

Subsection A is taken from the first sentence of ORS 17.005. The second sentence, which indicates that there are issues of law and of fact, is unnecessary because the first sentence mentions both issues of law and of fact.

Subsection B is taken from the first sentence of ORS 17.030. Statutory provisions relating to referees are retained (ORS 17.705 to 17.765). The first sentence of Subsection C is taken from the second sentence of ORS 17.030. Subsection C(1) restates the rule of waiver found in ORS 17.035. Subsection (1) of ORS 17.035 is not retained for the simple reason that a failure to appear at trial would result in a default judgment in any event. Subsection C(2) is new, but does not change existing practice.

The Council considered the merits of the demand-waiver system, but retained the existing Oregon procedure of having jury trial waivable only by affirmative action of the parties rather than the federal system of requiring a demand for jury trial.

Subsection D is a new provision in Oregon law. It tracks the language of Federal Rule 39(c) quite closely, providing for advisory juries and trial to a jury by consent, with binding effect.