

House Bill 3662

Sponsored by Representatives WHISNANT, THOMPSON, BARKER, Senators BOQUIST, MONNES ANDERSON; Representatives BERGER, BREWER, CONGER, ESQUIVEL, FREEMAN, GILLIAM, GREENLICK, HUFFMAN, JOHNSON, KENNEMER, KRIEGER, MATTHEWS, MCLANE, OLSON, PARRISH, SHEEHAN, SPRENGER, THATCHER, WAND, WEIDNER, WINGARD, WITT

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**.

Expands immunity from liability for health care provider who provides services for charitable organization without compensation.

Provides immunity from liability for person providing outreach services, without compensation, to homeless individuals or individuals at risk of becoming homeless individuals under certain circumstances.

Provides immunity from liability for pharmacists and optometrists providing services without compensation under certain circumstances.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to limitations on liability of persons providing services without compensation; creating new provisions; amending ORS 30.792, 676.340 and 676.345; and declaring an emergency.

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

SECTION 1. ORS 30.792 is amended to read:

30.792. (1) As used in this section:

(a) “Charitable [corporation] **organization**” [*has the meaning given that term in ORS 128.620*] means an organization organized for charitable purposes, as that term is defined in ORS 128.801.

(b) “Health care provider” means any person licensed in this state as a practitioner of one or more healing arts as described in ORS 31.740.

(c) “Health clinic” means a public health clinic or a health clinic operated by a charitable [corporation] **organization** that provides primarily primary physical health, dental or mental health services to low-income patients without charge or using a sliding fee scale based on the income of the patient.

(2) Except as provided in subsection (3) of this section, **[no]** a person may **not** maintain an action for damages against:

(a) A health care provider who voluntarily provides to a charitable [corporation] **organization** any assistance, services or advice directly related to the charitable purposes of the [corporation] **organization** if the assistance, services or advice are within the scope of the license of the health care provider; or

(b) A health clinic for the assistance, services or advice provided by a health care provider described in paragraph (a) of this subsection.

(3) The immunity provided in this section **[shall]** **does** not apply to:

(a) Any person who receives compensation other than reimbursement for expenses incurred by the person providing **[such]** **the** assistance, services or advice.

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 (b) The liability of any person for damages resulting from the person's gross negligence or from
2 the person's reckless, wanton or intentional misconduct.

3 (c) Any activity for which a person is otherwise strictly liable without regard to fault.

4 **SECTION 2. (1) As used in this section:**

5 (a) "Homeless individual" has the meaning given that term in 42 U.S.C. 11302, as in effect
6 on the effective date of this 2011 Act.

7 (b)(A) "Outreach services" includes, but is not limited to, case management services such
8 as assessment and referral for alcohol or other drug-related services and for housing, fi-
9 nancial, educational and related services.

10 (B) "Outreach services" does not include medical or dental services provided by a health
11 practitioner who may register with a health professional regulatory board to claim a liability
12 limitation under ORS 676.340 and 676.345.

13 (2) Except as provided in subsection (3) of this section, a person providing outreach ser-
14 vices to homeless individuals or individuals at risk of becoming homeless individuals is im-
15 mune from civil liability for all acts or omissions in providing the care if:

16 (a) The person has registered as a volunteer with a nonprofit corporation organized un-
17 der the laws of this state that has as one of its principal missions the provision of services
18 to homeless individuals or individuals at risk of becoming homeless individuals; and

19 (b) The services are provided without compensation from the nonprofit corporation, the
20 individual to whom services are rendered or any other person.

21 (3) This section does not apply to intentional torts or to acts or omissions that constitute
22 gross negligence.

23 **SECTION 3. ORS 676.340 is amended to read:**

24 676.340. (1) Notwithstanding any other provision of law, a health practitioner described in sub-
25 section (7) of this section who has registered under ORS 676.345 and who provides health care ser-
26 vices without compensation is not liable for any injury, death or other loss arising out of the
27 provision of those services, unless the injury, death or other loss results from the gross negligence
28 of the health practitioner.

29 (2) A health practitioner may claim the limitation on liability provided by this section only if
30 the patient receiving health care services, or a person who has authority under law to make health
31 care decisions for the patient, signs a statement that notifies the patient that the health care ser-
32 vices are provided without compensation and that the health practitioner may be held liable for
33 death, injury or other loss only to the extent provided by this section. The statement required under
34 this subsection must be signed before the health care services are provided.

35 (3) A health practitioner may claim the limitation on liability provided by this section only if
36 the health practitioner obtains the patient's informed consent for the health care services before
37 providing the services, or receives the informed consent of a person who has authority under law
38 to make health care decisions for the patient.

39 (4) A health practitioner provides health care services without compensation for the purposes
40 of subsection (1) of this section even though the practitioner requires payment of laboratory fees,
41 testing services and other out-of-pocket expenses.

42 (5) A health practitioner provides health care services without compensation for the purposes
43 of subsection (1) of this section even though the practitioner provides services at a health clinic that
44 receives compensation from the patient, as long as the health practitioner does not personally re-
45 ceive compensation for the services.

1 (6) In any civil action in which a health practitioner prevails based on the limitation on liability
2 provided by this section, the court shall award all reasonable attorney fees incurred by the health
3 practitioner in defending the action.

4 (7) This section applies only to:

- 5 (a) A physician licensed under ORS 677.100 to 677.228;
- 6 (b) A nurse licensed under ORS 678.040 to 678.101;
- 7 (c) A nurse practitioner licensed under ORS 678.375 to 678.390;
- 8 (d) A clinical nurse specialist certified under ORS 678.370 and 678.372;
- 9 (e) A physician assistant licensed under ORS 677.505 to 677.525;
- 10 (f) A dental hygienist licensed under ORS 680.010 to 680.205; [*and*]
- 11 (g) A dentist licensed under ORS 679.060 to 679.180[.];

12 **(h) A pharmacist licensed under ORS chapter 689; and**

13 **(i) An optometrist licensed under ORS chapter 683.**

14 **SECTION 4.** ORS 676.345 is amended to read:

15 676.345. (1) A health practitioner described in ORS 676.340 (7) may claim the liability limitation
16 provided by ORS 676.340 only if the health practitioner has registered with a health professional
17 regulatory board in the manner provided by this section. Registration under this section must be
18 made:

- 19 (a) By a physician or physician assistant, with the Oregon Medical Board;
- 20 (b) By a nurse, nurse practitioner or clinical nurse specialist, with the Oregon State Board of
Nursing; [*and*]
- 22 (c) By a dentist or dental hygienist, with the Oregon Board of Dentistry[.];
- 23 **(d) By a pharmacist, with the State Board of Pharmacy; and**
- 24 **(e) By an optometrist, with the Oregon Board of Optometry.**

25 (2) The health professional regulatory boards listed in subsection (1) of this section shall estab-
26 lish a registration program for the health practitioners who provide health care services without
27 compensation and who wish to be subject to the liability limitation provided by ORS 676.340. All
28 health practitioners registering under the program must provide the health professional regulatory
29 board with:

- 30 (a) A statement that the health practitioner will provide health care services to patients without
compensation, except for reimbursement for laboratory fees, testing services and other out-of-pocket
expenses;
- 33 (b) A statement that the health practitioner will provide the notice required by ORS 676.340 (2)
in the manner provided by ORS 676.340 (2) before providing the services; and
- 35 (c) A statement that the health practitioner will only provide health care services without
compensation that are within the scope of the health practitioner's license.

37 (3) Registration under this section must be made annually. The health professional regulatory
38 boards listed in subsection (1) of this section shall charge no fee for registration under this section.

39 **SECTION 5. Section 2 of this 2011 Act and the amendments to ORS 30.792 by section 1**
40 **of this 2011 Act apply to causes of action that arise on or after the effective date of this 2011**
41 **Act.**

42 **SECTION 6. (1) The amendments to ORS 676.340 and 676.345 by sections 3 and 4 of this**
43 **2011 Act become operative on January 1, 2012.**

44 **(2) The State Board of Pharmacy and the Oregon Board of Optometry may take any**
45 **action necessary before the operative date specified in subsection (1) of this section to enable**

1 the boards to exercise, on and after the operative date specified in subsection (1) of this
2 section, all the duties, functions and powers conferred on the boards by the amendments to
3 ORS 676.340 and 676.345 by sections 3 and 4 of this 2011 Act.

4 **SECTION 7.** This 2011 Act being necessary for the immediate preservation of the public
5 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
6 on its passage.

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