Chapter 18

1991 EDITION

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18.125 [1977 c.208 §3; repealed by 1981 c.898 §53]

18.130 [Repealed by 1977 c.208 §5]

18.135 [Formerly 15.100; repealed by 1981 c.898 §53]

18.140 [Amended by 1957 c.348 §1; 1973 c.207 §2; repealed by 1979 c.284 §199]

18.160 [Repealed by 1981 c.898 §53]

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18.230 [Amended by 1967 c.466 §1; 1975 c.134 §1; repealed by 1979 c.284 §199]

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18.250 [Repealed by 1979 c.284 §199]

18.260 [Amended by 1971 c.224 §1; repealed by 1979 c.284 §199]

DOCKETING; RECORD; LIEN; SATISFACTION

18.310 [Amended by 1967 c.471 §1; repealed by 1979 c.284 §199]

18.320 Docketing of judgment or lien record abstract. (1) Immediately after the entry in the register of judgment for the payment of money in any action, the clerk shall docket the judgment in the judgment docket, noting thereon the day, hour and minute of such docketing. The clerk shall rely on the existence of a separate section within the judgment for those judgments subject to ORCP 70 A.(2) in determining whether the judgment is a judgment for the payment of money and shall only docket therefrom.

(2) With respect to any judgment docketed in a circuit court judgment docket, the following apply:

(a) At any time thereafter, so long as the original judgment remains in force under ORS 18.360, and is unsatisfied in whole or part, the judgment creditor, or the agent of the judgment creditor, may have recorded a certified copy of the judgment or a lien record abstract in the County Clerk Lien Record for any other county in this state.

(b) Upon receipt, the county clerk shall record a certified copy of the judgment or a lien record abstract in the County Clerk Lien Record maintained under ORS 205.130, noting thereon the day, hour and minute of such recording.

(c) A certified copy or a lien record abstract of any judgment renewed pursuant to ORS 18.360 may likewise be recorded in the County Clerk Lien Record in another county.

(d) A certified copy of the judgment, or a certified copy of any renewed judgment under ORS 18.360, or lien record abstract of either, shall be recorded in any county other than in the county where a judgment is originally docketed in order for that judgment to be a lien upon the real property of the judgment debtor in that county. [Amended by 1961 c.151 §1; 1983 c.405 §1; 1983 c.696 §3; 1985 c.343 §1; 1987 c.586 §3; 1989 c.768 §5]

Note: See note following 18.360.

18.325 Form for lien record abstract. Unless otherwise prescribed by law, a person recording a lien record abstract shall use substantially the following form:

LIEN RECORD ABSTRACT

The undersigned states:

A. Creditor/Prevailing Party Information:

__ 1. The creditor/prevailing party is:

_____

and the address of the creditor is:

_____

_____

under judgment, decree, order or petition entered on _____ (date) in the District/Circuit Court/_____ for _____(County) of _____

(State) under Case No. _____.

__ 2. The Creditor's attorney's name is

_____

Attorney's Address is:

_____

Attorney's Phone No. is: _____

B. Debtor/Losing Party Information:

__ 1. The Debtor/losing party is:

_____

__ 2. Whose Address is (if known):

_____

_____

__ 3. Social Security No. (if known): _____

C. Judgment Information:

__ 1. The amount of the judgment is: _____

__ 2. The amount of the costs is: _____

__ 3. The amount of attorney fees, if any is: _____

D. The Real Property to be Affected (Check appropriate box):

__ All real property of the debtor/losing party, now or hereafter acquired, in _____ County as provided under ORS 18.320 and 18.350.

__ The following described real property of debtor (legal description as set forth or on attached Exhibit):

_____
_____
_____
_____

IN WITNESS WHEREOF, the undersigned person or persons have executed this abstract this ____day of _____, 19__.

_____ _____
_____ _____

State of Oregon)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this_____ day of _____, 19____ by _____.

_____
Notary Public for Oregon

My commission expires: _____

State of Oregon)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of ____, 19____ by_____ and by_____ of_____, a corporation on behalf of the corporation.

_____
Notary Public for Oregon

My commission expires: _____

[1987 c.586 §2b; 1989 c.171 §2]

Note: 18.325 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 18 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

18.330 [Repealed by 1959 c.558 §29 (18.335 enacted in lieu of 18.330)]

18.335 Trial court file; authority to issue post-judgment process against personal property. (1) In every proceeding, the clerk shall attach together, file and maintain in the office of the clerk until all actions in such proceeding have been completed and any judgment entered in such proceeding either has expired or has been satisfied, in the order of their filing, all the following:

(a) The original papers filed in the court, whether before or after judgment, including but not limited to the summons and proof of service, pleadings, motions, affidavits, depositions, stipulations and orders.

(b) The judgment.

(c) The notice of appeal and the undertaking on appeal, if any.

(2) The court in which the judgment was originally entered is the only court with authority to issue post-judgment process under ORS chapter 23 or 29 against personal property involving that judgment. This subsection does not apply to justice courts. If a judgment is a foreign judgment registered in this state, then the court in this state where the judgment was first filed is the only court with authority to issue post-judgment process against personal property involving that judgment. [1959 c.558 §30 (enacted in lieu of 18.330); 1979 c.284 §54; 1983 c.405 §2; 1987 c.873 §21]

18.340 [Repealed by 1959 c.558 §51]

18.350 Lien of judgment; undertaking in lieu of lien; filing satisfaction of judgment required. (1) From the time of docketing an original or renewed judgment, as provided in ORS 18.320, such judgment shall be a lien upon all the real property of the judgment debtor within the county where the same is docketed, or which the judgment debtor may afterwards acquire therein, during the time prescribed in ORS 18.360.

(2) When an appeal is taken from any judgment and an undertaking on appeal is filed, with a surety corporation licensed to do business in Oregon as surety on such undertaking, to the effect that if the judgment or any part thereof shall be affirmed

the appellant will satisfy it so far as affirmed, the lien of the judgment shall cease and be annulled upon the expiration of the time allowed to except to the surety in the undertaking or upon the justification thereof, if excepted to, and that fact shall be noted upon the judgment docket over the signature of the officer having custody of such docket.

(3) When the lien of a judgment ceases in the county in which the judgment was originally docketed, it shall cease in every other county in which a certified copy of the judgment or a lien record abstract has been recorded. When such judgment has been fully satisfied, it shall be the responsibility of the judgment creditor to file a full satisfaction in the county in which the judgment was originally docketed. The clerk of the court shall not charge a fee for filing a satisfaction of judgment. Upon satisfaction in full of the judgment, the judgment creditor shall deliver to the judgment debtor an executed satisfaction of the judgment for every county where a certified copy of the judgment or a lien record abstract has been recorded. [Amended by 1961 c.151 §2; 1983 c.405 §3; 1983 c.696 §3a; 1985 c.343 §2; 1987 c.586 §4]

18.360 Expiration of judgment and lien; renewal. Whenever, after the entry of a judgment, a period of 10 years elapses, the judgment and any docketed or recorded lien thereof shall expire. However, before the expiration of 10 years the circuit or district court for the county in which the judgment originally was entered, on motion, may renew the judgment and cause a new entry and docketing of the judgment to be made. The renewed judgment and any lien thereof expire 10 years after entry of the renewed judgment. If the judgment is renewed, the judgment creditor or the agent of the judgment creditor, may cause to be recorded in the County Clerk Lien Record of any other county in this state a certified copy of the renewed judgment or a lien record abstract. Execution may issue upon the renewed judgment until the judgment expires or is fully satisfied. [Amended by 1983 c.405 §4; 1983 c.696 §32a; 1985 c.343 §3; 1987 c.586 §5]

Note: Sections 11 and 12, chapter 343, Oregon Laws 1985, provide:

Sec. 11. (1) Notwithstanding the changes made to ORS 18.320 and 18.360 by sections 1 and 3 of this Act, when a certified transcript of the original docket entry of a judgment or the new record entry of a judgment renewed under ORS 18.360 was recorded in a County Clerk Lien Record between October 1, 1983, and October 1, 1985, under chapter 696, Oregon Laws 1983, the judgment is a lien upon all the real property of the judgment debtor within the county for which the County Clerk Lien Record is maintained, or which the judgment debtor may afterwards acquire in that county, during the time prescribed in ORS 18.360. If a court of competent jurisdiction rules that a judgment so recorded is not a lien as of the time it was recorded, the judgment shall be a lien as described in this subsection from the effective date of this Act [July 3, 1985].

(2) Notwithstanding chapter 696, Oregon Laws 1983, when a certified transcript of the original docket entry of a judgment or the new record entry of a judgment renewed under ORS 18.360 was docketed in a judgment docket between October 1, 1983, and October 1, 1985, the judgment is a lien upon all the real property of the judgment debtor within the county, or which the judgment debtor may afterwards acquire in that county, during the time prescribed in ORS 18.360. If a court of competent jurisdiction rules that a judgment so docketed is not a lien as of the time it was docketed, the judgment shall be a lien as described in this subsection from the effective date of this Act. [1985 c.343 §11]

Sec. 12. (1) When a certified transcript of the original docket entry of a judgment was recorded in a County Clerk Lien Record between October 1, 1983, and October 1, 1985, if the judgment creditor renews the judgment under ORS 18.360, the certified transcript of the new docket entry of the renewed judgment shall be filed and docketed in the judgment docket of the county.

(2) When a certified transcript of the original docket entry of a judgment was recorded in a County Clerk Lien Record between October 1, 1983, and October 1, 1985, a certificate obtained under ORS 18.400 showing the fact of satisfaction of the judgment shall be entered upon the same County Clerk Lien Record. [1985 c.343 §12]

18.370 Priority of lien over unrecorded conveyance. A conveyance of real property, or any portion thereof, or interest therein, shall be void as against the lien of a judgment, unless such conveyance be recorded at the time of docketing such judgment or the recording of a certified copy of the judgment or a lien record abstract as the case may be. [Amended by 1987 c.586 §6]

18.380 [Repealed by 1985 c.343 §14]

18.390 [Amended by 1961 c.151 §3; 1983 c.696 §4; repealed by 1985 c.343 §14]

18.400 Record of satisfaction or assignment of judgment; fee; support orders. (1) Subject to subsection (5) of this section, when any judgment is paid or satisfied, that fact may be noted upon the judgment docket of original entry over the signature of the officer having the official custody of such docket, or of the party entitled to receive and receiving payment or satisfaction, or of the attorney or attorneys representing the judgment creditor in the suit, action or proceeding in which the judgment was rendered; provided, such satisfaction shall not be made by an attorney whose authority over the judgment has expired. Upon annulment or payment or satisfaction and entry thereof being so made, the officer having the official custody of the judgment docket of original entry shall, upon request of any person and payment of the applicable fee, issue a certificate showing the fact of satisfaction of such judgment, or annulment of the lien thereof, describing the same sufficiently for identification; and such certificate shall, upon presentation to the officer having official custody of the judgment docket or the clerk in any county in which a certified copy of the judgment or lien re-

cord abstract may have been docketed or recorded, be entered upon such docket or recorded in the County Clerk Lien Record where a certified copy of the judgment or a lien record abstract has been recorded for the purpose of making the satisfaction of judgment a matter of record in such county.

(2) Evidence of the satisfaction of any judgment may also be perpetuated by the execution and acknowledgment by the judgment creditor, or the assignee or personal representative of the judgment creditor, of a certificate describing the judgment with convenient certainty, and specifying that the judgment has been paid or otherwise satisfied or discharged. Such certificate shall be acknowledged or proved and certified in the manner provided by law for conveyances of real property, and may be recorded in the County Clerk Lien Record of any county or counties. In case such judgment has been entered in the judgment docket of the circuit court of any such county, the official custodian of such docket shall, upon filing of such certificate of annulment or satisfaction, make notation thereof in the judgment docket. The procedures authorized by this subsection may be used only when the judgment does not arise pursuant to a support order entered under ORS 108.010 to 108.550, 416.010 to 416.270, 416.310 to 416.340 and 416.510 to 416.990 or ORS chapter 107, 109, 110 or 419 which directs that payments are to be made to the Department of Human Resources.

(3) An assignment of any judgment, executed in like manner, may be:

(a) Filed with the official custodian of the judgment docket of any county in which the judgment has been docketed, and upon such filing shall be docketed therein; or

(b) Recorded in the office of the county clerk of any county in which the judgment was recorded in the County Clerk Lien Record.

(4) In any case in which a state agency is assigned or subrogated to the support rights of a person under ORS 418.032, 418.042 or 419.513 or similar statutes of another state, a notice of assignment of judgment bearing the signature of the Administrator of the Support Enforcement Division or the authorized representative of the administrator shall be entitled to record, and with like effect, as an assignment of judgment under subsection (3) of this section.

(5) In cases where support payments ordered under ORS 416.010 to 416.270, 416.310 to 416.340 and 416.510 to 416.990 or ORS chapter 107, 108, 109, 110 or 419 are to be paid to the Department of Human Resources, any full or partial satisfaction of a support payment judgment signed by an obligee or an attorney representing the obligee must be mailed to or delivered to the Department of Human Resources, and not to the clerk of the court. The Department of Human Resources may provide support satisfaction forms, along with specific instructions. No credit shall be given for such support satisfaction except as provided by this subsection. The department shall credit such support satisfaction to the support judgment pay records maintained by the department, except to the extent that the judgment is assigned to the Department of Human Resources or its divisions. The department shall then promptly forward the satisfaction instrument to the appropriate clerk of the court together with a Department of Human Resources certificate stating the amount of support satisfaction entered on the pay records of the department. The clerk of the court shall enter on the judgment docket only the amount of the support satisfaction shown on the Department of Human Resources certificate, and not the amount shown on the satisfaction instrument. Nothing in this subsection shall prevent the Department of Human Resources or its attorney, in their discretion, from signing and mailing or delivering to the department a full or partial satisfaction of a support payment judgment to the extent that such judgment is assigned to the department. All other satisfactions of judgments shall be mailed or delivered to the clerk of the court, and not to the Department of Human Resources. [Amended by 1965 c.619 §7; 1979 c.694 §1; 1983 c.696 §5; 1985 c.343 §4; 1985 c.496 §18; 1985 c.610 §2; 1987 c.586 §7]

18.405 Notice of satisfaction of support judgment. At least five days prior to any application to the circuit court for an order fully or partially satisfying a support judgment, if aid, as defined in ORS 418.035 (2), is or has been granted to or on behalf of any person who is entitled to support pursuant to the support order, then a true copy of all papers to be submitted as part of such application shall be served by personal delivery or first-class mail on the Administrator of the Support Enforcement Division or on the branch office of the division which provides service to the county in which the application will be made. [1979 c.694 §3]

18.410 Procedure to satisfy judgment; hearing; judgments docketed in another county; disposition of money. (1) This section establishes a procedure to obtain a satisfaction for a judgment for the payment of money when any person, against whom exists a judgment for the payment of money or who is interested in any property upon which any such judgment is a lien, is unable to obtain a satisfaction from a judgment creditor for

any reason. The following apply to a procedure under this section:

(a) The procedure and all filings, entries and other actions relating to the procedure are to be considered as a continuation of the original action in which the judgment was entered.

(b) No appearance fee shall be charged for proceeding under this section.

(2) A person described in subsection (1) of this section may request the court which gave the judgment to determine whether the judgment has been paid in full or to determine the amount necessary to satisfy the judgment at a specific time in the future. To make such request, the person must do all of the following:

(a) File a motion with the court accompanied by an affidavit setting forth all the following, to the extent known to the person:

(A) The date of entry and principal amount of the judgment.

(B) The rate of interest and the date the rate of interest began.

(C) The date or dates and amounts of any payments on the judgment.

(D) Any amount the person believes is remaining to be paid on the judgment.

(E) Supporting mathematical calculations.

(F) Any other information necessary or helpful to the court in making its determination.

(b) Serve the motion and supporting affidavit on the judgment creditor and, if the person making the request is not the judgment debtor, on the judgment debtor. If the motion is filed within one year of the date of entry of the judgment to which the motion for satisfaction relates, service shall be made as provided in ORCP 9. If the motion is filed more than one year after the date of entry of the judgment to which the motion for satisfaction relates, service shall be made as provided in ORCP 7.

(c) File proof of service with the court.

(3) Any party served under paragraph (b) of subsection (2) of this section shall have 21 days or such additional time as may be allowed by the court within which to serve and file a responding affidavit with the court setting forth those parts of the original affidavit with which the person disagrees and any supporting information or mathematical calculations necessary to support the contentions of the objecting party.

(4) Not less than seven days after notice of hearing given to the person filing the motion and to the parties served with the motion, the court shall hear and determine the issues between the parties in a summary fashion without a jury. All the following apply to the court proceeding:

(a) The court shall give the parties a reasonable opportunity to present evidence relevant to any factual issues in dispute as shown by the affidavits.

(b) If the court, based on the record and sufficient evidence, is satisfied that the person making the request is entitled to relief, the court shall issue an order stating all the following:

(A) That the judgment has been satisfied in full or, if the judgment has not been satisfied in full, the specific amount that will satisfy the judgment on a date or within a period of time specified in the order.

(B) The party or parties to whom the money is owed.

(c) If the court finds that the judgment creditor's failure to file a satisfaction of judgment pursuant to ORS 18.350 was willful, the court, on motion, may do either or both of the following:

(A) The court may require the judgment creditor to pay to the demanding party a sum of money determined to be reasonable as attorney fees, costs and disbursements by awarding the demanding party a separate judgment for such costs.

(B) The court's order may specify that the demanding party may satisfy the judgment by paying such amounts determined by the court to be necessary to satisfy the judgment less that sum of money the court determines to be reasonable as attorney fees, costs and disbursements.

(5) If the order provides that the judgment has been satisfied or if money is paid to the clerk in the amount and within the time specified in the order, the clerk shall thereupon satisfy the judgment upon the records of the court.

(6) If such judgment has been entered in the records or docketed in the judgment docket in any other county than the county in which it was rendered, then a certified copy of the satisfaction may be used for any of the following purposes:

(a) Entry in the register of the circuit court for such other county and the clerk of that court shall thereupon satisfy the judgment upon the records of that court.

(b) Recording in the County Clerk Lien Record in any county in which a certified copy of the judgment or lien record abstract was recorded.

(7) The clerk shall, at any time, pay the money over to the person who shall be determined to be entitled thereto by the order

of the court in which the judgment was given. [Amended by 1985 c.540 §26; 1987 c.586 §8; 1989 c.768 §6]

18.420 Proceedings after discharge in bankruptcy. (1) Any person discharged from debts pursuant to the federal bankruptcy laws may file in any court or tribunal in which a judgment has at any time been rendered against the person, either before or after such discharge, a motion in the suit, action or proceeding for the discharge of the judgment from the record. After notice to the judgment creditor, or to any assignee of the judgment creditor whose assignment has been filed or recorded pursuant to ORS 18.400, the court shall enter a final order that the judgment be discharged and satisfied of record if the debtor establishes that:

(a) The debtor has been discharged from the payment of the judgment or the claim upon which the judgment was based; and

(b) Either there was no property upon which the judgment became a lien under ORS 18.350, as of the date the petition for relief is filed under the federal bankruptcy laws, or if there was such property, the value of the property on the date of the filing of the petition was not more than the outstanding balance of any prior lien or liens upon the property.

(2) If the debtor fails to meet the burden of proof established by subsection (1) of this section, the court shall enter a final order denying the debtor's motion.

(3) For the purposes of this section, where notice was given in connection with bankruptcy proceedings to a creditor retaining a beneficial interest in an assigned judgment or claim, such notice shall provide the basis for the satisfaction of that portion of said judgment in which the creditor retains a beneficial interest. Where the bankrupt received notice prior to the adjudication of bankruptcy of the assignment of a judgment or claim, notice to the assignor retaining a beneficial interest shall not provide the basis for satisfaction for that portion of the judgment which represents the amount actually paid by the assignee of said judgment for said claim and actual court costs incurred by said assignee in prosecuting said claim. [Amended by 1961 c.538 §1; 1987 c.586 §9; 1991 c.696 §1]

Note: Section 2, chapter 696, Oregon Laws 1991, provides:

Sec. 2. The amendments to ORS 18.420 by section 1 of this Act apply to all judgments that have not been discharged before the effective date of this Act [September 29, 1991]. [1991 c.696 §2]

18.425 Judgments of dismissal or after verdict; statement by attorney; content; record of statements. The following requirements apply to every civil action which is brought in a court of record in this state for damages resulting from personal injury or wrongful death, whether it results in a judgment of dismissal, with or without a settlement, or a judgment after verdict:

(1) The attorneys for each party to an action shall file the statement required under subsection (2) of this section within 45 days after final judgment is entered.

(2) The attorney shall file with the court a certified statement in the form and manner required by the Chief Justice. The statement shall contain the following information regarding the settlement or judgment:

(a) The date and terms.

(b) Any damages awarded or agreed to. For purposes of this paragraph, the information shall distinguish damages based on whether they are economic or noneconomic, as defined in ORS 18.560, or punitive.

(c) Any costs awarded or agreed to be paid by or to any party.

(d) Any disbursements awarded or agreed to be paid by or to any party.

(e) Any attorney fees awarded or agreed to be paid by or to any party.

(f) Any net amount realized by any party after payment of any costs, disbursements, attorney fees or any other charges or costs related to the case.

(3) If the attorney fails to file the statement by the due date or the statement is incomplete, the court shall order it filed within 20 days after the due date.

(4) The court shall maintain a record of the statements in a manner determined by the State Court Administrator. The statements shall be separately maintained from other records kept by the court. Each court shall transmit the information from the statements as determined by the State Court Administrator.

(5)(a) The State Court Administrator shall use the information in the statements to compile statistical summaries. The summaries shall be public records. A summary shall not contain information that identifies a specific case or a party to the case.

(b) Except as provided in paragraph (a) of this subsection, the statements are confidential and shall not be released by the State Court Administrator, trial court administrator, or trial court clerk to any person, including but not limited to other parties to the action.

(6) The Chief Justice shall adopt rules concerning the form and manner for filing of the statements. The rules shall be made available to the public in a manner which the Chief Justice determines will be most likely to apprise attorneys of their content.

(7) The State Court Administrator may adopt any procedures necessary or convenient for purposes of this section, except where rules are required to be adopted by the Chief Justice under subsection (6) of this section. [1987 c.774 §29]

Note: 18.425 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 18 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

CONTRIBUTION

18.430 Contribution among judgment debtors; subrogation of surety. When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays, without a sale, more than that person's proportion, that person may compel contribution from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of property or before sale, the surety may compel repayment from the principal. In such cases, the person so paying or contributing shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within 30 days after payment the person files with the clerk of the court where the judgment was rendered, notice of payment and claim to contribution or repayment; upon filing such notice, the clerk shall make an entry thereof in the margin of the docket where the judgment is entered. In any county where the judgment was recorded the person may have the notice of payment and claim to contribution or repayment recorded in the County Clerk Lien Record. [Amended by 1987 c.586 §10]

18.440 Right of contribution among joint tortfeasors; limitations; subrogation of insurer; effect on indemnity right. (1) Except as otherwise provided in this section, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them. There is no right of contribution from a person who is not liable in tort to the claimant.

(2) The right of contribution exists only in favor of a tortfeasor who has paid more than a proportional share of the common liability, and the total recovery of the tortfeasor is limited to the amount paid by the tortfeasor in excess of the proportional share. No tortfeasor is compelled to make contribution beyond the proportional share of the tortfeasor of the entire liability.

(3) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what is reasonable.

(4) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's proportional share of the common liability. This subsection does not limit or impair any right of subrogation arising from any other relationship.

(5) This section does not impair any right of indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of the indemnity obligation.

(6) This section shall not apply to breaches of trust or of other fiduciary obligation. [1971 c.665 §1; 1975 c.269 §1]

18.445 Basis for proportional shares of tortfeasors. (1) The proportional shares of tortfeasors in the entire liability shall be based upon their relative degrees of fault or responsibility. In contribution actions arising out of liability under ORS 18.470, the proportional share of a tortfeasor in the entire liability shall be based upon the tortfeasor's percentage of the common negligence of all tortfeasors.

(2) If equity requires, the collective liability of some as a group shall constitute a single share. Principles of equity applicable to contribution generally shall apply. [1975 c.269 §2]

18.450 Enforcement of right of contribution; commencement of separate action; barring right of contribution; effect of satisfaction of judgment. (1) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(2) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(3) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by the tortfeasor to enforce contribution must be commenced within two years after the judgment has become final by lapse of time for appeal or after appellate review.

(4) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the right of contribution of that tortfeasor is barred unless the tortfeasor has either:

(a) Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against the tortfeasor and has commenced action for contribution within two years after payment; or

(b) Agreed while action is pending against the tortfeasor to discharge the common liability and has within two years after the agreement paid the liability and commenced action for contribution.

(5) The running of the statute of limitations applicable to a claimant's right of recovery against a tortfeasor shall not operate to bar recovery of contribution against the tortfeasor.

(6) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(7) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution. [1975 c.269 §3]

18.455 Covenant not to sue; effect; notice. (1) When a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death or claimed to be liable in tort for the same injury or the same wrongful death:

(a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

(2) When a covenant described in subsection (1) of this section is given, the claimant shall give notice of all of the terms of the covenant to all persons against whom the claimant makes claims. [1975 c.269 §4]

18.460 Severability. If any provision of ORS 18.440 to 18.460 or the application thereof to any person is held invalid, the invalidity shall not affect other provisions or applications of ORS 18.440 to 18.460 which can be given effect without the invalid provision or application and to this end the provisions of ORS 18.440 to 18.460 are severable. [1975 c.269 §5]

COMPARATIVE NEGLIGENCE

18.470 Contributory negligence not bar to recovery; comparative negligence standard. Contributory negligence shall not bar recovery in an action by any person or the legal representative of the person to recover damages for death or injury to person or property if the fault attributable to the person seeking recovery was not greater than the combined fault of the person or persons against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the percentage of fault attributable to the person recovering. This section is not intended to create or abolish any defense. [1971 c.668 §1; 1975 c.599 §1]

18.475 Doctrines of last clear chance and implied assumption of risk abolished. (1) The doctrine of last clear chance is abolished.

(2) The doctrine of implied assumption of the risk is abolished. [1975 c.599 §4]

18.480 Special questions to trier of fact; effect. (1) When requested by any party the trier of fact shall answer special questions indicating:

(a) The amount of damages to which a party seeking recovery would be entitled, assuming that party not to be at fault;

(b) The degree of each party's fault expressed as a percentage of the total fault attributable to all parties represented in the action.

(2) A jury shall be informed of the legal effect of its answer to the questions listed in subsection (1) of this section. [1975 c.599 §2]

18.485 Liability of joint tortfeasors. (1) As used in this section, "economic damages" and "noneconomic damages" have the meaning given those terms in ORS 18.560.

(2) In any civil action arising out of bodily injury, death or property damage, including claims for emotional injury or distress, loss of care, comfort, companionship and society, and loss of consortium, the liability of

each defendant for noneconomic damages awarded to plaintiff shall be several only and shall not be joint.

(3) The liability of a defendant who is found to be less than 15 percent at fault for the economic damages awarded the plaintiff shall be several only.

(4) The liability of a defendant who is found to be at least 15 percent at fault for the economic damages awarded the plaintiff shall be joint and several, except that a defendant whose percentage of fault is less than that allocated to the plaintiff is liable to the plaintiff only for that percentage of the recoverable economic damages.

(5) Subsections (1) to (4) of this section do not apply to:

(a) A civil action resulting from the violation of a standard established by Oregon or federal statute, rule or regulation for the spill, release or disposal of any hazardous waste, as defined in ORS 466.005, hazardous substance, as defined in ORS 453.005 or radioactive waste, as defined in ORS 469.300.

(b) A civil action resulting from the violation of Oregon or federal standards for air pollution, as defined in ORS 468A.005 or water pollution, as defined in ORS 468B.005. [1975 c.599 §3; 1987 c.774 §7]

18.490 Setoff of damages not allowed. Setoff of damages shall not be granted in actions subject to ORS 18.470 to 18.490. [1975 c.599 §5]

ADVANCE PAYMENTS

18.500 "Advance payment" defined. As used in ORS 12.155 and 18.500 to 18.530, "advance payment" means compensation for the injury or death of a person or the injury or destruction of property prior to the determination of legal liability therefor. [Formerly 41.950]

18.510 Effect of advance payment; payment as satisfaction of judgment. (1) If judgment is entered against a party on whose behalf an advance payment referred to in ORS 18.520 or 18.530 has been made and in favor of a party for whose benefit any such advance payment has been received, the amount of the judgment shall be reduced by the amount of any such payments in the manner provided in subsection (3) of this section. However, nothing in ORS 12.155, 18.520, 18.530 and this section authorizes the person making such payments to recover such advance payment if no damages are awarded or to recover any amount by which the advance payment exceeds the award of damages.

(2) If judgment is entered against a party who is insured under a policy of liability insurance against such judgment and in favor of a party who has received benefits that have been the basis for a reimbursement payment by such insurer under ORS 742.534, the amount of the judgment shall be reduced by reason of such benefits in the manner provided in subsection (3) of this section.

(3)(a) The amount of any advance payment referred to in subsection (1) of this section may be submitted by the party making the payment, in the manner provided in ORCP 68 C.(4) for the submission of disbursements.

(b) The amount of any benefits referred to in subsection (2) of this section, diminished in proportion to the amount of negligence attributable to the party in favor of whom the judgment was entered and diminished to an amount no greater than the reimbursement payment made by the insurer under ORS 742.534, may be submitted by the insurer which has made the reimbursement payment, in the manner provided in ORCP 68 C.(4) for the submission of disbursements.

(c) Unless timely objections are filed as provided in ORCP 68 C.(4), the court clerk shall apply the amounts claimed pursuant to this subsection in partial satisfaction of the judgment. Such partial satisfaction shall be allowed without regard to whether the party claiming the reduction is otherwise entitled to costs and disbursements in the action. [1971 c.331 §6; 1975 c.784 §14; 1981 c.892 §85c; 1981 c.898 §17]

18.520 Advance payment for death or personal injury not admission of liability; when advance payment made. (1) Advance payment made for damages arising from the death or injury of a person is not an admission of liability for the death or injury by the person making the payment unless the parties to the payment agree to the contrary in writing.

(2) For the purpose of subsection (1) of this section, advance payment is made when payment is made with or to:

(a) The injured person;

(b) A person acting on behalf of the injured person with the consent of the injured person; or

(c) Any other person entitled to recover damages on account of the injury or death of the injured or deceased person. [Formerly 41.960]

18.530 Advance payment for property damage not admission of liability. Any advance payment made for damages arising from injury or destruction of property is not an admission of liability for the injury or destruction by the person making the payment unless the parties to the payment agree to the contrary in writing. [Formerly 41.970]

DAMAGES

18.540 Punitive damages; distribution; order of application. (1) Upon the entry of a judgment including an award of punitive damages, the Department of Justice shall become a judgment creditor as to the punitive damages portion of the award to which the Criminal Injuries Compensation Account is entitled pursuant to paragraph (c) of this subsection, and the punitive damage portion of an award shall be allocated as follows:

(a) The attorney for the prevailing party shall be paid the amount agreed upon between the attorney and the prevailing party.

(b) One-half of the remainder shall be paid to the prevailing party.

(c) One-half of the remainder shall be paid to the Criminal Injuries Compensation Account to be used for the purposes set forth in ORS chapter 147. However, if the prevailing party is a public entity, the amount otherwise payable to the Criminal Injuries Compensation Account shall be paid to the general fund of the public entity.

(2) The party preparing the proposed judgment shall assure that the judgment identifies the judgment creditors specified in subsection (1) of this section.

(3) Upon the entry of a judgment including an award of punitive damages, the prevailing party shall provide notice of the judgment to the Department of Justice.

(4) Whenever a judgment includes both compensatory and punitive damages, any payment on the judgment by or on behalf of any defendant, whether voluntary or by execution or otherwise, shall be applied first to compensatory damages, costs and court-awarded attorney fees awarded against that defendant and then to punitive damages awarded against that defendant unless all affected parties, including the Department of Justice, expressly agree otherwise, or unless that application is contrary to the express terms of the judgment.

(5) Whenever any judgment creditor of a judgment which includes punitive damages governed by this section receives any payment on the judgment by or on behalf of any defendant, the judgment creditor receiving the payment shall notify the attorney for the other judgment creditors and all sums collected shall be applied as required by subsections (1) and (4) of this section, unless all affected parties, including the Department of Justice, expressly agree otherwise, or unless that application is contrary to the express terms of the judgment. [1987 c.774 §3; 1991 c.862 §1]

Note: 18.540 to 18.580 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 18 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

18.550 Award of punitive damages against health practitioner prohibited; conditions. Punitive damages shall not be awarded against a health practitioner if:

(1) The health practitioner is licensed, registered or certified as:

(a) A psychologist under ORS 675.030 to 675.070, 657.085 and 675.090;

(b) An occupational therapist under ORS 675.230 to 675.300;

(c) A licensed clinical social worker under ORS 675.530, 675.540 to 675.560, 675.580 and 675.585;

(d) A physician under ORS 677.100 to 677.228;

(e) An emergency medical technician under ORS chapter 823;

(f) A podiatrist under ORS 677.820 to 677.840;

(g) A nurse under ORS 678.040 to 678.101;

(h) A nurse practitioner under ORS 678.375 to 678.390;

(i) A dentist under ORS 679.060 to 679.180;

(j) A dental hygienist under ORS 680.040 to 680.100;

(k) A denturist under ORS 680.515 to 680.535;

(L) An audiologist or speech pathologist under ORS 681.250 to 681.350;

(m) An optometrist under ORS 683.040 to 683.155 and 683.170 to 683.220;

(n) A chiropractor under ORS 684.040 to 684.105;

(o) A naturopath under ORS 685.060 to 685.110, 685.125 and 685.135;

(p) A massage technician under ORS 687.021 to 687.086;

(q) A physical therapist under ORS 688.040 to 688.145;

(r) A radiologic technician under ORS 688.445 to 688.525; or

(s) A pharmacist under ORS 689.225 to 689.285; and

(2) The health practitioner was engaged in conduct regulated by the license, registration or certificate issued by the appropriate governing body and was acting within the scope of practice for which the license, registration or certificate was issued and without malice. [1987 c.774 §4; 1989 c.721 §45; 1989 c.782 §34]

Note: See note under 18.540.

18.560 Noneconomic damages; award; limit; "economic damages" and "noneconomic damages" defined. (1) Except for claims subject to ORS 30.260 to 30.300 and ORS chapter 656, in any civil action seeking damages arising out of bodily injury, including emotional injury or distress, death or property damage of any one person including claims for loss of care, comfort, companionship and society and loss of consortium, the amount awarded for noneconomic damages shall not exceed $500,000.

(2) As used in this section:

(a) "Economic damages" means objectively verifiable monetary losses including but not limited to reasonable charges necessarily incurred for medical, hospital, nursing and rehabilitative services and other health care services, burial and memorial expenses, loss of income and past and future impairment of earning capacity, reasonable and necessary expenses incurred for substitute domestic services, recurring loss to an estate, damage to reputation that is economically verifiable, reasonable and necessarily incurred costs due to loss of use of property and reasonable costs incurred for repair or for replacement of damaged property, whichever is less.

(b) "Noneconomic damages" means subjective, nonmonetary losses, including but not limited to pain, mental suffering, emotional distress, humiliation, injury to reputation, loss of care, comfort, companionship and society, loss of consortium, inconvenience and interference with normal and usual activities apart from gainful employment.

(3) This section does not apply to punitive damages.

(4) The jury shall not be advised of the limitation set forth in this section. [1987 c.774 §6]

Note: See note under 18.540.

18.570 Economic and noneconomic damages separately set forth in verdict. A verdict shall set forth separately economic damages and noneconomic damages, if any, as defined in ORS 18.560. Whenever a judgment includes both economic and noneconomic damages, payment by or on behalf of any defendant shall be applied first to noneconomic damages and then to economic damages. [1987 c.774 §7a]

Note: See note under 18.540.

18.580 Effect of collateral benefits. (1) In a civil action, when a party is awarded damages for bodily injury or death of a person which are to be paid by another party to the action, and the party awarded damages or person injured or deceased received benefits for the injury or death other than from the party who is to pay the damages, the court may deduct from the amount of damages awarded, before the entry of final judgment, the total amount of those collateral benefits other than:

(a) Benefits which the party awarded damages, the person injured or that person's estate is obligated to repay;

(b) Life insurance or other death benefits;

(c) Insurance benefits for which the person injured or deceased or members of that person's family paid premiums; and

(d) Retirement, disability and pension plan benefits, and federal social security benefits.

(2) Evidence of the benefit described in subsection (1) of this section and the cost of obtaining it is not admissible at trial, but shall be received by the court by affidavit submitted after the verdict by any party to the action. [1987 c.774 §9]

Note: See note under 18.540.

18.590 Evidence of nonuse of safety belt or harness to mitigate damages. (1) In an action brought to recover damages for personal injuries arising out of a motor vehicle accident, evidence of the nonuse of a safety belt or harness may be admitted only to mitigate the injured party's damages. The mitigation shall not exceed five percent of the amount to which the injured party would otherwise be entitled.

(2) Subsection (1) of this section shall not apply to:

(a) Actions brought under ORS 30.900 to 30.920; or

(b) Actions to recover damages for personal injuries arising out of a motor vehicle accident when nonuse of a safety belt or harness is a substantial contributing cause of the accident itself. [1989 c.1074 §1]

Note: 18.590 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 18 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 2, chapter 1074, Oregon Laws 1989, provides:

Sec. 2. This Act applies only to causes of action arising on or after the effective date of this Act [August 7, 1989] and to causes of action arising before the effective date of this Act that have not been settled, compromised, released, barred or as to which a trial has not been commenced. [1989 c.1074 §2]