

Senate Bill 401

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Changes procedure for award of damages in class action.

Directs court in class action to order that funds not distributed to class members be paid to Legal Aid Supplementary Account and to entity for purposes that court determines have direct or indirect relationship to objectives of underlying litigation or otherwise promote substantive or procedural interests of class members.

Establishes Legal Aid Supplementary Account in State Treasury.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to lawsuits; creating new provisions; amending ORCP 32 F and 32 L; and declaring an
3 emergency.

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

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

6 **F Notice and exclusion.**

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

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

25 F(2)(ii) The form of the statement shall be designed to meet the ends of justice. In determining
26 the language and form of the documents to be sent class members under subsection F(2)(i) or (iii),
27 the court shall consider at least: (a) the nature of the acts of the defendant; (b) the amount of

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 knowledge a class member would have about the extent of such member's damages; (c) the nature
 2 of the class including the probable degree of sophistication of its members and any special needs
 3 created by class members' disabilities; (d) whether it is appropriate for the statement to be prepared
 4 in alternative formats, such as large type, Braille, or in languages in addition to English; and (e) the
 5 availability of relevant information from sources other than the individual class members.

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

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

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

21 **F(2)(v) The amount of the judgment not claimed by class members under subsection
 22 F(2)(i), any abandoned amount or other property subject to ORS 98.352 and 98.392 in any
 23 common fund created under this rule and any portion of an award or settlement approved
 24 under this rule that is not distributed to class members are residual funds. The court shall
 25 order that _____ percent of residual funds be deposited in the Legal Aid Supplementary Ac-
 26 count established under section 3 of this 2015 Act. The court shall order that the balance of
 27 residual funds be disbursed to any entity for purposes that the court determines have a di-
 28 rect or indirect relationship to the objectives of the underlying litigation or otherwise pro-
 29 mote the substantive or procedural interests of members of the class.**

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

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

38 *[F(5)]* **F(4)** Plaintiffs shall bear costs of any notice ordered prior to a determination of liability.
 39 The court may, however, order that defendant bear all or a specified part of the costs of any notice
 40 included with a regular mailing by defendant to its current customers or employees. The court may
 41 hold a hearing to determine how the costs of such notice shall be apportioned.

42 *[F(6)]* **F(5)** No duty of compliance with due process notice requirements is imposed on a de-
 43 fendant by reason of the defendant including notice with a regular mailing by the defendant to
 44 current customers or employees of the defendant under this section.

45 *[F(7)]* **F(6)** As used in this section, "customer" includes a person, including but not limited to

1 a student, who has purchased services or goods from a defendant.

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

3 L Form of judgment. The judgment in an action ordered maintained as a class action, whether
4 or not favorable to the class, shall specify or describe those found to be members of the class or
5 who, as a condition of exclusion, have agreed to be bound by the judgment. *[If a judgment that in-*
6 *cludes a money award is entered in favor of a class, the judgment must, when possible, identify by*
7 *name each member of the class and the amount to be recovered thereby.]*

8 **SECTION 3.** The Legal Aid Supplementary Account is established in the State Treasury,
9 separate and distinct from the General Fund. All moneys in the account are continuously
10 appropriated to the Oregon State Bar and may be used only for the funding of the Legal
11 Services Program established under ORS 9.572. Interest earned by the account shall be
12 credited to the account.

13 **SECTION 4.** The amendments to ORCP 32 F and 32 L by sections 1 and 2 of this 2015 Act
14 apply only to class actions in which a judgment has not been entered before the effective date
15 of this 2015 Act.

16 **SECTION 5.** This 2015 Act being necessary for the immediate preservation of the public
17 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
18 on its passage.
19 _____