I certificate issued pursuant to ORS 485.560 or an emergency medical technician II, III or IV certificate issued pursuant to ORS 677.610 to 677.700.

(2) No person may maintain an action 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, if the action is against:

(a) A medically trained person; or

(b) A governmental agency or other entity which employs, trains, supervises or sponsors the medically trained person.

(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. [1967 c 266 §§1, 2, 1973 c 635 §1, 1979 c.576 §1; 1979 c. 731 §1]

30.805 Liability for emergency medical assistance by government personnel.

(1) No person may maintain an action for damages for injury, death or loss that results from acts or omissions in 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, if the action is against:

(a) The staff person of a governmental agency or other entity if the staff person and the agency or entity are authorized within the scope of their official duties or licenses to provide emergency medical care; or

(b) A governmental agency or other entity that employs, trains, supervises or sponsors the staff person.

(2) As used in this section, "emergency medical care" means medical care to an injured or ill person who is in need of immediate medical care:

(a) Under emergency circumstances that suggest that the giving of assistance is the only alternative to serious physical aftereffects or death;

(b) In a place where emergency medical care is not regularly available;

(c) In the absence of a personal refusal of such medical care by the injured or ill person or the responsible relative of such person; and

(d) Which may include medical care provided through means of radio or telecommunication by a medically trained person, who practices in a hospital as defined in ORS 442.015 (12)(a) and licensed under ORS 441.015 to 441.087, and who is not at the location of the injured or ill person. [1979 c 782 §8; 1981 c 693 §27]

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 ORS 165.825 (2), any person who buys a horse sold in violation of ORS 165.825 (1) 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, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees. [1971 c 175 §3; 1981 c 897 §8]

30.830 Action against judicial officer for failure to make certain payments. If any money described in ORS 46.800, 153.630, 305.830, 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]

Note: The amendments to 30.830 by section 111, chapter 3, Oregon Laws 1981 (special session), become operative January 1, 1983. See section 5, chapter 3, Oregon Laws 1981 (special session) 30.830, as amended, is set forth for the users' convenience.

30.830. If any money described in ORS 46.800 (4), 137.017, 153.630, 305.830, 488.865, 496.715 and 506.630 is not paid to the Department of Revenue within the time provided therein, the court or 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

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 business or property by a violation of subsection (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 at trial and on appeal. [1977 c 395 §§1, 2; 1981 c 897 §9]

30.870 Definitions for ORS 30.870 and 30.875. As used in this section and ORS 30.875:

(1) "Agricultural produce" means any plant including, but not limited to, trees, or animals, kept, grown or raised upon real property, and the products of those plants and animals.

(2) "Mercantile establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale.

(3) "Merchandise" means all things movable and capable of manual delivery.

(4) "Owner" means any person who owns or operates a mercantile establishment or farm, or the agents or employes of that person. [1979 c 592 §1, 1981 c 716 §5]

30.875 Civil damages for shoplifting or taking of agricultural produce; court jurisdiction; assignment of judgments. (1) An adult or an emancipated minor who takes possession of any merchandise displayed or offered for sale by any mercantile establish-

ment, or who takes from any real property any agricultural produce kept, grown or raised on the property for purposes of sale, without the consent of the owner and with the intention of converting such merchandise or produce to the individual's own use without having paid the purchase price thereof, or who alters the price indicia of such merchandise, shall be civilly liable to the owner for actual damages, for a penalty to the owner in the amount of the retail value of the merchandise or produce not to exceed \$500, plus an additional penalty to the owner of not less than \$100 nor more than \$250.

(2) The parents having custody of an unemancipated minor who takes possession of any merchandise displayed or offered for sale by any mercantile establishment, or who takes from any real property any agricultural produce kept, grown or raised on the property for purposes of sale, without the consent of the owner, and with the intention of converting such merchandise or produce to the minor's own use without having paid the purchase price thereof, or who alters the price indicia of such merchandise shall be civilly liable to the owner for actual damages, for a penalty to the owner in the amount of the retail value of the merchandise or produce not to exceed \$250, plus an additional penalty to the owner of not less than \$100 nor more than \$250. Persons operating a foster home certified under ORS 418.625 to 418.645 are not liable under this subsection for the acts of children not related to them by blood or marriage and under their care.

(3) A conviction for theft under ORS 164.045 or 164.055 is not a condition precedent to the maintenance of a civil action under this section.

(4) A civil liability under this section is not limited by any other law that limits liability of parents of minor children.

(5) An action for recovery of damages under this section may be brought in any court of competent jurisdiction, including the small claims department of a district court if the total damages do not exceed the jurisdictional limit of the small claims department.

(6) The fact that an owner or seller of merchandise or agricultural produce may bring an action against an individual for damages as provided in this section shall not limit the right of the owner or seller to demand, in writing, that a person who is liable for damages under this section remit said

damages prior to the commencement of any legal action.

(7) Judgments, but not claims, arising under this section may be assigned. [1979 c 592 §2; 1981 c 716 §6]

30.880 Child care center liability insurance coverage. A child care center, as defined by rule of the Children's Services Division, may obtain insurance in the same manner as a local public body may obtain insurance under ORS 30.282. However, the insurance shall not cover theft or bodily injury and property damage arising out of operation of a motor vehicle by a child resident of the center. [1979 c 842 §5a]

30.890 Food gleaners and distributors liability. (1) Notwithstanding any other provision of law, the good-faith donor of any perishable food, apparently fit for human consumption, to a bona fide charitable or nonprofit organization for free distribution, or a gleaner of any perishable food apparently fit for human consumption, shall not be subject to criminal penalty or civil damages arising from the condition of the food, unless an injury is caused by the gross negligence, recklessness or intentional conduct of the donor or gleaner.

(2) Notwithstanding any other provision of law, a bona fide charitable or nonprofit organization which in good faith receives food, apparently fit for human consumption, and distributes it at no charge, shall not be subject to criminal penalty or civil damages resulting from the condition of the food unless an injury results from the gross negligence, recklessness or intentional conduct of the organization.

(3) This section includes the good-faith donation of perishable food not readily marketable due to appearance, freshness, grade, surplus or other considerations but does not restrict the authority of any appropriate agency to regulate or ban the use of such food for human consumption.

(4) As used in this section:

(a) "Gleaner" means a person that harvests for free distribution an agricultural crop that has been donated by the owner.

(b) "Perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. "Perishable food" includes, but is not limited to, fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or

vegetables, and foods that have been packaged, refrigerated or frozen. "Perishable food" does not include foods that have been canned.

[1979 c 265 §1]

PRODUCTS LIABILITY ACTIONS

30.900 "Product liability civil action" defined. As used in ORS 30.900 to 30.920, "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]

30.920 When seller or lessor of product liable; effect of liability rule. (1) One who sells or leases any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm or damage to property caused by that condition, if:

(a) The seller or lessor is engaged in the business of selling or leasing such a product; and

(b) The product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold or leased.

(2) The rule stated in subsection (1) of this section shall apply, even though:

(a) The seller or lessor has exercised all possible care in the preparation and sale or lease of the product; and

(b) The user, consumer or injured party has not purchased or leased the product from or entered into any contractual relations with the seller or lessor.

(3) It is the intent of the Legislative Assembly that the rule stated in subsections (1) and (2) of this section shall be construed in accordance with the Restatement (Second) of Torts sec. 402A, Comments a to m (1965). All references in these comments to sale, sell, selling or seller shall be construed to include lease, leases, leasing and lessor.

(4) Nothing in this section shall be construed to limit the rights and liabilities of sellers and lessors under principles of common law negligence or under ORS chapter 72. [1979 c 866 §2]

30.925 Punitive damages; evidence of defendant's ability to pay. (1) In a product liability civil action, punitive damages shall not be recoverable unless it is proven by clear and convincing evidence that the party against whom punitive damages is sought has shown wanton disregard for the health, safety and welfare of others.

(2) During the course of trial, evidence of the defendant's ability to pay shall not be admitted unless and until the party entitled to recover establishes a prima facie right to recover under subsection (1) of this section.

(3) Punitive damages, if any, shall be determined and awarded based upon the following criteria:

(a) The likelihood at the time that serious harm would arise from the defendant's misconduct;

(b) The degree of the defendant's awareness of that likelihood;

(c) The profitability of the defendant's misconduct;

(d) The duration of the misconduct and any concealment of it;

(e) The attitude and conduct of the defendant upon discovery of the misconduct;

(f) The financial condition of the defendant; and

(g) The total deterrent effect of other punishment imposed upon the defendant as a result of the misconduct, including, but not limited to, punitive damage awards to persons in situations similar to the claimant's and the severity of criminal penalties to which the defendant has been or may be subjected. [1979 c 866 §3]

FARMING PRACTICES

30.930 Definitions for ORS 30.930 to 30.940. As used in ORS 30.930 to 30.940:

(1) "Farm" means any facility, including the land, buildings, watercourses and appurtenances thereto, used in the commercial production of crops, livestock, poultry, livestock products or poultry products.

(2) "Farming practice" means a mode of operation on a farm that:

(a) Is or may be used on a farm of a similar nature;

(b) Is necessary for the operation of the farm to obtain a profit in money; and

(c) Is or may become customarily utilized in conjunction with farm use. [1981 c 716 §1]

30.935 Farming practice not private or public nuisance; effect on local ordinances; exceptions. (1) A farming practice shall not be declared or held to be a private or public nuisance.

(2) Any local government ordinance now in effect or subsequently adopted that makes a farming practice a nuisance or provides for its abatement as a nuisance shall not apply to that farming practice.

(3) The provisions of ORS 30.870, 30.875 and 30.930 to 30.945 shall not apply:

(a) When a nuisance results from the negligent operation of a farming practice;

(b) To the growing or raising of infested, infected or diseased crops, poultry or livestock that are declared a nuisance by statute, ordinance or administrative rule of a governmental body that has jurisdiction over the farming practice; or

(c) To sounds produced by devices designed for agricultural purposes in order to frighten predacious birds or animals away from agricultural crops. [1981 c 716 §2]

30.940 Effect on other remedies. The provisions of ORS 30.870, 30.875 and 30.930 to 30.945 shall not impair the right of any person or governmental body to pursue any remedy authorized by a statute, ordinance or administrative rule that:

(1) Concerns matters other than a nuisance;

(2) Does not expressly purport to prohibit or regulate a farming practice as a nuisance; or

(3) Prohibits or regulates the use or physical condition of facilities that adversely affect public health or safety, regardless of whether it purports to prohibit or regulate a situation as a nuisance. [1981 c 716 §3]

30.945 Severability. It is the intent of the Legislative Assembly, in enacting ORS 30.870, 30.875 and 30.930 to 30.945, that each part of ORS 30.870, 30.875 and 30.930 to 30.945 be considered to be essentially and inseparably connected with and dependent upon every other part. The Legislative Assembly does not intend that any part of ORS 30.870, 30.875 and 30.930 to 30.945 be the law if any other part is held unconstitutional. [1981 c 716 §4]

INTOXICATING LIQUOR SERVICE

30.950 Licensee and permittee liability. No licensee or permittee is liable for damages incurred or caused by intoxicated patrons off the licensee's or permittee's business premises unless the licensee or permittee has served or provided the patron alcoholic beverages when such patron was visibly intoxicated. [1979 c 801 §1]

30.955 Private host liability. No private host is liable for damages incurred or caused by an intoxicated social guest unless the private host has served or provided alcoholic beverages to a social guest when such

guest was visibly intoxicated. [1979 c 801 §2]

30.960 Liability for serving minors. Notwithstanding ORS 30.950, 30.955 and 471.130, no licensee, permittee or social host shall be liable to third persons injured by or through persons not having reached 21 years of age who obtained alcoholic beverages from the licensee, permittee or social host unless it is demonstrated that a reasonable person would have determined that identification should have been requested or that the identification exhibited was altered or did not accurately describe the person to whom the alcoholic liquor was sold or served. [1979 c.801 §3]

SKIING ACTIVITIES

30.970 Definitions for ORS 30.970 to 30.990. As used in ORS 30.970 to 30.990:

(1) "Inherent risks of skiing" includes, but is not limited to, those dangers or conditions which are an integral part of the sport, such as changing weather conditions, variations or steepness in terrain, snow or ice conditions, surface or subsurface conditions, bare spots, creeks and gullies, forest growth, rocks, stumps, lift towers and other structures and their components, collisions with other skiers and a skier's failure to ski within the skier's own ability.

(2) "Injury" means any personal injury or property damage or loss.

(3) "Skier" means any person who is in a ski area for the purpose of engaging in the sport of skiing or who rides as a passenger on any ski lift device.

(4) "Ski area" means any area designated and maintained by a ski area operator for skiing.

(5) "Ski area operator" means those persons, and their agents, officers, employes or representatives, who operate a ski area. [1979 c 665 §1]

30.975 Skiers assume certain risks. In accordance with ORS 18.470 and notwithstanding ORS 18.475 (2), an individual who engages in the sport of skiing, alpine or nordic, accepts and assumes the inherent risks of skiing in so far as they are reasonably obvious, expected or necessary. [1979 c.665 §2]

30.980 Notice to ski area operator of injury to skier; injuries resulting in death; statute of limitations; informing skiers of notice requirements. (1) A ski area operator

shall be notified of any injury to a skier by registered or certified mail within 180 days after the injury or within 180 days after the skier discovers, or reasonably should have discovered, such injury.

(2) When an injury results in a skier's death, the required notice of the injury may be presented to the ski area operator by or on behalf of the personal representative of the deceased, or any person who may, under ORS 30.020, maintain an action for the wrongful death of the skier, within 180 days after the date of the death which resulted from the injury. However, if the skier whose injury resulted in death presented a notice to the ski area operator that would have been sufficient under this section had the skier lived, notice of the death to the ski area operator is not necessary.

(3) An action against a ski area operator to recover damages for injuries to a skier shall be commenced within two years of the date of the injuries. However, ORS 12.160 and 12.190 apply to such actions.

(4) Failure to give notice as required by this section bars a claim for injuries or wrongful death unless:

(a) The ski area operator had knowledge of the injury or death within the 180-day period after its occurrence;

(b) The skier or skier's beneficiaries had good cause for failure to give notice as required by this section; or

(c) The ski area operator failed to comply with subsection (5) of this section.

(5) Ski area operators shall give to skiers, in a manner reasonably calculated to inform, notice of the requirements for notifying a ski area operator of injury and the effect of a failure to provide such notice under this section. [1979 c 665 §3]

30.985 Duties of skiers; effect of failure to comply. (1) Skiers shall have duties which include but are not limited to the following:

(a) Skiers who ski in any area not designated for skiing within the permit area assume the inherent risks thereof.

(b) Skiers shall be the sole judges of the limits of their skills and their ability to meet and overcome the inherent risks of skiing and shall maintain reasonable control of speed and course.

(c) Skiers shall abide by the directions and instructions of the ski area operator.

(d) Skiers shall familiarize themselves with posted information on location and degree of difficulty of trails and slopes to the extent reasonably possible before skiing on any slope or trail.

(e) Skiers shall not cross the uphill track of any surface lift except at points clearly designated by the ski area operator.

(f) Skiers shall not overtake any other skier except in such a manner as to avoid contact and shall grant the right of way to the overtaken skier.

(g) Skiers shall yield to other skiers when entering a trail or starting downhill.

(h) Skiers must wear retention straps or other devices to prevent runaway skis.

(i) Skiers shall not board rope tows, wire rope tows, j-bars, t-bars, ski lifts or other similar devices unless they have sufficient ability to use the devices, and skiers shall follow any written or verbal instructions that are given regarding the devices.

(j) Skiers, when involved in a skiing accident, shall not depart from the ski area without leaving their names and addresses if reasonably possible.

(k) A skier who is injured should, if reasonably possible, give notice of the injury to the ski area operator before leaving the ski area.

(L) Skiers shall not embark or disembark from a ski lift except at designated areas or by the authority of the ski area operator.

(2) Violation of any of the duties of skiers set forth in subsection (1) of this section entitles the ski area operator to withdraw the violator's privilege of skiing. [1979 c 665 §4]

30.990 Operators required to give skiers notice of duties. Ski area operators shall give notice to skiers of their duties under ORS 30.985 in a manner reasonably calculated to inform skiers of those duties. [1979 c 665 §5]

