Chapter 30

1991 EDITION

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, and for the benefit of any stepchild or stepparent whether that stepchild or stepparent would be entitled to inherit the personal property of the decedent or not, 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 three years after the injury causing the death of the decedent is discovered or reasonably should have been discovered by the decedent, by the personal representative or by a person for whose benefit the action may be brought under this section if that person is not the wrongdoer. In no case may an action be commenced later than the earliest of:

(a) Three years after the death of the decedent; or

(b) The longest of any other period for commencing an action under a statute of ultimate repose that applies to the act or omission causing the injury, including but not limited to the statutes of ultimate repose provided for in ORS 12.110 (4), 12.115, 12.135, 12.137 and 30.905.

(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, stepchildren, stepparents 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.

(4) For the purposes of this section:

(a) Two persons shall be considered to have a stepchild-stepparent relationship if one of the biological parents of the stepchild, while the stepchild is a minor and in the custody of this first biological parent, marries the stepparent who is not the second biological parent or the adoptive parent of the stepchild;

(b) The stepchild-stepparent relationship shall remain in effect even though the stepchild is older than the age of majority or has been emancipated;

(c) The stepchild-stepparent relationship shall remain in effect even though one or both of the biological parents of the stepchild die; and

(d) The stepchild-stepparent relationship shall end upon the divorce of the biological parent and the stepparent. [Amended by 1953 c.600 §3; 1961 c.437 §1; 1967 c.544 §1; 1973 c.718 §2; 1991 c.471 §1; 1991 c.608 §1]

Note: Section 2, chapter 471, Oregon Laws 1991, provides:

Sec. 2. The amendments to ORS 30.020 by section 1 of this Act apply only to causes of action arising on or after the effective date of this Act [September 29, 1991]. [1991 c.471 §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 defendant either in the form of an action filed or a letter 10 days before commencement of the action; provided, that no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, at least 20 days before trial in an action that was pending at the death of the injured party, or otherwise prior to the commencement of the action, an amount not less than the damages awarded to the plaintiff. [1965 c.620 §4; 1971 c.473 §2; 1981 c.810 §1; 1981 c.897 §6]

30.080 Effect of death of wrongdoer. Claims for relief 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 claim for relief against the personal representatives of the wrongdoer as if the wrongdoer had survived, except for those damages provided for in ORS 30.020 (2)(e). [Amended by 1953 c.600 §3; 1961 c.437 §2; 1967 c.544 §2; 1973 c.742 §1; 1983 c.662 §1]

30.085 Defense to action for injury or death based on ordinary negligence. (1) It is a complete defense in any civil action for personal injury or wrongful death based on ordinary negligence that:

(a) The person damaged was engaged in conduct at the time that would constitute aggravated murder, murder or a Class A or a Class B felony; and

(b) The felonious conduct was a substantial factor contributing to the injury or death.

(2) To establish the defense described in this section, the defendant must prove beyond a reasonable doubt the fact that the person damaged was engaged in conduct that would constitute aggravated murder, murder or a Class A or a Class B felony.

(3) Nothing in this section affects any right of action under 42 U.S.C. §1983. [1987 c.774 §10]

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 a 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 the gross negligence or intoxication of the owner or operator. 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. In no event shall the indemnification obligation under such provisions be greater than the limits of the insurance secured by the indemnitee.

(2) Notwithstanding subsection (1) of this section, any provision in a construction agreement which requires a person or that person's surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused by the sole negligence of the indemnitee is void.

(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; 1987 c.774 §25]

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 employees 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 employee thereof, unless it is alleged and proved by the complaining party that the owner, licensee, operator,

agent or employee 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 employee thereof, be liable for any damages for any defamatory statement published or uttered by one other than such owner, licensee, operator, agent or employee, 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, the plaintiff can prove to have suffered as a direct and proximate result of the publication of the defamatory statement. [1955 c.365 §1]

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

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

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

(2) Where the plaintiff is entitled to recover general damages, the publication of a correction or retraction may be considered in mitigation of damages. [1955 c.365 §2]

30.165 Publication of correction or retraction upon demand. (1) The demand for correction or retraction shall be in writing, signed by the defamed person or the attorney of the person and be delivered to the publisher of the defamatory statement, either personally, by registered mail or by certified mail with return receipt 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, the publisher 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; 1991 c.249 §4]

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 ARISING OUT OF THE PROVISION OF UTILITY SERVICES

30.180 Definitions for ORS 30.180 to 30.186. As used in ORS 30.180 to 30.186:

(1) "Customer" means the person in whose name a utility service is provided.

(2) "Divert" means to change the intended course or path of the utility service without the authorization or consent of the utility.

(3) "Person" means any individual, partnership, firm, association, corporation or government agency.

(4) "Reconnection" means the commencement of utility service to a customer or other person after service has been lawfully disconnected by the utility.

(5) "Tamper" means to rearrange, injure, alter, interfere with or otherwise prevent from performing the normal or customary function.

(6) "Utility" means a private corporation, a municipal corporation or an agency thereof, any other public corporation or any district that provides electricity, gas, water, telephone or cable television to customers on a retail or wholesale basis.

(7) "Utility service" means the provision of electricity, gas, water, telephone, cable television, electronic communications, steam or any other service or commodity furnished by the utility for compensation. [1989 c.670 §3]

30.182 Civil action for taking of or tampering with utility services. A utility may bring a civil action for damages against any person who knowingly and willfully commits, authorizes, solicits, aids, abets or attempts to:

(1) Divert, or cause to be diverted, utility services by any means whatsoever;

(2) Make, or cause to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility;

(3) Prevent any utility meter or other device used in determining the charge for utility services from accurately performing its measuring function by tampering or by any other means;

(4) Tamper with any property owned or used by the utility to provide utility services; or

(5) Use or receive the direct benefit of all or a portion of the utility service with knowledge of, or reason to believe that, the diversion, tampering or unauthorized connection existed at the time of the use or that the use or receipt was without the authorization or consent of the utility. [1989 c.670 §1]

30.184 Amount of recovery. In any civil action brought under this section, the utility shall recover from the defendant the amount of actual damages, if any. Actual damages include the costs incurred on account of the bypassing, tampering or unauthorized reconnection, including but not limited to costs and expenses for investigation, disconnection, reconnection and service calls. The utility may recover punitive damages in addition to actual damages. The utility shall also recover the cost of the suit, reasonable attorney fees and expert witness fees. [1989 c.670 §2]

30.186 Remedies not exclusive. The remedies provided in ORS 30.180 to 30.186 are in addition to, and not in lieu of, any and all other remedies, both civil and criminal, provided by law. [1989 c.670 §4]

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 ORS 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; 1983 c.521 §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 an official undertaking or other security of the public officer, or renders the sureties of the public officer 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 the name of the person, against the officer and the sureties of the officer, to recover the amount to which the person 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

(Generally)

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:

(a) The state and any department, agency, board or commission of the state;

(b) Any city, county, school district or other political subdivision or municipal or public corporation and any instrumentality thereof;

(c) 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;

(d) Any nonprofit corporation that is organized and existing under ORS chapter 65 and that has only political subdivisions or municipal, quasi-municipal or public corporations in this state as members; or

(e) A private child-caring agency, as defined in ORS 418.205, that meets the criteria specified in ORS 30.880 (2) and that receives more than 50 percent of its funding from the state for the purpose of providing residential treatment to children who have been placed in the care and custody of the state or that provides residential treatment to children more than half of whom have been placed in the care and custody of the state.

(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.

(7) "Nuclear incident" has the meaning given that term in 42 U.S.C. 2014(q).

(8) "Tort" means the breach of a legal duty that is imposed by law, other than a duty arising from contract or quasi-contract, the breach of which results in injury to a specific person or persons for which the law provides a civil right of action for damages or for a protective remedy. [1967 c.627 §1; 1975 c.609 §11; 1977 c.823 §1; 1981 c.109 §1; 1987 c.915 §9; subsections (7) and (8) enacted as 1987 c.705 §6; 1989 c.905 §1; 1989 c.1004 §2]

30.265 Scope of liability of public body, officers, employees and agents; liability in nuclear incident. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is subject to action or suit for its torts and those of its officers, employees 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. The sole cause of action for any tort of officers, employees or agents of a public body acting within the scope of their employment or duties and eligible for representation and indemnification under ORS 30.285 or 30.287 shall be an action against the public body only. The remedy provided by ORS 30.260 to 30.300 is exclusive of any other action or suit against any such officer, employee or agent of a public body whose act or omission within the scope of their employment or duties gives rise to the action or suit. No other form of civil action or suit shall be permitted. If an action or suit is filed against an officer, employee or agent of a public body, on appropriate motion the public body shall be substituted as the only defendant.

(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, employee or agent of a public body when such officer, employee or agent is immune from liability.

(3) Every public body and its officers, employees 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, including but not limited to any statute of ultimate repose.

(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, employees 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, employees 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, employees 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.

(7) Subsection (1) of this section applies to any action of any officer, employee or agent of the state relating to a nuclear incident, whether or not the officer, employee or agent is acting within the scope of employment, and provided the nuclear incident is covered by an insurance or indemnity agreement under 42 U.S.C. 2210.

(8) Paragraph (c) of subsection (3) of this section does not apply to any discretionary act that is found to be the cause or partial cause of a nuclear incident covered by an insurance or indemnity agreement under the provisions of 42 U.S.C. 2210, including but not limited to road design and route selection. [1967 c.627 §§2, 3, 10; 1969 c.429 §1; 1975 c.609 §12; 1977 c.823 §2; 1981 c.490 §4; 1985 c.731 §31; 1987 c.705 §7; 1991 c.861 §1]

30.266 [1977 c.781 §2; 1981 c.109 §2; 1985 c.731 §20; 1989 c.873 §1; repealed by 1991 c.756 §5]

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 employees 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 a representative of the president 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, employees 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 as general and special damages for all other claims arising out of a single accident or occurrence unless those damages exceed $100,000, in which case the claimant may recover additional special damages, but in no event shall the total award of special damages exceed $100,000.

(c) $500,000 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 $500,000, any party may apply to any circuit court to apportion to each claimant the 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 the claimant 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, employees or agents, or two or more officers, employees 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.

(5) For any claim arising in connection with a nuclear incident, no provision of this section shall limit the amount of damages recoverable for injuries or death or loss of or damage to property, or loss of use of property as a result of a nuclear incident covered by an insurance or indemnity agreement under 42 U.S.C. 2210. [1967 c.627 §4; 1969 c.429 §2; 1975 c.609 §13; 1987 c.705 §8; 1987 c.915 §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, employee 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, employee 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, employee 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, employee 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, employee or agent of the public body. A person responsible for administering claims on behalf of a public body is one who, as an officer, employee or agent of a public body or as an employee 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, employee 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, employee 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]

30.278 Reporting notice of claim of professional negligence to licensing board. When notice is received under ORS 30.275 of a claim of professional negligence against a physician, optometrist, dentist, dental hygienist or naturopath who is acting within the scope of employment by a public body or within the scope of duties as defined by ORS 30.267, the person receiving the notice shall report to the appropriate licensing board, in the same manner as required by ORS 742.400, the information required by ORS 742.400 to be reported by insurers or self-insured associations. [1987 c.774 §64]

Note: 30.278 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 30 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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 Insurance Fund. (1) The governing body of any local public body may procure insurance against liability of the public body and its officers, employees 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 offi-

cers, employees 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, employees 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, employees 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 Insurance Fund created under ORS 278.425, and claims paid and administrative costs incurred under subsection (3) of this section shall be paid out of the Insurance Fund, and moneys in the Insurance 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, employee 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; 1985 c.731 §21]

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, employees 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 willful or wanton neglect of duty.

(3) If any civil action, suit or proceeding is brought against any state officer, employee or agent which on its face falls within the provisions of subsection (1) of this section, or which the state officer, employee or agent asserts to be based in fact upon an alleged act or omission in the performance of duty, the state officer, employee 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, employee or agent unless after investigation the Attorney General finds that the claim or demand does not arise out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Attorney General shall reject defense of the claim.

(4) Any officer, employee 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, employee 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, no public funds shall be paid in settlement of said claim or in payment of any judgment against such officer, employee or agent. Such action by the Attorney General shall not prejudice the right of the officer, employee 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 willful or wanton neglect of duty, in which case the officer, employee or agent shall be indemnified against liability and reasonable costs of defending the claim, cost of such indemnification to be a charge against the Insurance Fund established by ORS 278.425.

(6) 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 employee 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 employee on any claim arising out of the same accident or occurrence.

(7) As used in this section, "state officer, employee or agent" includes district attor-

neys and deputy district attorneys, special prosecutors and law clerks of the office of district attorney who act in a prosecutorial capacity, but does not include any other employee of the office of district attorney or any employee 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; 1985 c.731 §22; 1987 c.763 §1]

30.287 Counsel for public officer; when public funds not to be paid in settlement; effect on liability limit; defense by insurer. (1) If any civil action, suit or proceeding is brought against any officer, employee 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, employee or agent asserts to be based in fact upon an alleged act or omission in the performance of duty, the officer, employee or agent 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, employee 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 willful or wanton neglect of duty, in which case the governing body shall reject defense of the claim.

(2) Any officer, employee 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, employee or agent has not so cooperated or has otherwise acted in prejudice of the 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, no public funds shall be paid in settlement of the claim or in payment of any judgment against such officer, employee or agent. Such action by the governing body shall not prejudice the right of the officer, employee or agent to assert and establish in an appropriate proceedings that the claim or demand in fact arose out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of did not amount to malfeasance in office or willful or wanton neglect of duty, in which case the officer, employee or agent shall be indemnified by the public body against liability and reasonable costs of defending the claim.

(4) 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 employee 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 employee on any claim arising out of the same accident or occurrence.

(5) The provisions of this section may be superseded to the extent that the claim against the public officer, employee 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; 1985 c.565 §3; 1989 c.1004 §1]

30.290 Settlement of claims by local public body. 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, employees 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. [1967 c.627 §8; 1975 c.609 §17; 1989 c.655 §1]

30.295 Payment of judgment or settlement; remedies for nonpayment; tax levy for payment; installment 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, employees 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 re-

venues 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 electors 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 installment 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 installment 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 installment 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 installment 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 installments 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 installment payments shall provide for annual interest at the judgment rate. [1967 c.627 §9; 1977 c.823 §4]

30.297 Liability for damages caused by foster child under care of Children's Services Division; conditions; exceptions. (1) Notwithstanding ORS 126.080, the Children's Services Division is liable for damages resulting from the intentional torts of a foster child who is:

(a) Residing in a foster home that has been certified by the division under the provisions of ORS 418.625 to 418.645, even though the child may be temporarily absent from that home; or

(b) Residing in an approved home that is receiving payment from the division under the provisions of ORS 418.027 or under the provisions of ORS 420.810 and 420.815, even though the child may be temporarily absent from that home.

(2) Except as otherwise provided in this section, the liability of the division under this section shall be subject to the same requirements and limitations provided in ORS 30.260 to 30.300, and a claim under this section shall be treated as a claim for damages within the scope of ORS 30.260 to 30.300 for the purposes of ORS 278.120.

(3) Notwithstanding subsection (1) of this section:

(a) The division shall not be liable for any damages arising out of the operation of a motor vehicle by a foster child; and

(b) The division shall only be liable for theft by a foster child upon a showing by clear and convincing evidence that the foster child committed the theft.

(4) For the purposes of this section:

(a) "Division" means the Children's Services Division.

(b) "Foster child" means:

(A) A minor child under the custody or guardianship of the division by reason of appointment pursuant to ORS chapter 126 or 419;

(B) A minor child under the physical custody of the division pursuant to a voluntary agreement with the parent under ORS 418.015 (1);

(C) A minor child placed in a certified foster home, pending hearing, by any person authorized by the division to make that placement; and

(D) A person under 21 years of age who has been placed in an approved home that is receiving payment from the division under the provisions of ORS 418.027 or under the provisions of ORS 420.810 and 420.815. [1991 c.756 §2]

Note: 30.297 and 30.298 were added to and made a part of 30.260 to 30.300 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 4, chapter 756, Oregon Laws 1991, provides:

Sec. 4. Sections 2 and 3 of this Act [30.297 and 30.298] apply only to causes of action arising on or after the effective date of this Act [September 29, 1991]. Any cause of action arising before the effective date of this Act shall be governed by ORS 30.266 (1989 Edition). [1991 c.756 §4]

30.298 Liability of Children's Services Division to foster parents for injury or damage caused by foster child; conditions; limitations. (1) Except as otherwise provided in this section, the Children's Services Division is liable, without regard to fault, for injury to the person of foster parents or damage to the property of foster parents caused by a foster child if:

(a) The foster child resides in a foster home that is maintained by the foster parents and that has been certified by the division under the provisions of ORS 418.625 to 418.645; or

(b) The foster child is residing in an approved home that is maintained by the foster parents and that is receiving payment from the division under the provisions of ORS 418.027 or under the provisions of ORS 420.810 and 420.815.

(2) Except as otherwise provided in this section, the liability of the division under this section shall be subject to the same requirements and limitations provided in ORS 30.260 to 30.300, and a claim under this section shall be treated as a claim for damages within the scope of ORS 30.260 to 30.300 for the purposes of ORS 278.120.

(3) Notwithstanding ORS 30.260 to 30.300:

(a) In no event shall the liability of the division under this section exceed $5,000 for any number of claims arising out of a single occurrence;

(b) The liability of the division under this section is limited to economic damages, and in no event shall the division be liable for noneconomic damages;

(c) The division is liable under this section only to the extent the loss is not covered by other insurance; and

(d) No claim shall be allowed under this section unless written notice of the claim is delivered to the Department of General Services within 90 days after the alleged loss or injury.

(4) The division shall not be liable under this section for:

(a) Damage to or destruction of currency, securities or any other intangible property;

(b) The unexplained disappearance of any property; or

(c) Loss or damage that is due to wear and tear, inherent vice or gradual deterioration.

(5) In no event shall the division's liability under this section for damage to property exceed the difference between the fair market value of the property immediately before its damage or destruction and its fair market value immediately thereafter. The division shall not be liable for the costs of any betterments to the property that may be required by code, statute or other law as a condition of repair, replacement or reconstruction.

(6) The liability imposed under this section is in addition to that imposed for the intentional torts of a foster child under ORS 30.297, but any amounts paid under this section shall reduce any recovery that may be made under ORS 30.297.

(7) For the purposes of this section:

(a) "Division" means the Children's Services Division.

(b) "Economic damages" and "noneconomic damages" have those meanings given in ORS 18.560.

(c) "Foster child" has that meaning given in ORS 30.297. [1991 c.756 §3]

Note: See notes under 30.297.

(Certain Retired Physicians)

30.302 Certain retired physicians to be considered agents of public bodies. (1) As used in this section, "retired physician" means any person:

(a) Who holds a degree of Doctor of Medicine or Doctor of Osteopathy or has met the minimum educational requirements for licensure to practice naturopathy;

(b) Who has been licensed and is currently retired in accordance with the provisions of ORS chapter 677 or 685;

(c) Who is registered with the Board of Medical Examiners for the State of Oregon as a retired emeritus physician or who complies with the requirements of the Board of Naturopathic Examiners as a retired naturopath;

(d) Who registers with the county health officer in the county in which the physician or naturopath practices; and

(e) Who provides medical care as a volunteer without compensation solely through referrals from the county health officer specified in paragraph (d) of this subsection.

(2) Any retired physician who treats patients pursuant to this section shall be con-

sidered to be an agent of a public body for the purposes of ORS 30.260 to 30.300. [1991 c.952 §1]

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 counties to enforce ordinances and resolutions. (1) An incorporated city or any county may maintain civil proceedings in courts of this state against any person or property 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 remedies provided by this section are supplementary and in addition to those described in ORS 30.310.

(3) Nothing in this section shall affect the limitations imposed on cities and counties by subsections (3) and (4) of section 1, chapter 791, Oregon Laws 1989. [1961 c.313 §2; 1963 c.338 §1; 1985 c.626 §1; 1989 c.882 §§1, 2]

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 36.300 to 36.365.

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 prop-

erty 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; 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.

(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; 1987 c.396 §1]

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 an 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 the officer personally, and the amount thereof shall be allowed to the officer in the official accounts of the officer.

SETTLEMENT OR COMPROMISE BY PUBLIC BODY

30.402 Prohibition of confidential settlements and compromises; exception. (1) No public body, or officer, employee or agent of a public body, who is a defendant in an action under ORS 30.260 to 30.300, or who is a defendant in an action under ORS 294.100, shall enter into any settlement or compromise of the action if the settlement or compromise requires that the terms of the settlement or compromise be confidential.

(2) Notwithstanding subsection (1) of this section, the court may, after an expedited

examination in chambers, order that terms and conditions of a settlement or compromise of an action be confidential if the court determines, by written findings, that specific privacy interests of a private individual outweigh the public's interest in the terms of the settlement or compromise.

(3) Any public body, or officer, employee or agent of a public body, who is a defendant in an action under ORS 30.260 to 30.300, or who is a defendant in an action under ORS 294.100, shall file with the court a full and complete disclosure of the terms and conditions of any settlement or compromise of the claims against the public body, its officers, employees or agents. The disclosure shall be filed prior to the dismissal of the action.

(4) For the purposes of this section:

(a) "Action" means a legal proceeding that has been commenced as provided in ORCP 3; and

(b) "Public body" has that meaning given in ORS 30.260. [1991 c. 847 §1]

Note: Section 2, chapter 847, Oregon Laws 1991, provides:

Sec. 2. This Act [30.402] applies to all actions commenced on or after the effective date of this Act [September 29, 1991]. [1991 c.847 §2]

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 ORS 46.800 (4), 137.017, or other law, when recovered, shall be paid into the treasury of the proper county. [Amended by 1981 s.s. c.3 §110]

30.460 Payment of fines, cost or bail in proceeding to enforce county ordinance or resolution; defendant personally liable. When proceedings are conducted by county hearings officers to enforce requirements or prohibitions of county ordinances or resolutions, if fines, cost or bail are not paid by a defendant within 60 days after payment is ordered, the defendant is personally liable to the county for the amount of the unpaid fines, cost or bail. The county may file and record the order for payment in the County Clerk Lien Record. [1985 c.626 §3]

VOLUNTEERS TRANSPORTING DISABLED AND OLDER PERSONS

30.475 Legislative policy. In enacting ORS 30.480 and 30.485, the Legislative Assembly of the State of Oregon declares:

(1) That many disabled persons and older persons, due to disability or age, cannot obtain medical, educational, recreational or other important services or benefits, or pursue daily life activities outside the home, such as shopping or socializing, without transportation and other necessary assistance;

(2) That public resources are not adequate to provide dependable transportation to disabled persons and older persons, and that it is in the best interest of this state to encourage volunteers to provide transportation services to Oregon's disabled people and older people;

(3) That the threat or fear of personal liability arising from the provision of transportation services to disabled persons and older persons seriously discourages individuals from providing services on a volunteer basis;

(4) That the policy of this state is to encourage volunteers to provide such transportation services; and

(5) That, therefore, persons who qualify under ORS 30.480 must be protected from the threat of unlimited personal liability arising from the provision of volunteer transportation services, and that ORS 30.475 to 30.485 shall be liberally construed in favor of such persons in order to promote fully the foregoing policies. [1983 c.468 §1; 1989 c.224 §5]

30.480 Limitation on liability of volunteers; conditions. (1) When a provider of

volunteer transportation services who is qualified under subsection (3) of this section provides the services under the conditions described in subsection (4) of this section to a person who is disabled or who is 55 years of age or older, the liability of the provider to the person for injury, death or loss arising out of the volunteer transportation services shall be limited as provided in this section. When volunteer transportation services are provided to five or fewer persons at one time, the liability of the provider of the volunteer transportation services shall not exceed the greater of the amount of coverage under the terms of the provider's motor vehicle liability insurance policy, as described in ORS 806.080, or the amounts specified in ORS 806.070 for future responsibility payments for:

(a) Bodily injury to or death of any one person to whom the transportation services are provided, in any one accident.

(b) Bodily injury to or death of two or more persons to whom the transportation services are provided, in any one accident.

(c) Injury to or destruction of the property of one or more persons to whom the transportation services are provided, in any one accident.

(2) Notwithstanding the amount specified in paragraph (b) of subsection (1) of this section by reference to ORS 806.070, if a qualified provider of transportation services provides the services to more than five persons, but not more than 16, at one time who are disabled or who are 55 years of age or older, under the conditions described in subsection (4) of this section, the liability under paragraph (b) of subsection (1) of this section shall not exceed the greater of the amount of coverage under the terms of the provider's motor vehicle liability insurance policy or $300,000. The limitations on liability provided by ORS 30.475, 30.480 and 30.485 do not apply when volunteer transportation services are provided to 17 or more persons at one time who are disabled or who are 55 years of age or older.

(3) The following persons qualify for the limitation on liability under subsections (1) and (2) of this section:

(a) The person who provides or sponsors transportation services.

(b) The owner of the vehicle in which transportation services are provided.

(c) The person who operates the vehicle in which transportation services are provided.

(4) The limitation on liability under subsections (1) and (2) of this section applies to a person qualified under subsection (3) of this section only under the following conditions:

(a) If the person is an individual, the individual must hold a valid Oregon driver's license.

(b) The person must provide the transportation services on a nonprofit and voluntary basis. However, this paragraph does not prohibit a sponsor of transportation services from reimbursing an operator of a private motor vehicle providing the services for actual expenses incurred by the operator. If an operator is paid, that operator is qualified only if operating as an emergency operator.

(c) The person providing the transportation services must not receive from the persons using the services any substantial benefit in a material or business sense that is a substantial motivating factor for the transportation. A contribution or donation to the provider of the transportation services other than the operator of the motor vehicle or any mere gratuity or social amenity shall not be a substantial benefit under this paragraph.

(d) Except as provided in paragraph (c) of this subsection, the transportation services must be provided without charge to the person using the services.

(5) The amounts received by a person who is disabled or 55 years of age or older under the personal injury protection provisions of the insurance coverage of a person who qualifies for the limitation on liability under this section shall not reduce the amount that the person may recover under subsection (1) or (2) of this section.

(6) The liability of two or more persons whose liability is limited under this section, on claims arising out of a single accident, shall not exceed in the aggregate the amounts limited by subsection (1) or (2) of this section.

(7) This section does not apply in the case of an accident or injury if the accident or injury was intentional on the part of any person who provided the transportation services or if the accident or injury was caused by the person's gross negligence or intoxication. For purposes of this subsection, gross negligence is 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.

(8) For purposes of this section, a person is disabled if the person has a physical or mental disability that for the person constitutes or results in a functional limitation to one or more of the following activities: Self-care, ambulation, communication, transpor-

tation, education, socialization or employment. [1983 c.468 §2; 1985 c.16 §443; 1987 c.915 §7; 1989 c.224 §6]

30.485 Apportionment of damages awarded; insurance issues excluded from jury consideration. (1) If the amount awarded by a court to multiple claimants exceeds the total amount limited under ORS 30.480 (1) or (2), the court shall apportion a proper share of that total amount to each claimant to whom ORS 30.480 (1) or (2) applies.

(2) If the amount settled upon by multiple claimants exceeds the total amount limited under ORS 30.480 (1) or (2), any party may apply to any circuit court to apportion a proper share of that total amount to each claimant to whom ORS 30.480 (1) or (2) applies.

(3) The share apportioned under subsection (1) or (2) of this section to each claimant to whom ORS 30.480 (1) or (2) applies shall be in the proportion that the ratio of the award or settlement made to the claimant bears to the aggregate awards and settlements for all claims arising out of the occurrence that are made by all claimants to whom ORS 30.480 (1) or (2) applies.

(4) Nothing in this section or ORS 30.480 authorizes the issues of insurance coverage or the amount of insurance coverage to be presented to a jury. [1983 c.468 §3]

VOLUNTEERS PROVIDING ASSISTANCE OR ADVICE IN RESPONSE TO DISCHARGE OF HAZARDOUS MATERIAL OR RELATING TO COMPLIANCE WITH DISPOSAL LAWS

30.490 Definitions for ORS 30.490 to 30.497. As used in ORS 30.490 to 30.497:

(1) "Discharge" means any leakage, seepage or any other release of hazardous material.

(2) "Hazardous material" means:

(a) Hazardous waste as defined in ORS 466.005;

(b) Hazardous substances as defined in ORS 453.005;

(c) Radioactive waste as defined in ORS 469.300 ;

(d) Uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials;

(e) Radioactive substance as defined in ORS 453.005;

(f) Any substance designated by the United States Department of Transportation as hazardous pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. 1801, P.L. 93-633, as amended; and

(g) Any substance which the Environmental Protection Agency designates as hazardous pursuant to:

(A) The federal Toxic Substance Control Act, 15 U.S.C. 2601-2629; or

(B) The Federal Resource Conservation and Recovery Act, P.L. 94-580 as amended.

(3) "Person" means an individual, corporation, association, firm, partnership, joint stock company or state or local government agency. [1985 c.376 §1; 1991 c.480 §9]

30.492 Limitation on liability of person voluntarily providing assistance or advice related to mitigation or cleanup of discharge of hazardous material. (1) Except as provided in ORS 30.495 and 30.497, no person may maintain an action for damages against a person for voluntarily providing assistance or advice directly related to:

(a) Mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous material; or

(b) Preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of any discharge of hazardous material.

(2) Except as provided in ORS 30.495 and 30.497, no state or local agency may assess a civil or criminal penalty against a person for voluntarily providing assistance or advice directly related to:

(a) Mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous material; or

(b) Preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of any discharge of hazardous material. [1985 c.376 §2]

30.495 Exceptions to limitation. The immunity provided in ORS 30.492 shall not apply to any person:

(1) Whose act or omission caused in whole or in part the actual or threatened discharge and who would otherwise be liable for the damages; or

(2) Who receives compensation other than reimbursement for expenses for the person's service in rendering such assistance or advice. [1985 c.376 §3]

30.497 When limitation on liability not applicable. Nothing in ORS 30.492 shall be construed to limit or otherwise affect the liability of any person for damages resulting from the person's gross negligence or from the person's reckless, wanton or intentional misconduct. [1985 c.376 §4]

30.500 Definitions for ORS 30.500 and 30.505. As used in this section and ORS 30.505:

(1) "Generator" has the meaning given that term in ORS 466.005.

(2) "Person" means an individual, corporation, association, firm, partnership, joint stock company or state or local government agency. [1987 c.332 §1]

30.505 Limitation on liability of person voluntarily providing assistance relating to compliance with hazardous waste disposal laws. (1) Except as provided in subsection (2) of this section, no person may maintain an action for damages against a person who voluntarily provides assistance, training or advice to a generator directly related to procedures or actions the generator must take to comply with the requirements of state or federal hazardous waste disposal laws.

(2) The immunity provided in subsection (1) of this section shall not apply to:

(a) Any person whose act or omission caused in whole or in part the occurrence resulting in the damages for which the action is brought and who would otherwise be liable for the damages.

(b) Any person who receives compensation other than reimbursement for expenses for the person's service in providing such assistance, training or advice.

(c) The liability of any person for damages resulting from the person's gross negligence or from the person's reckless, wanton or intentional misconduct.

(d) Any activity for which a person is otherwise strictly liable without regard to fault. [1987 c.332 §2]

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 the office of the public officer; 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 the right of the person 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, the person shall be entitled to the possession and enjoyment of the franchise, or to take upon the person the execution of the office, after qualifying the person 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 the person, 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 the knowledge and consent of the person;

(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 the patentee, 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 the district attorney 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 with Secretary of State. 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 to be filed with the Secretary of State. [Amended by 1991 c.111 §3]

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 employee 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 employee 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]

ACTIONS ARISING OUT OF EQUINE ACTIVITIES

30.687 Definitions for ORS 30.687 to 30.697. For the purposes of ORS 30.687 to 30.697:

(1) "Equine" means a horse, pony, mule, donkey or hinny.

(2) "Equine activity" means:

(a) Equine shows, fairs, competitions, performances or parades that involve any or all breeds of equines and any of the equine disciplines including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, endurance trail riding and western games and hunting;

(b) Equine training, grooming and teaching activities;

(c) Boarding equines;

(d) Riding, inspecting or evaluating an equine belonging to another whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect or evaluate the equine; and

(e) Rides, trips, hunts or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor.

(3) "Equine activity sponsor" means an individual, group or club, partnership or corporation, whether or not the sponsor is operating for profit or nonprofit, that sponsors, organizes or provides the facilities for an equine activity, including but not limited to pony clubs, 4-H clubs, hunt clubs, riding clubs, school and college sponsored classes and programs, therapeutic riding programs and operators, instructors, and promoters of equine facilities, including but not limited to stables, clubhouses, pony ride strings, fairs and arenas at which the activity is held.

(4) "Equine professional" means a person engaged for compensation:

(a) In instructing a participant or renting to a participant an equine for the purpose of riding, training, driving, grooming or being a passenger upon the equine; or

(b) In renting equipment or tack to a participant.

(5) "Participant" means any person, whether amateur or professional, who directly engages in an equine activity, whether or not a fee is paid to participate in the equine activity. "Participant" does not in-

clude a spectator at an equine activity or a person who participates in the equine activity but does not ride, train, drive, groom or ride as a passenger upon an equine. [1991 c.864 §2]

30.689 Policy. (1) It is the purpose of ORS 30.687 to 30.697 to assist courts and juries to define the circumstances under which those persons responsible for equines may and may not be liable for damages to other persons harmed in the course of equine activities.

(2) It is the policy of the State of Oregon that no person shall be liable for damages sustained by another solely as a result of risks inherent in equine activity, insofar as those risks are, or should be, reasonably obvious, expected or necessary to the person injured.

(3) It is the policy of the State of Oregon that persons responsible for equines, or responsible for the safety of those persons engaged in equine activities, who are negligent and cause foreseeable injury to a person engaged in those activities, bear responsibility for that injury in accordance with other applicable law. [1991 c.864 §1]

30.691 Limitations on liability; exceptions. (1) Except as provided in subsection (2) of this section and in ORS 30.693, an equine activity sponsor or an equine professional shall not be liable for an injury to or the death of a participant arising out of riding, training, driving, grooming or riding as a passenger upon an equine and, except as provided in subsection (2) of this section and ORS 30.693, no participant or participant's representative may maintain an action against or recover from an equine activity sponsor or an equine professional for an injury to or the death of a participant arising out of riding, training, driving, grooming or riding as a passenger upon an equine.

(2)(a) The provisions of ORS 30.687 to 30.697 do not apply to any injury or death arising out of a race as defined in ORS 462.010.

(b) Nothing in subsection (1) of this section shall limit the liability of an equine activity sponsor or an equine professional:

(A) If the equine activity sponsor or the equine professional commits an act or omission that constitutes willful or wanton disregard for the safety of the participant and that act or omission caused the injury;

(B) If the equine activity sponsor or the equine professional intentionally injures the participant;

(C) Under the products liability provisions of ORS 30.900 to 30.920; or

(D) Under ORS 30.820 or 608.015. [1991 c.864 §3]

30.693 Additional exceptions to limitations on liability; effect of written release. (1) Except as provided in subsection (2) of this section, nothing in ORS 30.691 shall limit the liability of an equine activity sponsor or an equine professional if the equine activity sponsor or the equine professional:

(a) Provided the equipment or tack, failed to make reasonable and prudent inspection of the equipment or tack, and that failure was a cause of the injury to the participant;

(b) Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to safely ride, train, drive, groom or ride as a passenger upon an equine, to determine the ability of the equine to behave safely with the participant and to determine the ability of the participant to safely manage the particular equine; or

(c) Owns, leases, rents or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known to or should have been known to the equine activity sponsor or the equine professional and for which warning signs have not been conspicuously posted.

(2) The limitations on liability provided in ORS 30.691 shall apply to an adult participant in the circumstances listed in paragraph (b) of subsection (1) of this section if the participant, prior to riding, training, driving, grooming or riding as a passenger upon an equine, knowingly executes a release stating that as a condition of participation, the participant waives the right to bring an action against the equine professional or equine activity sponsor for any injury or death arising out of riding, training, driving, grooming or riding as a passenger upon the equine. A release so executed shall be binding upon the adult participant, and no equine professional or equine activity sponsor shall be liable in the circumstances described in paragraph (b) of subsection (1) of this section except as provided in ORS 30.691 (2). [1991 c.864 §4]

30.695 Effect of written release on liability of veterinarian or farrier. (1) No veterinarian or farrier shall be liable to any person who assists the veterinarian or farrier in rendering veterinarian or farrier services to an equine if the person, prior to assisting the veterinarian or farrier, executes a release stating that the person rendering assistance waives the right to bring an action against the veterinarian or farrier for any

injury or death arising out of assisting in the provision of veterinarian or farrier services. A release so executed shall be enforceable regardless of lack of consideration.

(2) A release executed pursuant to this section shall not limit the liability of a veterinarian or farrier for gross negligence or intentional misconduct. [1991 c.864 §5]

30.697 Effect on workers' compensation benefits. Nothing in ORS 30.687 to 30.695 shall affect the right of any person to any workers' compensation benefits that may be payable by reason of death, injury or other loss. [1991 c.864 §6]

Note: Section 7, chapter 864, Oregon Laws 1991, provides:

Sec. 7. This Act [30.687 to 30.697] applies only to causes of action arising on or after the effective date of this Act [September 29, 1991]. [1991 c.864 §7]

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 plaintiff 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 the liability of the maker 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 or recklessly committed by such child. However, a parent who is not entitled to legal custody of the minor child at the time of the intentional or reckless 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 $7,500, 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 mi-

nor 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; 1991 c.968 §5]

Note: Section 7, chapter 968, Oregon Laws 1991, provides:

Sec. 7. Section 4 of this Act [12.274] and the amendments to ORS 12.080, 12.135, 30.765 and 105.655, by sections 1, 2, 5 and 6 of this Act apply only to causes of action arising on or after the effective date of this Act [September 29, 1991]. [1991 c.968 §7]

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 167.164 shall be liable in a civil suit for all damages occasioned thereby. [1959 c.681 §3; 1971 c.743 §309]

30.785 Liability of construction design professional for injuries resulting from failure of employer to comply with safety standards. (1) A construction design professional who is retained to perform professional services on a construction project, or an employee of the construction design professional in the performance of professional services on the construction project, shall not be liable for any injury to a worker on the construction project that is a compensable injury under ORS chapter 656 and that results from the failure of the employer of the worker to comply with safety standards on the construction project unless the construction design professional by contract specifically assumes responsibility for compliance with those safety standards. The immunity provided by this section to a construction design professional shall not apply to the negligent preparation of design plans or specifications.

(2) As used in this section, "construction design professional" means an architect, registered landscape architect, professional engineer or professional land surveyor. [1987 c.915 §12]

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 the state, a city, port, school district, mass transit district or county. [1981 c.690 §2; 1985 c.530 §4]

Note: Section 3, chapter 778, Oregon Laws 1991, provides:

Sec. 3. Notwithstanding the provisions of ORS 137.306, 137.307, 169.165 and 30.795, until July 1, 1993, ORS 137.306, 137.307, 169.165 and 30.795 shall not be operative but sections 4 to 7 of this Act shall operate in lieu thereof. [1991 c.778 §3]

Note: See temporary provisions relating to the Law Enforcement Medical Liability Account in note preceding 414.025, temporary provisions relating to county assessments following 137.306 and temporary provisions relating to medical expenses following 169.165.

30.800 Liability for emergency medical assistance by medically trained persons. (1) As used in this section:

(a) "Emergency medical assistance" means:

(A) Medical or dental care not provided in a place where emergency medical or dental care is regularly available, including

but not limited to a hospital, industrial first-aid station or a physician's or dentist's office, given voluntarily and without the expectation of compensation to an injured person who is in need of immediate medical or dental care and under emergency circumstances that suggest that the giving of assistance is the only alternative to death or serious physical after effects; or

(B) Medical care provided voluntarily in good faith and without expectation of compensation by a physician licensed by the Board of Medical Examiners for the State of Oregon in the physician's professional capacity as a team physician at a public or private school or college athletic event or as a volunteer physician at other athletic events.

(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, dentistry or dental 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 the person, 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 the person, 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 the person, a course sponsored or approved by the American Red Cross, the federal Mine Safety and Health Administration, the Occupational Safety and Health Administration or the Department of Insurance and Finance, is qualified to render emergency first-aid and 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 the person, has been trained or who has been trained and, within three years prior to the date on which emergency medical assistance is rendered by the person, has served as a medical assistant or medical corpsman in the Armed Services of the United States;

(E) A person who possesses an emergency medical technician 1, 2, 3 or 4 certificate issued pursuant to ORS 823.150; or

(F) A person who has completed, within one year prior to the date the emergency cardiopulmonary resuscitation is rendered by the person, a course sponsored by the American Red Cross or the American Heart Association in emergency cardiopulmonary resuscitation, or a course in emergency cardiopulmonary resuscitation provided by an agency or organization that meets the current criteria and standards of emergency cardiopulmonary resuscitation training as established by the American Heart Association and is qualified to render cardiopulmonary resuscitation and who possesses proof of the successful completion of such a training program.

(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, dentist and patient or nurse and patient between the medically trained person giving the assistance and the person receiving the assistance insofar as the relationship carries with it a duty of a physician, dentist 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; 1983 c.771 §1; 1983 c.779 §1; 1985 c.428 §1; 1989 c.782 §35]

30.803 Liability of certified emergency medical technician acting as volunteer. No person shall maintain a cause of action for injury, death or loss against any certified emergency medical technician who acts as a volunteer without expectation of compensation, based on a claim of negligence unless the person shows that the injury, death or loss resulted from willful and wanton misconduct or intentional act or omission of the emergency medical technician. [1987 c.915 §11]

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 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; 1985 c.747 §48]

30.807 Liability for emergency transportation assistance. (1) No person shall maintain an action for damages for injury, death or loss that results from acts or omissions in rendering emergency transportation 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 transportation assistance was rendered if the action is against an uncompensated person who provides emergency transportation assistance under the direction of a medically trained person, as defined in ORS 30.800.

(2) As used in this section, "emergency transportation assistance" means transportation provided 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 aftereffect or death;

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

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

(d) Which may include directions on the transportation provided through means of radio or telecommunications by a medically trained person who practices in a hospital, as defined in ORS 442.015 and who is not at the location of the injured or ill person. [1987 c.915 §10]

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]

30.825 Action for unlawful tree spiking. Any person who is damaged by an act prohibited in ORS 164.877 (1) to (3) may bring a civil action to recover damages sustained, and shall be entitled to reasonable attorney fees. A party seeking civil damages under this section may recover upon proof by a preponderance of the evidence of a violation of the provisions of ORS 164.877 (1) to (3). [1989 c.1003 §4]

30.830 Action against judicial officer for failure to make certain payments. If any money described in ORS 137.295 that is payable to the Department of Revenue is not paid to the department 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. [1971 c.186 §7; 1981 s.s. c.3 §111; 1983 c.763 §52; 1987 c.905 §3a]

Note: The amendments to 30.830 by section 3a, chapter 905, Oregon Laws 1987, take effect July 1, 1992. See section 39, chapter 905, Oregon Laws 1987, as amended by section 1, chapter 460, Oregon Laws 1991. The text (1989 Edition) is set forth for the user's convenience.

30.830. If any money described in ORS 153.630, 305.830, 496.715, 506.630 and 830.145 that is payable to the Department of Revenue is not paid to the department 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, employees, 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 employees of that person. [1979 c.592 §1; 1981 c.716 §5]

30.875 Civil damages for shoplifting or taking of agricultural produce or cable television services; court jurisdiction; assignment of judgments. (1)(a) An adult or an emancipated 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 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, and for an additional penalty to the owner of not less than $100 nor more than $250.

(b) An adult or emancipated minor who engages in conduct described under ORS 164.125, 164.132 or 164.373, shall be civilly liable to the owner of a franchised, or otherwise duly licensed, cable television system injured thereby for actual damages, for a penalty to the owner in the amount of any retail value of the service received as a result of the conduct not to exceed $500, and for 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 or who engages in conduct described in ORS 164.125, 164.132 or 164.373, 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 is not a condition precedent to the maintenance of a civil action under this section. A conviction for

unlawful distribution of cable television equipment under ORS 164.132, or for tampering with cable television equipment under ORS 164.373, 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 or the owner of a cable television system, 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; 1985 c.537 §6; 1987 c.907 §16]

30.880 Child care center liability insurance coverage. (1) A child care center, as defined by rule of the Children's Services Division, and a private child-caring agency as defined in ORS 418.205 that meets the specifications of subsection (2) of this section, 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.

(2) A private child-caring agency is eligible to obtain insurance as specified in subsection (1) of this section if it:

(a) Is run by a private, nonprofit agency;

(b) Is licensed by the state; and

(c) Provides residential treatment for children who have been placed in the care and custody of the state. [1979 c.842 §5a; 1987 c.774 §148; 1987 c.915 §8]

30.890 Food gleaners and distributors liability. (1)(a) Notwithstanding any other provision of law, a gleaner or the good-faith donor of any food, apparently fit for human consumption, to a bona fide charitable or nonprofit organization, including but not limited to a food bank, for distribution without charge or on a scale reflecting ability to pay or only requiring a shared maintenance contribution, 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.

(b) The immunity from civil liability and criminal penalty provided by this section applies regardless of compliance with any laws, rules or ordinances regulating the packaging or labeling of food, and regardless of compliance with any laws, rules or ordinances regulating the storage or handling of the food by the donee after the donation of the food.

(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 while apparently fit for human consumption distributes it at no charge or on a fee scale reflecting ability to pay or only requiring a shared maintenance contribution, 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 applies to the good-faith donation of 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) "Donor" includes any person who operates a restaurant or other food establishment licensed or regulated by law.

(b) "Food" means any food whether or not it may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition, including but 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, canned, refrigerated, freeze-dried or frozen.

(c) "Food bank" means a surplus food collection and distribution system operated and established to assist in bringing donated food to nonprofit charitable organizations and individuals for the purpose of reducing hunger and meeting nutritional needs.

(d) "Gleaner" means a person that harvests for free distribution an agricultural crop that has been donated by the owner. [1979 c.265 §1; 1989 c.808 §1]

30.892 Liability of donors of general merchandise and household items. (1) Notwithstanding any other provision of law, the good-faith donor of any general merchandise or household item, apparently fit

for use to a bona fide charitable or nonprofit organization for distribution without charge or on a fee scale reflecting ability to pay, or only requiring a shared maintenance contribution, shall not be subject to criminal penalty or civil damages arising from the condition of the general merchandise or household item, unless an injury is caused by the gross negligence, recklessness or intentional conduct of the donor.

(2) The immunity from civil liability and criminal penalty provided by this section applies regardless of compliance with any laws, rules or ordinances regulating the packaging or labeling of general merchandise or household items, and regardless of compliance with any laws, rules or ordinances regulating the storage or handling of the general merchandise or household items by the donee after the donation.

(3) Notwithstanding any other provision of law, a bona fide charitable or nonprofit organization which in good faith receives general merchandise or household items, apparently fit for use, and while apparently still fit for use, distributes the merchandise or items at no charge or on a fee scale reflecting ability to pay or only requiring a shared maintenance contribution, shall not be subject to criminal penalty or civil damages resulting from the condition of the general merchandise or household items, unless an injury results from the gross negligence, recklessness or intentional conduct of the organization.

(4) This section applies to the good-faith donation of general merchandise or household items not readily marketable due to appearance, grade, surplus or considerations other than safety but does not restrict the authority of any appropriate agency to regulate or ban the use of such general merchandise or household items. The immunity from civil liability and criminal penalty provided by this section shall not apply if the general merchandise or household item is resold by either the donee or any other person. This section does not affect the liability of a manufacturer for products that are subject to a current or future safety recall whether such recall is initiated by the manufacturer or at the request of the state or Federal Government, nor shall this section affect the liability of a manufacturer under ORS 30.900 to 30.920.

(5) As used in this section:

(a) "Donor" includes all of the following, without regard to who is the owner of the general merchandise or household item at the time of the donation:

(A) A general merchandiser;

(B) A retail establishment;

(C) A wholesaler; and

(D) A manufacturer.

(b) "General merchandise or household item" means any item sold as general merchandise for household use, including but not limited to items sold in the following categories: Toiletries, cosmetics, domestics, electronics, sporting goods, clothing, toys, small appliances, personal care appliances, housewares, household chemicals, hardware, paint, sundries, plumbing, garden supplies, automotive, school supplies, pet food, pet supplies, over-the-counter drugs or vitamins, or other items of merchandise commonly sold in a retail or general merchandising establishment. [1989 c.1012 §2]

30.895 Wrongful use of civil proceeding; pleading; procedure. (1) In order to bring a claim for wrongful use of a civil proceeding against another, a person shall not be required to plead or prove special injury beyond the expense and other consequences normally associated with defending against unfounded legal claims.

(2) The filing of a civil action within 60 days of the running of the statute of limitations for the purpose of preserving and evaluating the claim when the action is dismissed within 120 days after the date of filing shall not constitute grounds for a claim for wrongful use of a civil proceeding under subsection (1) of this section.

(3) A claim for damages for wrongful use of a civil proceeding shall be brought in an original action after the proceeding which is the subject matter of the claim is concluded. [1987 c.774 §11]

ACTION AGAINST MANUFACTURER OF INTRAUTERINE DEVICE

Note: Sections 2 and 4 to 7, chapter 642, Oregon Laws 1989, provide:

Sec. 2. The statutes of repose in ORS 12.115, 30.905 (1) or any other statute of repose contained in Oregon Revised Statutes shall not apply to a product liability civil action against a manufacturer of an intrauterine device, resulting in IUD-related injuries. [1989 c.642 §2]

Sec. 4. This Act applies to any product liability civil action against the manufacturer of an intrauterine device resulting from IUD-related injuries which is tried, arbitrated or settled after the effective date of this Act [July 6, 1989], even if such an action has already been dismissed, so long as the dismissal is based on a previous version of the applicable statute of limitations or repose. This Act shall also apply to any product liability civil action against a manufacturer of an intrauterine device currently pending in the trial court or on appeal, in which the defendant manufacturer has raised the statute of limitations or repose as a defense. Any such action in which final judgment has been entered in favor of the manufacturer based solely on a previous version of the statute of limitations or repose may be refiled within one year of the effective date of this Act. [1989 c.642 §4]

Sec. 5. If a product liability civil action that was allowed to be commenced or refiled under authority of

section 8 or 9, chapter 4, Oregon Laws 1987, was not refiled or commenced in timely fashion under the provisions of either of those sections because of the pending bankruptcy of the defendant, such action may be refiled or commenced within one year after the effective date of this Act. [1989 c.642 §5]

Sec. 6. This Act shall not apply to product liability actions against manufacturers that had, at the time the intrauterine device was sold, received approval of an application filed under 21 U.S.C. section 355 with the Food and Drug Administration for the sale of the intrauterine device which caused the injury unless the plaintiff proves, by clear and convincing evidence, that the defendant drug manufacturer, acting in wanton disregard for the health, safety and welfare of others, fraudulently withheld from or misrepresented to the United States Food and Drug Administration, information that was both:

(1) Required to be submitted by Food and Drug Administration regulations; and

(2) Material and relevant to the harm suffered by the plaintiff. [1989 c.642 §6]

Sec. 7. This Act is repealed on July 1, 1995. [1989 c.642 §7]

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 and ORS 30.907, 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) Except as provided in ORS 30.907, 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; 1983 c.143 §1; 1987 c.4 §1]

Note: Section 5, chapter 4, Oregon Laws 1987, is repealed on July 1, 1995. See section 7, chapter 4, Oregon Laws 1987, as amended by section 1, chapter 642, Oregon Laws 1989. The text is set forth for the user's convenience.

Sec. 5. Notwithstanding ORS 30.905, a product liability civil action against the manufacturer of an intrauterine contraceptive device must be commenced not later than two years after the date on which the plaintiff first discovered or, in the exercise of reasonable care, should have discovered the specific disease, injury or permanent disability for which the plaintiff is suing and the tortious act or acts of the manufacturer which caused the disease, injury or permanent disability.

30.907 Action for damages from asbestos-related disease; limitations. A product liability civil action for damages resulting from asbestos-related disease shall be commenced not later than two years after the date on which the plaintiff first discovered, or in the exercise of reasonable care should have discovered, the disease and the cause thereof. [1987 c.4 §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 the property of the user or consumer 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]

30.927 When manufacturer of drug not liable for punitive damages; exceptions. (1) Where a drug allegedly caused the plaintiff harm, the manufacturer of the drug shall not be liable for punitive damages if the drug product alleged to have caused the harm:

(a) Was manufactured and labeled in relevant and material respects in accordance with the terms of an approval or license issued by the Federal Food and Drug Administration under the Federal Food, Drug and Cosmetic Act or the Public Health Service Act; or

(b) Is generally recognized as safe and effective pursuant to conditions established by the Federal Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(2) Subsection (1) of this section does not apply if the plaintiff proves, in accordance with the standard of proof set forth in ORS 30.925 (1), that the defendant, either before or after making the drug available for public use, knowingly in violation of applicable Federal Food and Drug Administration regulations withheld from or misrepresented to the agency or prescribing physician information known to be material and relevant to the harm which the plaintiff allegedly suffered.

(3) Nothing contained in this section bars an award of punitive damages where a manufacturer of a drug intentionally fails to conduct a recall required by a valid order of a federal or state agency authorized by statute to require such a recall.

(4) For the purposes of this section, the term "drug" has the meaning given to the term in section 1201 (g)(1) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §321 (g)(1). [1987 c.774 §5]

Note: 30.927 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 30 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

FARMING PRACTICES

30.930 Definitions for ORS 30.930 to 30.947. As used in ORS 30.930 to 30.947:

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

(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; 1983 c.730 §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 30.930 to 30.947 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; 1985 c.565 §4]

30.940 Effect on other remedies. The provisions of ORS 30.930 to 30.947 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; 1985 c.565 §5]

30.945 Severability. It is the intent of the Legislative Assembly, in enacting ORS 30.870, 30.875 and 30.930 to 30.947, that each part of ORS 30.870, 30.875 and 30.930 to 30.947 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 30.947 be the law if any other part is held unconstitutional. [1981 c.716 §4]

30.947 Effect of siting of destination resorts. The fact that a comprehensive plan and implementing ordinances allow the siting of destination resorts as provided in ORS 30.947, 197.435 to 197.465, 215.213 and 215.283, does not in any way affect the provisions of ORS 30.930 to 30.947. [1987 c.886 §13]

INTOXICATING LIQUOR SERVICE

30.950 Licensee, permittee and social host liability. No licensee, permittee or social host is liable for damages incurred or caused by intoxicated patrons or guests off the licensee, permittee or social host's premises unless:

(1) The licensee, permittee or social host has served or provided the patron alcoholic beverages to the patron or guest while the patron or guest was visibly intoxicated; and

(2) The plaintiff proves by clear and convincing evidence that the patron or guest was served alcoholic beverages while visibly intoxicated. [1979 c.801 §1; 1987 c.774 §13]

30.955 [1979 c.801 §2; repealed by 1987 c.774 §14]

30.960 Liability for serving minors; liability for misrepresentation of age. (1) Notwithstanding ORS 30.950 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.

(2) A person who is under 21 but at least 18 years of age who through misrepresentation of age causes an Oregon Liquor Control Commission licensee to be fined or have a license suspended or revoked shall be civilly liable for damages sustained by the licensee and for costs, disbursements and attorney fees at trial and on appeal. [1979 c.801 §3; 1991 c.860 §5]

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, employees 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]