

# Senate Bill 337

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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**.

Defines "insurer" as any person that defends, indemnifies insured against or makes payment in response to claim for professional negligence. Defines certain persons within meaning of "insured" for purposes of claim reporting requirement. Expands requirement for reporting professional negligence claims to include public bodies and certain other insurers. Specifies that reporting requirement continues to apply to public body if public body is substituted in place of insured as defendant in claim of alleged professional negligence.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to reports to health professional regulatory boards; creating new provisions; amending ORS  
3 30.625 and 742.400; and declaring an emergency.

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

5 **SECTION 1.** ORS 742.400 is amended to read:

6 742.400. (1) As used in this section[,]:

7 (a) "Claim" means:

8 [(a)] (A) A written request for payment for injury alleged to have been caused by professional  
9 negligence that is made by or on behalf of the injured person to an insurer; or

10 [(b)] (B) A written notification to an insurer by an insured that a person has requested payment  
11 from the insured for injury alleged to have been caused by professional negligence.

12 (b) "Insured" means a physician, podiatric physician and surgeon, physician's assistant,  
13 optometrist, dentist, dental hygienist or naturopath on whose behalf an insurer provides a  
14 defense against or indemnity for a claim or on whose behalf the insurer makes any payment  
15 in response to a claim.

16 (c) "Insurer" includes:

17 (A) A person that provides a defense against or an indemnity for, or that makes a pay-  
18 ment in response to, a claim made against a physician, podiatric physician and surgeon,  
19 physician's assistant, optometrist, dentist, dental hygienist or naturopath that the person  
20 employs, with whom the person contracts for professional services or to whom the person  
21 has granted staff privileges;

22 (B) A person that issues or underwrites professional liability insurance in this state and  
23 under the terms of the insurance indemnifies or provides for the defense of the insured  
24 against a claim or makes a payment on behalf of the insured in response to a claim; and

25 (C) A public body as defined in ORS 30.260 that is subject to the reporting requirements  
26 set forth in ORS 30.278.

27 [(2) Any insurer that issues or underwrites professional liability insurance in this state to any

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 *physician or podiatric physician and surgeon licensed by the Board of Medical Examiners for the State*  
 2 *of Oregon, to any optometrist registered by the Oregon Board of Optometry, to any dentist or dental*  
 3 *hygienist licensed by the Oregon Board of Dentistry or to any naturopath licensed by the Board of*  
 4 *Naturopathic Examiners shall report any claim against the insured for alleged professional negligence*  
 5 *to the appropriate licensing board within 30 days after receiving notice of the claim from the insured*  
 6 *or any other person.]*

7 **(2) Within 30 days after receiving notice of a claim for alleged professional negligence**  
 8 **from the insured or from any other person, the insurer shall report the claim to the board**  
 9 **that issued a license to or that registered the insured. For purposes of this section, the**  
 10 **insurer shall report the claim to one of the following boards, as appropriate:**

11 **(a) The Board of Medical Examiners for the State of Oregon for a claim against a phy-**  
 12 **sician, podiatric physician and surgeon or physician’s assistant.**

13 **(b) The Oregon Board of Optometry for a claim against an optometrist.**

14 **(c) The Oregon Board of Dentistry for a claim against a dentist or dental hygienist.**

15 **(d) The Board of Naturopathic Examiners for a claim against a naturopath.**

16 **(3) An insurer shall make the report required by subsection (2) of this section**  
 17 **notwithstanding any instance in a hearing or proceeding conducted under the laws of this**  
 18 **state in which the insurer is substituted in place of the insured as the person against whom**  
 19 **the claim is made.**

20 [(3)] **(4) The report required by subsection (2) of this section shall be kept confidential by all**  
 21 **persons who make or receive [it] the report until the case is settled or closed and shall include:**

22 **(a) The name of the insured;**

23 **(b) The name of the person making the claim;**

24 **(c) The reason or reasons for which the claim is made; and**

25 **(d) Any additional information the Director of the Department of Consumer and Business Ser-**  
 26 **vices considers necessary.**

27 [(4)] **(5) Any insurer required to report to a board under this section shall also be required to**  
 28 **advise the appropriate licensing board of any settlements, awards or judgments against a physician,**  
 29 **podiatric physician and surgeon, physician’s assistant, optometrist, dentist or dental hygienist**  
 30 **or naturopath within 30 days after the date of the settlement, award or judgment.**

31 [(5)] **(6) The appropriate board shall provide copies of all reports required by subsections (2) and**  
 32 **(4) of this section to each health care facility licensed under ORS 441.015 to 441.087, 441.525 to**  
 33 **441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 that employs, contracts**  
 34 **for professional services with or grants staff privileges to the person against whom the claim was**  
 35 **[filed] made.**

36 **SECTION 2.** ORS 30.265 is amended to read:

37 30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is subject to  
 38 action or suit for its torts and those of its officers, employees and agents acting within the scope  
 39 of their employment or duties, whether arising out of a governmental or proprietary function or  
 40 while operating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598. The  
 41 sole cause of action for any tort of officers, employees or agents of a public body acting within the  
 42 scope of their employment or duties and eligible for representation and indemnification under ORS  
 43 30.285 or 30.287 shall be an action against the public body only. The remedy provided by ORS 30.260  
 44 to 30.300 is exclusive of any other action or suit against any such officer, employee or agent of a  
 45 public body whose act or omission within the scope of the officer’s, employee’s or agent’s employ-

1 ment or duties gives rise to the action or suit. No other form of civil action or suit shall be per-  
2 mitted. If an action or suit is filed against an officer, employee or agent of a public body, on  
3 appropriate motion the public body shall be substituted as the only defendant. **Substitution of the**  
4 **public body as the defendant does not exempt the public body from making any report re-**  
5 **quired under ORS 742.400.**

6 (2) Every public body is immune from liability for any claim for injury to or death of any person  
7 or injury to property resulting from an act or omission of an officer, employee or agent of a public  
8 body when such officer, employee or agent is immune from liability.

9 (3) Every public body and its officers, employees and agents acting within the scope of their  
10 employment or duties, or while operating a motor vehicle in a ridesharing arrangement authorized  
11 under ORS 276.598, are immune from liability for:

12 (a) Any claim for injury to or death of any person covered by any workers' compensation law.

13 (b) Any claim in connection with the assessment and collection of taxes.

14 (c) Any claim based upon the performance of or the failure to exercise or perform a discretion-  
15 ary function or duty, whether or not the discretion is abused.

16 (d) Any claim that is limited or barred by the provisions of any other statute, including but not  
17 limited to any statute of ultimate repose.

18 (e) Any claim arising out of riot, civil commotion or mob action or out of any act or omission  
19 in connection with the prevention of any of the foregoing.

20 (f) Any claim arising out of an act done or omitted under apparent authority of a law, resolution,  
21 rule or regulation that is unconstitutional, invalid or inapplicable except to the extent that they  
22 would have been liable had the law, resolution, rule or regulation been constitutional, valid and  
23 applicable, unless such act was done or omitted in bad faith or with malice.

24 (4) Subsection (1) of this section applies to any action of any officer, employee or agent of the  
25 state relating to a nuclear incident, whether or not the officer, employee or agent is acting within  
26 the scope of employment, and provided the nuclear incident is covered by an insurance or indemnity  
27 agreement under 42 U.S.C. 2210.

28 (5) Subsection (3)(c) of this section does not apply to any discretionary act that is found to be  
29 the cause or partial cause of a nuclear incident covered by an insurance or indemnity agreement  
30 under the provisions of 42 U.S.C. 2210, including but not limited to road design and route selection.

31 **SECTION 3. (1) The amendments to ORS 742.400 by section 1 of this 2007 Act apply to**  
32 **insurers in operation on or after the effective date of this 2007 Act and to claims made be-**  
33 **fore, on or after the effective date of this 2007 Act.**

34 **(2) The amendments to ORS 30.265 by section 2 of this 2007 Act apply to public bodies on**  
35 **and after the effective date of this 2007 Act.**

36 **SECTION 4. This 2007 Act being necessary for the immediate preservation of the public**  
37 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
38 **on its passage.**

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