

# Enrolled House Bill 2700

Sponsored by Representatives READ, WILLIAMSON; Representatives BARNHART, BUCKLEY, DOHERTY, FAGAN, FREDERICK, GALLEGOS, GOMBERG, GORSEK, GREENLICK, HELM, HOLVEY, HOYLE, KENY-GUYER, KOMP, KOTEK, LININGER, LIVELY, MCLAIN, NATHANSON, NOSSE, PILUSO, RAYFIELD, REARDON, SMITH WARNER, TAYLOR, VEGA PEDERSON, WITT, Senator GELSER (Presession filed.)

CHAPTER .....

AN ACT

Relating to lawsuits; creating new provisions; amending ORCP 32 F and 32 L; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORCP 32 F is amended to read:

**F Notice and exclusion.**

F(1) When ordering that an action be maintained as a class action under this rule, the court shall direct that notice be given to some or all members of the class under subsection E(2) of this rule, shall determine when and how this notice should be given and shall determine whether, when, how, and under what conditions putative members may elect to be excluded from the class. The matters pertinent to these determinations ordinarily include: (a) the nature of the controversy and the relief sought; (b) the extent and nature of any member’s injury or liability; (c) the interest of the party opposing the class in securing a final resolution of the matters in controversy; (d) the inefficiency or impracticality of separately maintained actions to resolve the controversy; (e) the cost of notifying the members of the class; and (f) the possible prejudice to members to whom notice is not directed. When appropriate, exclusion may be conditioned on a prohibition against institution or maintenance of a separate action on some or all of the matters in controversy in the class action or a prohibition against use in a separately maintained action of any judgment rendered in favor of the class from which exclusion is sought.

*[F(2)(i) Prior to the entry of a judgment against a defendant the court shall request members of the class who may be entitled to individual monetary recovery to submit a statement in a form prescribed by the court requesting affirmative relief which may also, where appropriate, require information regarding the nature of the loss, injury, claim, transactional relationship, or damage.]*

*[F(2)(ii) The form of the statement shall be designed to meet the ends of justice. In determining the language and form of the documents to be sent class members under subsection F(2)(i) or (iii), the court shall consider at least: (a) the nature of the acts of the defendant; (b) the amount of knowledge a class member would have about the extent of such member’s damages; (c) the nature of the class including the probable degree of sophistication of its members and any special needs created by class members’ disabilities; (d) whether it is appropriate for the statement to be prepared in alternative formats, such as large type, Braille, or in languages in addition to English; and (e) the availability of relevant information from sources other than the individual class members.]*

*[F(2)(iii) When the names and addresses of the class members can reasonably be determined from the defendant's business records and individual monetary recoveries are capable of calculation without the need for individualized adjudications, the court, instead of requiring the statement referred to in subsection F(2)(i), may direct the defendant to send each class member notice of (a) the amount of the monetary recovery that has been calculated for that person and (b) that person's right to request exclusion from the class. All class members who do not request exclusion within the time specified by the court shall be deemed to have requested affirmative relief in the calculated amount.]*

*[F(2)(iv) The amount of damages assessed against the defendant shall not exceed the total amount of damages determined to be allowable by the court for all individual class members who have filed the statement required by the court under subsection F(2)(i) or who are deemed to have requested affirmative relief under subsection F(2)(iii), assessable court costs, and an award of attorney fees, if any, as determined by the court.]*

*[F(2)(v) If the parties agree and the court approves, any of the procedures set forth in subsection F(2)(i) to subsection F(2)(iv) may be waived in a particular case.]*

*[F(3) If a class member fails to file the statement required by the court under subsection F(2)(i) or if a class member requests exclusion under subsection F(2)(iii) within the time specified by the court, that person's claim for monetary recovery shall be dismissed without prejudice to the right to maintain an individual, but not a class, action for such claim.]*

*[F(4) Nothing in subsections F(2) or F(3) is intended to allow the court to award any monetary recovery that is not claimed either because a class member failed to file the statement required by the court under subsection F(2)(i), or because a class member requested exclusion under subsection F(2)(iii) within the time specified by the court.]*

*[F(5)] F(2) Plaintiffs shall bear costs of any notice ordered prior to a determination of liability. The court may, however, order that defendant bear all or a specified part of the costs of any notice included with a regular mailing by defendant to its current customers or employees. The court may hold a hearing to determine how the costs of such notice shall be apportioned.*

*[F(6)] F(3) No duty of compliance with due process notice requirements is imposed on a defendant by reason of the defendant including notice with a regular mailing by the defendant to current customers or employees of the defendant under this section.*

*[F(7)] F(4) As used in this section, "customer" includes a person, including but not limited to a student, who has purchased services or goods from a defendant.*

**SECTION 2.** ORCP 32 L is amended to read:

**L Form of judgment.** The judgment in an action ordered maintained as a class action, whether or not favorable to the class, **must generally describe the members of the class and must specifically identify any persons who requested exclusion from the class and are not bound by the judgment.** *[shall specify or describe those found to be members of the class or who, as a condition of exclusion, have agreed to be bound by the judgment. If a judgment that includes a money award is entered in favor of a class, the judgment must, when possible, identify by name each member of the class and the amount to be recovered thereby.]*

**SECTION 3.** ORCP 32 is amended by adding a new section O to read:

**O Payment of damages.** As part of the settlement or judgment in a class action, the court may approve a process for the payment of damages. The process may include the use of claim forms. If any amount awarded as damages is not claimed within the time specified by the court, or if the court finds that payment of all or part of the damages to class members is not practicable, the court shall order that:

(1) At least 50 percent of the amount not paid to class members be paid or delivered to the Oregon State Bar for the funding of legal services provided through the Legal Services Program established under ORS 9.572; and

(2) The remainder of the amount not paid to class members be paid to any entity for purposes that the court determines are directly related to the class action or directly beneficial to the interests of class members.

**SECTION 4.** All amounts paid or delivered to the Oregon State Bar under section 3 of this 2015 Act are continuously appropriated to the Oregon State Bar, and may be used only for the funding of legal services provided through the Legal Services Program established under ORS 9.572.

**SECTION 5.** (1) Section 3 of this 2015 Act and the amendments to ORCP 32 F and 32 L by sections 1 and 2 of this 2015 Act apply only to class actions in which a final judgment has not been entered before the effective date of this 2015 Act.

(2) As used in this section, “final judgment” means a judgment for which the time to appeal has expired without any party filing an appeal or that is not subject to further appeal or review.

**SECTION 6.** This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by House February 9, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate March 3, 2015

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

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Secretary of State