

Oregon Legislature considers “trial lawyer stimulus package”

Oregon’s trial lawyers and their friends in the Legislature have a stimulus package for lawyers—13 new ways to sue or recover more in damages from businesses and nonprofits in Oregon.

They want to start by overturning Oregon Supreme Court decisions that didn’t go their way. The court ruled in 2008 that Oregon’s statute capping non-economic damages in a wrongful death case at \$500,000 is constitutional. In cases of wrongful death, the economic damages suffered by the family of the victim—such as lost wages, medical bills, etc.—are fully compensated. Oregon, like many other states, caps additional non-economic damages—such as mental suffering, loss of society and companionship, etc.—at \$500,000. No amount of money can restore a life or bring comfort to the family of the deceased. There is no objective standard for measuring the loss of companionship. If family members were permitted to recover unlimited damages, as proposed in House Bill 2802, the emotions of the moment could result in excessive awards.

The high court also ruled in 2008 that smokers must show actual harm, not just the possibility of future harm, in order to make a claim against cigarette companies. The Oregon Supreme Court ruled that Oregon has long recognized that “a threat of future physical harm is not sufficient” grounds for legal action. Senate Bill 807 would overturn that decision.

Ever heard of a class action lawsuit where the consumers get coupons and the lawyers get millions? That’s what will happen if House

Bill 2585 is enacted. A high-powered trial lawyer hired his own lobbyists to get the bill passed.

That same trial lawyer is behind House Bill 2584, which would repeal a U.S. Supreme Court decision called Illinois Brick. It’s a nightmare for manufacturers, wholesalers and retailers. If one person in the chain of distribution violates the law, every business linked to it would be exposed to triple damages—even if they did nothing wrong.

Oregon’s statute of ultimate repose sets a time limit for bringing a claim based on the expected lifespan of a product. Statutes of repose recognize that certain products have a finite lifetime during which the manufacturer is responsible for defects. After that period expires, it is much more likely that any failure of the equipment is a result of ordinary wear and tear rather than any defect in the design. Senate Bill 307 and House Bill 2612 would increase the unpredictability of Oregon’s liability climate and harm Oregon’s ability to attract new jobs by extending Oregon’s statute of ultimate repose to 25 years.

Senate Bill 309 would allow plaintiffs to submit medical bills into evidence without any discussion of whether the bills are legitimate or the treatments necessary.

Oregon law has special attorney fee provisions for small claims under \$5,500,

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Tom Holt to enhance coalition’s lobbying efforts

Tom Holt has been a lobbyist in Oregon since 1997 and a public policy communications professional since the mid-1980s. Prior to starting his own government affairs practice, he was a state government affairs manager for Schering-Plough Corporation, a global research-based pharmaceutical company covering several Western states. He also served as executive director and principal lobbyist for the Oregon State Pharmacy Association, a professional and trade organization. Please join us in welcoming Tom to our team.

Democrats control both the House and Senate following November election

Oregon Democrats retained control of both the House and Senate following last November’s election. The Democrats enjoy a 36-24 majority in the House and an 18-12 margin in the Senate. Governor Ted Kulongoski, also a Democrat, will serve until 2010.

Join us!

Interested in joining the ORLRC? Call the coalition at (503) 296-5732.

ORLRC Mission

- Restore balance to the scales of justice
- Limit expansion of tort liability
- Reduce the cost of defending lawsuits
- Speed resolution of lawsuits
- Improve the fairness and certainty of the civil justice system

2009 Legislative Schedule

Feb. 2: All bill concepts to Legislative Counsel for drafting

March 2: Deadline for bill introductions

April 17: Last date for first committees to schedule a work session in originating house

April 28: Last date for action in committee in the chamber of origin.

May 15: Final revenue forecast from state economist

May 20: Last date for first work committee session in second house

May 28: All policy committees close

June 30: Legislature to adjourn Sine Die

New state tort cap signed into law

Senate Bill 311 was signed into law by Gov. Ted Kulongoski (D) on April 15, 2009. A key feature of the new state tort cap is the elimination of the distinction between economic and non-economic damages. The bill increases the state tort cap for the state and OHSU to \$1.5 million per claim (increases by \$100,000/year to \$2 million by 2014) and \$3 million per occurrence (increases by \$200,000/year to \$4 million by 2014). For the state and OHSU, the effective date is retroactive to the Clarke decision (Dec. 28, 2007). For local governments, the cap will be \$500,000 per claim (increases by \$33,000/year to \$666,000 by 2014) and \$1 million per occurrence (increases by \$66,000/year to \$1.3 million by 2014). The effective date for local governments is July 1, 2009. Property damage claims would be limited to \$100,000 per claim and \$500,000 per occurrence for state and local governments.

Please visit www.orlrc.org/issues/legislation.shtml for updates.

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Lawyer stimulus package

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a level at which it's often hard to find a lawyer. Increasing this threshold to \$10,000 and allowing small contract disputes to fall under these attorney fee provisions, as proposed in Senate Bill 306, will dramatically increase the number of small insurance and contract cases that go to court.

If you sell products or services to the government, House Bill 2264 and House Bill 2479 should be on your radar screen. Under these proposed "false claims acts," a business that tries to correct an inadvertent mistake on an invoice could be treated the same way as a business that set out to defraud the government. In addition to steep damages and penalties, vendors could be barred from future contracting.

Everyone agrees that medical malpractice is tragic, but the Legislature isn't willing to live by the same rules it applies to everyone else. Senate Bill 311 would limit the amount Oregonians can recover from the state, public universities or local governments, but it does nothing about the medical malpractice crisis faced by physicians who don't work for the government.

Do Oregon legislators really think 13 new ways to sue will create family-wage jobs or help with Oregon's budget shortfall of more than \$4.4 billion?



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The ORLRC welcomes the following new member:

Oregon Association of
Orthopaedists Inc.

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