

Chapter 41

1991 EDITION

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EVIDENCE AND WITNESSES

41.010 Judicial evidence; proof. Judicial evidence is the means, sanctioned by law, of ascertaining in a judicial proceeding the truth respecting a question of fact. Proof is the effect of evidence, the establishment of the fact by evidence.

41.020 [Repealed by 1981 c.892 §98]

41.030 [Repealed by 1981 c.892 §98]

41.040 [Repealed by 1981 c.892 §98]

41.050 [Repealed by 1981 c.892 §98]

41.060 [Repealed by 1981 c.892 §98]

41.070 [Repealed by 1981 c.892 §98]

41.080 [Repealed by 1981 c.892 §98]

41.090 [Repealed by 1981 c.892 §98]

41.100 [Repealed by 1981 c.892 §98]

41.110 Satisfactory evidence. Satisfactory evidence is that which ordinarily produces moral certainty or conviction in an unprejudiced mind. It alone will justify a verdict. Evidence less than this is insufficient evidence.

41.120 [Repealed by 1981 c.892 §98]

41.130 [Repealed by 1981 c.892 §98]

41.140 [Repealed by 1981 c.892 §98]

41.150 [Repealed by 1981 c.892 §98]

41.210 [Repealed by 1981 c.892 §98]

41.220 [Repealed by 1981 c.892 §98]

41.230 [Repealed by 1981 c.892 §98]

41.240 [Repealed by 1981 c.892 §98]

41.250 [Repealed by 1981 c.892 §98]

41.260 [Repealed by 1981 c.892 §98]

41.270 Proof of usage. (1) Usage shall be proved by the testimony of at least two witnesses.

(2) Evidence may be given of usage to explain the true character of an act, contract or instrument when such true character is not otherwise plain, but usage is never admissible except as a means of interpretation. [Amended by 1981 c.892 §86]

41.280 [Repealed by 1981 c.892 §98]

41.310 [Repealed by 1981 c.892 §98]

41.315 Punitive damages; standard of proof; evidence of financial condition of party. (1) Except as otherwise specifically provided by law, a claim for punitive damages shall be established by clear and convincing evidence.

(2) In a civil action in which a party seeks punitive damages from another party, evidence of the financial condition of a party shall not be admissible until the party seeking such damages has presented evidence sufficient to justify to the court a prima facie claim of punitive damages. [1987 c.774 §§1, 2]

41.320 [Repealed by 1981 c.892 §98]

41.330 [Repealed by 1981 c.892 §98]

41.340 [Repealed by 1981 c.892 §98]

41.350 [Amended by 1971 c.127 §1; repealed by 1981 c.892 §98]

41.360 [Amended by 1957 c.679 §1; 1961 c.726 §399; repealed by 1981 c.892 §98]

41.410 [Repealed by 1981 c.892 §98]

41.415 Photograph of victim in prosecution for criminal homicide. In a prosecution for any criminal homicide, a photograph of the victim while alive shall be admissible evidence when offered by the district attorney to show the general appearance and condition of the victim while alive. [1987 c.2 §8]

41.420 [Repealed by 1981 c.892 §98]

41.430 [Repealed by 1981 c.892 §98]

41.440 [Repealed by 1981 c.892 §98]

41.450 [Repealed by 1981 c.892 §98]

41.460 [Repealed by 1981 c.892 §98]

41.470 [Repealed by 1981 c.892 §98]

41.480 [Repealed by 1981 c.892 §98]

41.500 "Secondary evidence" defined for ORS 41.500 to 41.580. As used in ORS 41.500 to 41.580, "secondary evidence" means a copy, or oral evidence, of an original writing or object. [1981 c.892 §81]

41.510 Indispensable evidence. Certain evidence is necessary to the validity of particular acts or the proof of particular facts.

41.520 Evidence to prove a will. Evidence of a will shall be the written instrument itself, or secondary evidence of the contents of the will, in the cases prescribed by law. [Amended by 1969 c.591 §271]

41.530 Evidence of representations as to third persons. No evidence is admissible to charge a person upon a representation as to the credit, skill or character of a third person, unless the representation, or some memorandum thereof, be in writing, and either subscribed by or in the handwriting of the party to be charged.

41.540 [Repealed by 1977 c.479 §1]

41.550 [Repealed by 1961 c.726 §427]

41.560 Grant or assignment of trust. Every grant or assignment of any existing trust in lands, tenements, hereditaments, goods or things in action is void, unless it is in writing and subscribed by the party making it or by the lawfully authorized agent of the party.

41.570 Contracts and communications made by telegraph. Contracts made by telegraph shall be held to be in writing; and all communications sent by telegraph, and signed by the sender, or by the authority of the sender, shall be held to be in writing.

41.580 Statute of frauds. (1) In the following cases the agreement is void unless it, or some note or memorandum thereof, expressing the consideration, is in writing and subscribed by the party to be charged, or by the lawfully authorized agent of the party;

evidence, therefore, of the agreement shall not be received other than the writing, or secondary evidence of its contents in the cases prescribed by law:

(a) An agreement that by its terms is not to be performed within a year from the making.

(b) An agreement to answer for the debt, default or miscarriage of another.

(c) An agreement by an executor or administrator to pay the debts of the testator or intestate out of the estate of the executor or administrator.

(d) An agreement made upon consideration of marriage, other than a mutual promise to marry.

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property, or of any interest therein.

(f) An agreement concerning real property made by an agent of the party sought to be charged unless the authority of the agent is in writing.

(g) An agreement authorizing or employing an agent or broker to sell or purchase real estate for a compensation or commission; but if the note or memorandum of the agreement is in writing and subscribed by the party to be charged, or by the lawfully authorized agent of the party, and contains a description of the property sufficient for identification, and authorizes or employs the agent or broker to sell the property, and expresses with reasonable certainty the amount of the commission or compensation to be paid, the agreement shall not be void for failure to state a consideration.

(h) An agreement, promise or commitment to lend money, to otherwise extend credit, to forbear with respect to the repayment of any debt payable in money, to modify or amend the terms under which the person has lent money or otherwise extended credit, to release any guarantor or cosigner or to make any other financial accommodation pertaining to an existing debt or other extension of credit. This paragraph does not apply:

(A) If no party to the agreement, promise or commitment is a financial institution as defined in ORS 706.005, a consumer finance company licensed under ORS chapter 725 or a mortgage banker as defined in ORS 59.015;

(B) To a loan of money or extension of credit to a natural person which is primarily for personal, family or household purposes and not for business or agricultural purposes or which is secured solely by residential property consisting of one to four dwelling units, one of which is the primary residence of the debtor; or

(C) To any transaction involving the use of a credit card, charge card or similar device.

(2)(a) Except as provided in this section, all defenses and exceptions to paragraphs (a) to (g) of subsection (1) of this section created by any provision of the Oregon Revised Statutes or recognized by the courts of this state shall also apply to paragraph (h) of subsection (1) of this section.

(b) An agreement, promise or commitment which does not satisfy the requirements of paragraph (h) of subsection (1) of this section, but which is valid in other respects, is enforceable if the party against whom enforcement is sought admits in the party's pleading, testimony or otherwise in court that the agreement, promise or commitment was made. The agreement is not enforceable under this paragraph beyond the dollar amount admitted.

(c) Nothing in paragraph (h) of subsection (1) of this section precludes a party from seeking to prove the waiver of any term relating to the time of repayment.

(3)(a) If a financial institution as defined in ORS 706.005, a consumer finance company licensed under ORS chapter 725 or a mortgage banker as defined in ORS 59.015 lends money or extends credit, and paragraph (h) of subsection (1) of this section applies to the loan or extension of credit, the financial institution, consumer finance company or mortgage banker shall, not later than the time the loan or extension of credit is initially made, include within the loan or credit document, or within a separate document which identifies the loan or extension of credit, a statement which is underlined or in at least 10-point bold type and which is substantially to the following effect:

"Under Oregon law, most agreements, promises and commitments made by us after October 3, 1989, concerning loans and other credit extensions which are not for personal, family or household purposes or secured solely by the borrower's residence must be in writing, express consideration and be signed by us to be enforceable."

(b) The financial institution, consumer finance company or mortgage banker shall obtain the borrower's signature on the original document described in paragraph (a) of this subsection and shall give the borrower a copy.

(c) Not later than October 3, 1989, each financial institution, consumer finance company or mortgage banker shall develop and implement a program reasonably designed to

inform existing and potential commercial borrowers of the provisions of paragraph (h) of subsection (1) of this section. Each program shall at a minimum include making available to existing and potential commercial borrowers, on a continuing basis for a period ending not sooner than three years after October 3, 1989, a brochure or other written material containing the statement required by paragraph (a) of this subsection. The statement shall be underlined or be in at least 10-point bold type.

(d) Each financial institution, consumer finance company and mortgage banker shall make available the brochure or material described in paragraph (c) of this subsection at each branch, office or other location from which it makes loans or other extensions of credit to which paragraph (h) of subsection (1) of this section applies. If a financial institution, consumer finance company or mortgage banker complies with this paragraph and paragraph (c) of this subsection, the financial institution, consumer finance company or mortgage banker shall not be precluded from enforcing paragraph (h) of subsection (1) of this section because any particular existing or potential commercial borrower did not receive the brochure or material. [Amended by 1989 c.967 §1] [1989 c.967 §19]

41.590 [Repealed by 1961 c.726 §427]

41.610 [Repealed by 1981 c.892 §98]

41.615 [1959 c.353 §§1, 3 (subsection (2) enacted in lieu of 41.630); 1973 c.231 §1; repealed by 1977 c.358 §1 (41.616 enacted in lieu of 41.615)]

41.616 [1977 c.358 §2 (enacted in lieu of 41.615); repealed by 1979 c.284 §199]

41.617 [1977 c.358 §3; repealed by 1979 c.284 §199]

41.618 [1977 c.358 §4; repealed by 1979 c.284 §199]

41.620 [Repealed by 1979 c.284 §199]

41.622 [1977 c.744 §2; repealed by 1979 c.284 §199]

41.625 [1959 c.349 §1; repealed by 1977 c.240 §1; (41.626 enacted in lieu of 41.625)]

41.626 [1977 c.240 §2 (enacted in lieu of 41.625); repealed by 1979 c.284 §199]

41.630 [Repealed by 1959 c.353 §2 (subsection (2) of 41.615 enacted in lieu of 41.630)]

41.631 [1977 c.240 §4; repealed by 1979 c.284 §199]

41.635 [1977 c.240 §3 and 1977 c.358 §5; repealed by 1979 c.284 §199]

41.640 [Repealed by 1981 c.892 §98]

41.650 [Repealed by 1981 c.892 §98]

41.660 Admissibility of objects cognizable by the senses. Whenever an object, cognizable by the senses, has such a relation to the fact in dispute as to afford reasonable grounds of belief respecting it, or to make an item in the sum of the evidence, the object may be exhibited to the jury, or its existence, situation and character may be proved by witnesses. The exhibition of the object to the

jury shall be regulated by the sound discretion of the court.

41.670 [Repealed by 1981 c.892 §98]

41.675 Inadmissibility of certain health care facility and training data. (1) As used in subsection (2) of this section "data" means written reports, notes or records of tissue committees, governing bodies or committees of a health care facility licensed under ORS chapter 441, medical staff committees and similar committees of professional societies in connection with training, supervision or discipline of physicians, or in connection with the grant, denial, restriction or termination of clinical privileges at a health care facility. The term also includes the written reports, notes or records of utilization review and peer review organizations.

(2) All data shall be privileged and shall not be admissible in evidence in any judicial proceeding, but this section shall not affect the admissibility in evidence of a party's medical records dealing with a party's hospital care and treatment.

(3) A person serving on or communicating information to any governing body or committee described in subsection (1) of this section shall not be examined as to any communication to that committee or the findings thereof.

(4) A person serving on or communicating information to any governing body or committee described in subsection (1) of this section shall not be subject to an action for civil damages for affirmative actions taken or statements made in good faith.

(5) Subsection (2) of this section shall not apply to judicial proceedings in which a health care practitioner contests the denial, restriction or termination of clinical privileges by a health care facility. However, any data so disclosed in such proceedings shall not be admissible in any other judicial proceeding. [1963 c.181 §1; 1971 c.412 §1; 1975 c.796 §11; 1977 c.448 §9; 1981 c.806 §1; 1991 c.225 §1]

41.680 [Repealed by 1981 c.892 §98]

41.685 Inadmissibility of certain data submitted by emergency medical service provider; data of certain committees and governing bodies privileged. (1) All data shall be privileged and is not a public record as defined in ORS 192.410 and shall not be admissible in evidence in any judicial proceeding. However, nothing in this section affects the admissibility in evidence of a party's medical records dealing with a party's medical care.

(2) On request, an emergency medical service provider shall submit data to any committee or governing body of the county, counties or state as provided for by state or county administrative rule.

(3) A person serving on or communicating information to any governing body or committee shall not be examined as to any communication to that body or committee or the findings thereof.

(4) A person serving on or communicating information to any governing body or committee shall not be subject to an action for civil damages for affirmative actions taken or statements made in good faith.

(5) As used in this section:

(a) "Committee or governing body" means any committee or governing body which has authority to undertake an evaluation of an emergency medical services system as part of a quality assurance program and includes any committee of an emergency medical service provider undertaking a quality assurance program.

(b) "Data" means written reports, notes or records of a committee or governing body and includes any information submitted by any health care provider relating to training, supervision, performance evaluation or professional competency.

(c) "Emergency medical service provider" means any public, private or volunteer entity providing prehospital functions and services which are required to prepare for and respond to medical emergencies including rescue, ambulance, treatment, communication and evaluation.

(d) "Emergency medical services system" means those prehospital functions and services which are required to prepare for and respond to medical emergencies, including rescue, ambulance, treatment, communication and evaluation. [1989 c.1079 §1]

41.690 [Repealed by 1981 c.892 §98]

41.700 [Repealed by 1981 c.892 §98]

41.710 [Repealed by 1981 c.892 §98]

41.720 [Repealed by 1981 c.892 §98]

41.730 [Repealed by 1981 c.892 §98]

41.740 Parol evidence rule. When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be, between the parties and their representatives or successors in interest, no evidence of the terms of the agreement, other than the contents of the writing, except where a mistake or imperfection of the writing is put in issue by the pleadings or where the validity of the agreement is the fact in dispute. However this section does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, as defined in ORS 42.220, or to explain an ambiguity, intrinsic or extrinsic, or to establish illegality or fraud.

The term "agreement" includes deeds and wills as well as contracts between parties.

41.810 [Repealed by 1981 c.892 §98]

41.815 Evidence of compliance with or attempt to comply with ORCP 32 I; when admissible. Attempts to comply with the provisions of ORCP 32 I. by a person receiving a demand shall be construed to be an offer to compromise and shall be inadmissible as evidence. Such attempts to comply with a demand shall not be considered an admission of engaging in the act or practice alleged to be unlawful nor of the unlawfulness of that act. Evidence of compliance or attempts to comply with the provisions of ORCP 32 I. may be introduced by a defendant for the purpose of establishing good faith or to show compliance with the provisions of ORCP 32 I. [Formerly 13.310; 1981 c.912 §3]

41.820 [Repealed by 1981 c.892 §98]

41.830 [Repealed by 1981 c.892 §98]

41.840 [Repealed by 1981 c.892 §98]

41.850 [Repealed by 1981 c.892 §98]

41.860 [Repealed by 1981 c.892 §98]

41.870 [Repealed by 1981 c.892 §98]

41.880 [Repealed by 1981 c.892 §98]

41.890 [Repealed by 1981 c.892 §98]

41.900 [Repealed by 1981 c.892 §98]

41.905 Admissibility of certain traffic offense procedures in subsequent civil action. (1) A judgment of conviction or acquittal of a person charged with a traffic offense is not admissible in the trial of a subsequent civil action arising out of the same accident or occurrence to prove or negate the facts upon which such judgment was rendered.

(2) A plea of guilty by a person to a traffic offense may be admitted as evidence in the trial of a subsequent civil action arising out of the same accident or occurrence as an admission of the person entering the plea, and for no other purpose.

(3) Evidence of forfeiture of bail posted by a person as a result of a charge of a traffic offense shall not be admitted as evidence in the trial of a subsequent civil action arising out of the same accident or occurrence. [1975 c.542 §1; 1981 c.892 §87]

41.910 Certain intercepted communications inadmissible; exception; motion to suppress. (1) Evidence of the contents of any wire or oral communication intercepted:

(a) In violation of ORS 165.540 shall not be admissible in any court of this state, except as evidence of unlawful interception.

(b) Under ORS 165.540 (2)(a) shall not be admissible in any court of this state.

(2) Evidence made inadmissible under this section due to noncompliance by a law

enforcement officer with the conditions of ORS 165.540 (5)(a) shall only be inadmissible under this section pursuant to a motion to suppress under ORS 133.736. [1955 c.675 §6; 1959 c.681 §5; 1979 c.716 §12; 1983 c.824 §4]

41.915 [1973 c.263 §1; repealed by 1979 c.284 §199]

41.920 [1973 c.263 §2; repealed by 1979 c.284 §199]

41.925 [1973 c.263 §3; repealed by 1979 c.284 §199]

41.930 Admissibility of copies of original records. The copy of the records described in ORCP 55 H. is admissible in evidence to the same extent as though the original thereof were offered and a custodian of hospital records had been present and testified to the matters stated in the affidavit. The affidavit is admissible as evidence of the matters stated therein. The matters stated

therein are presumed to be true. The presumption established by this section is a presumption affecting the burden of producing evidence. [1973 c.263 §4; 1979 c.284 §77]

41.935 [1973 c.263 §5; repealed by 1979 c.284 §199]

41.940 [1973 c.263 §§6, 7; repealed by 1979 c.284 §199]

41.945 Application of ORS 41.930 and ORCP 55 H. ORS 41.930 and ORCP 55 H. apply in any proceedings in which testimony may be compelled. [1973 c.263 §8; 1979 c.284 §78]

41.950 [1971 c.331 §1; renumbered 18.500]

41.960 [1971 c.331 §2; renumbered 18.520]

41.970 [1971 c.331 §3; renumbered 18.530]

41.980 [1971 c.331 §4; repealed by 1981 c.892 §98]

EVIDENCE AND WITNESSES
