

# Senate Bill 397

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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**.

Allows action based on tort to be brought against officer, employee or agent of public body if complaint alleges that plaintiff is entitled to damages in excess of limitations imposed by Oregon Torts Claims Act.

## A BILL FOR AN ACT

1  
2 Relating to tort claims against public bodies; amending ORS 30.265 and 65.369.

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

4 **SECTION 1.** ORS 30.265 is amended to read:

5 30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is subject to **civil**  
6 action [*or suit*] for its torts and those of its officers, employees and agents acting within the scope  
7 of their employment or duties, whether arising out of a governmental or proprietary function or  
8 while operating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598.

9 (2) The sole cause of action for [*any tort of*] **a tort committed by** officers, employees or agents  
10 of a public body acting within the scope of their employment or duties and eligible for represen-  
11 tation and indemnification under ORS 30.285 or 30.287 [*shall be*] **is** an action [*against the public body*  
12 *only*] **under ORS 30.260 to 30.300**. The remedy provided by ORS 30.260 to 30.300 is exclusive of any  
13 other action [*or suit*] against any such officer, employee or agent of a public body whose act or  
14 omission within the scope of the officer's, employee's or agent's employment or duties gives rise to  
15 the action [*or suit*]. No other form of civil action [*or suit shall be*] **is** permitted. [*If an action or suit*  
16 *is filed against an officer, employee or agent of a public body, on appropriate motion the public body*  
17 *shall be substituted as the only defendant. Substitution of the public body as the defendant does not*  
18 *exempt the public body from making any report required under ORS 742.400.*]

19 (3) **If an action under ORS 30.260 to 30.300 alleges damages in an amount equal to or less**  
20 **than the damages allowed under ORS 30.271, 30.272 or 30.273, the sole cause of action for a**  
21 **tort committed by officers, employees or agents of a public body acting within the scope of**  
22 **their employment or duties and eligible for representation and indemnification under ORS**  
23 **30.285 or 30.287 is an action against the public body. If an action is filed against an officer,**  
24 **employee or agent of a public body, and the plaintiff alleges damages in an amount equal to**  
25 **or less than the damages allowed under ORS 30.271, 30.272 or 30.273, the court upon motion**  
26 **shall substitute the public body as the defendant. Substitution of the public body as the de-**  
27 **fendant does not exempt the public body from making any report required under ORS 742.400.**

28 (4) **If an action under ORS 30.260 to 30.300 alleges damages in an amount greater than**  
29 **the damages allowed under ORS 30.271, 30.272 or 30.273, the action may be brought and**  
30 **maintained against an officer, employee or agent of a public body, whether or not the public**

**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 **body is also named as a defendant. An action brought under this subsection is subject to the**  
 2 **limitations on damages imposed under ORS 30.271, 30.272 or 30.273.**

3 [(2)] (5) Every public body is immune from liability for any claim for injury to or death of any  
 4 person or injury to property resulting from an act or omission of an officer, employee or agent of  
 5 a public body when such officer, employee or agent is immune from liability.

6 [(3)] (6) Every public body and its officers, employees and agents acting within the scope of their  
 7 employment or duties, or while operating a motor vehicle in a ridesharing arrangement authorized  
 8 under ORS 276.598, are immune from liability for:

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

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

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

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

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

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

21 [(4)] (7) [*Subsection (1) of*] This section applies to any action of any officer, employee or agent  
 22 of the state relating to a nuclear incident, whether or not the officer, employee or agent is acting  
 23 within the scope of employment, and provided the nuclear incident is covered by an insurance or  
 24 indemnity agreement under 42 U.S.C. 2210.

25 [(5)] (8) Subsection [(3)(c)] (6)(c) of this section does not apply to any discretionary act that is  
 26 found to be the cause or partial cause of a nuclear incident covered by an insurance or indemnity  
 27 agreement under the provisions of 42 U.S.C. 2210, including but not limited to road design and route  
 28 selection.

29 **SECTION 2.** ORS 65.369 is amended to read:

30 65.369. (1) The civil liability of a qualified director for the performance or nonperformance of  
 31 the director's duties shall be limited to gross negligence or intentional misconduct.

32 (2) This section does not affect the civil liability of the entity which a qualified director serves.

33 (3) For the purposes of this section, "qualified director" means a person who serves without  
 34 compensation for personal services as:

35 (a) A member of a board or commission of the state or a governmental subdivision for the pur-  
 36 pose of setting policy and controlling or otherwise overseeing the activities or functional responsi-  
 37 bilities of the board or commission but, notwithstanding ORS 30.265 [(2)] (5), the entity is not  
 38 thereby rendered immune from liability;

39 (b) An officer, director or member of an executive board for the purpose of setting policy and  
 40 controlling or otherwise overseeing the activities or functional responsibilities of a nonprofit cor-  
 41 poration, unincorporated association or nonprofit cooperative corporation that has as its primary  
 42 purpose:

43 (A) Religion;

44 (B) Charity;

45 (C) Benevolence;

- 1 (D) Providing goods or services at no charge to the general public;
  - 2 (E) Education;
  - 3 (F) Scientific activity;
  - 4 (G) Medical or hospital services at reduced costs; or
  - 5 (H) Engaging in activities of the nature specified in section 501 of the Internal Revenue Code
  - 6 of 1986, as amended;
  - 7 (c) A director for the purpose of setting policy and controlling or otherwise overseeing the ac-
  - 8 tivities or functional responsibilities of an organization which acts as an advocate for its members
  - 9 and which has as its members individuals or organizations that are:
    - 10 (A) Members of a particular trade or industry; or
    - 11 (B) Members of the business community of a particular municipality or area of the state; or
    - 12 (d) An officer, director or member of an executive board for the purpose of setting policy and
    - 13 controlling or otherwise overseeing the activities or functional responsibilities of a nonprofit cor-
    - 14 poration, unincorporated association or nonprofit cooperative corporation composed of owners or
    - 15 lessees of units or interests in any condominium submitted to the provisions of ORS 100.005 to
    - 16 100.625, any planned community as defined in ORS 94.550, any timeshare property as defined in ORS
    - 17 94.803, any residential cooperative community or any other residential or commercial common in-
    - 18 terest real estate community.
    - 19 (4) An otherwise qualified director shall not be considered to be compensated for personal ser-
    - 20 vices if the director receives payment only for actual expenses incurred in attending meetings or
    - 21 performing a director's duties or receives a stipend which is paid only to compensate the director
    - 22 for average expenses incurred over the course of a year.
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