

Chapter 30 of Oregon Revised Statutes A Potpourri of Laws — by Rudy Lachenmeier

Entitled “Actions and suits in particular cases”, Chapter 30 of ORS is also the home of the peculiar action. Each series of special purpose statutes undoubtedly has a history. Unfortunately, digging into the specific social and political background that spawned the original passage of the various laws is beyond the scope of this article. Nonetheless, as you read through Chapter 30, you can tell each law is rooted in someone’s real life experience, a sympathetic legislator, and a process that often causes compromises, sometimes obvious from the statutory structure, even if the reasons can not easily be ascertained from the text.

ORS Chapter 30 is a mandatory read for every adjuster and attorney because in one chapter you can find a wonderfully diverse collection of special interest statutes, many of which you may be surprised to find exist. It is the purpose of this article simply to highlight some of the more important and some of the more unusual statutes to remind us all that they do exist and may impact the next general liability case you handle.

Some of the more well known statutes deal with: wrongful death ORS 30.020 et. seq.; tort actions against public bodies ORS 30.260 et. seq.; product liability actions ORS 30.900 et. seq.; and claims arising out of skiing activities ORS 30.970 et. seq. A careful read of each of these always reminds me that there’s more there than I remember. For instance, right above the wrongful death

statute is ORS 30.010 which supplies the statutory basis a custodial parent has for bringing a claim for a minor child. ORS 30.020 itself tells you just exactly who can bring a claim and who can’t for wrongful death, defines what damages can be sought, spells out the statute of limitations and how damages should be distributed. ORS 30.075 tells you what happens if the injured person dies while an action is pending, the effect on the statute of limitations and, under 30.075 (2), allows the court to award attorney fees for a prevailing party if death occurs to a plaintiff while an action is pending. ORS 30.100 tells you what happens if a defendant dies while an action is pending.

The tort actions against a public body statutes begin with ORS 30.260 defining what constitutes a “public body.” Besides the state, city, counties, school districts and other political subdivisions, it also includes, for instance, under ORS 30.260(4)(e), a private child caring agency, with certain restrictions, that receives more than 50% of its funding from the state for purposes of providing residential treatment to children who have been placed in the care and custody of the state...!

What I find amazing every time I wade through these statutes is how many of them there are and that they relate to such divergent things as liability insurance for students involved in off campus experimental activities ORS 30.264, the

scope of liability of public bodies, officers, employees and agents involved in a nuclear accident ORS 30.265, and the liability for medical treatment at OHSU and other similar facilities ORS 30.267 and 30.268.

ORS 30.270 sets forth the amount of liability, i.e. the cap for governmental bodies, including \$50,000 for property damage, \$100,000 to any claimant as general and special damages, and \$500,000 for any number of claims arising out of a single accident or occurrence. ORS 30.270 (3) has a provision for apportioning that \$500,000 if there is more claims than money to go around. ORS 30.275 sets forth how claim notices need to be given, and when they need to be done.

When public bodies shall indemnify their officers, employees and agents, is set forth in ORS 30.285. Some of the other provisions in this section deal with the liability of the state agency for damages caused by foster children, ORS 30.297, and the liability of the state to the foster parents, ORS 30.298. Under ORS 30.302 retired physicians who volunteer their time are considered agents of a public body for purposes of the tort limitations ORS 30.302 (2), and there are lots more related statutes there.

Products liability civil actions are defined in ORS 30.900 et. seq. and provides for time limitations for the commencements of actions ORS 30.905, asbestos claims ORS 30.907, breast implants ORS 30.908, and presumptions and defenses ORS 30.910 and 30.915. ORS 30.920(3) is the provision that makes the Restatement 2nd of Tort, section 402A comments A to M 1965 applicable to the construction of the products liability law. ORS 30.927 is an example of special interest legislation and provides when the manufacturer of a drug is not to be held liable for punitive damages.

In addition to these well known statutes, there is a second tier of slightly less known

statutes including what's left of the guest passenger statute ORS 30.115, the equine activities statutes ORS 30.687 through 30.697 and the ski activity statutes beginning with ORS 30.970.

Ever heard of the guest passenger statute? If not, ask someone who was adjusting claims prior to 1979. ORS 30.115 dealing with aircraft and watercraft guest passengers, used to apply to automobiles as well. If one qualifies as a guest, the only claim against the driver can be for "gross negligence". Be careful as most claims on watercraft on navigable streams are subject to admiralty law, but if you have a boat case, or have a plane case, keep in mind that if the statute is applicable, a passenger who has not paid a "substantial benefit" for the ride will have to overcome the "gross negligence" standard to prevail.

ORS 30.687 through 30.697 is an elaborate structure for defining liability involving "equine activity," meaning a case involving "a horse, pony, mule, donkey or hinny." In the equine activity statutes there is a public policy specifically set forth in ORS 30.689 (2) stating "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." ORS 30.691 spells out limitations on liability, rather like the guest passenger statute, and provides liability for "willful or wonton disregard of the safety of the participant" and further spells out in ORS 30.693 the effect of a written release.

ORS 30.970 et. seq. deals with skiing activities and specifically builds in an assumption of risk defense under ORS 30.975, even though generally assumption of risk as a defense was expressly abolished long ago. ORS 30.980 requires a notice somewhat similar to a tort claim notice against a public body to be filed and served

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in a specific way on a ski area operator before a claim for injuries can be brought. ORS 30.985 specifically sets forth the duties of skiers and the effect of failure to comply with these duties.

There is ORS 30.820 which deals with actions against the seller of a drugged horse. ORS 30.822 deals with actions for theft of or injury to a search and rescue animal or therapeutic animal and provides for attorney fees. ORS 30.825 provides a cause of action for tree spiking.

ORS 30.860 deals with actions for trade discrimination including discrimination, boycotts, black listing, etc. based upon national origin, race or religion. ORS 30.866 deals with actions for the issuance or violation of a stalking protective order. ORS 30.875 deals with damages for shoplifting or taking of agricultural produce. ORS 30.876 provides treble damages for interference with agricultural research. ORS 30.882 provides for liquidated damages to sports officials subject to offensive physical contact! ORS 30.890 deals with the liability of food gleaners, donors and distributors and 30.892 protects good faith donors of general merchandise to charitable or non-profit organizations.

ORS 30.655 through 30.665 is an elaborate structure designed to provide protection and definition of the exposure of the computer industry for the Y2K problem.

ORS 30.740 provides a right of a gambling loser to recover double his losses resulting from certain unlawful gaming. ORS 30.750 deals with the liability of land title abstractors.

ORS 30.765 deals with the liability of parents for torts by their children and the effect on foster parents.

There are several statutes beginning at ORS 30.785 dealing with the liability of the construction design professional resulting

from failure of an employer to comply with safety standards, followed by ORS 30.785, dealing with the liability of architects, engineers and inspectors or building evaluators for emergency relief services, and beginning with ORS 30.722 a whole string of statutes limiting liability for emergency medical assistance.

ORS 30.140 limits the ability of contracting parties to use indemnity agreements, making certain agreements for indemnity void when the person being indemnified is in whole or in part responsible for the damage.

ORS 30.135 limits the liability of a person that “lends, rents, donates use of, makes available for test drive, or otherwise provides a motor vehicle to another person unless the person providing the motor vehicle is “negligent in maintaining the motor vehicle or in providing the motor vehicle and the injury, death or damage results from that negligence”. This limited liability, however, applies “only if the person providing the motor vehicle is engaged in the business of selling, renting, leasing or repairing motor vehicles and the motor vehicle is provided to another person in the course of that business”. Further, under section three, it applies only if there is a written agreement. In short, this is a very specific law written to protect a very small segment of the population.

ORS 30.178 tries to limit liability when an employer discloses information about an employee to a new employer and creates a rebuttable presumption of good faith.

There are limitations on liability for officers, employees and agents in case of nuclear incident, set forth in ORS 30.265. There are specific limitations of liabilities for certain medical treatment at OHSU and elsewhere, ORS 30.267 and 30.268, limitations of liability for volunteers transporting disabled and older persons in ORS 30.475, et seq., and limitations on liabilities for volunteers

assisting or advising in response to the discharge of hazardous materials, at ORS 30.490, et seq.

ORS 30.930 et. seq., begins a series of statutes designed to protect farming and forest practices, prevent local laws from interfering with forest practices, prohibiting local laws making farm practices a nuisance or a trespass and provides for immunity from certain private actions based on farming or forest practices on certain lands.

These are just some of the particular and peculiar specific statutes dealing with a wide variety of civil circumstances. If you are going to handle general liability claims, chapter 30 is worth reading, at least once a year. It is not the only chapter containing unusual laws, but it has by far the most. ❖

— If you have particular questions or comments, please contact the author at Rudy@lerlaw.com or visit our website at www.lerlaw.com.