

Senate Bill 734

Sponsored by Senator WINTERS; Senators BOQUIST, FERRIOLI, GEORGE, GIROD, KRUSE, MONROE, MORSE, NELSON, OLSEN, TELFER, WHITSETT

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**.

Prohibits state from indemnifying person in exempt service, unclassified service or management service position for costs of counsel and other costs of defense when judgment is entered against person based on determination that person has engaged in civil rights violation or other unlawful employment practice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to indemnification; creating new provisions; amending ORS 30.285; and declaring an emer-
3 gency.

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

5 **SECTION 1.** ORS 30.285 is amended to read:

6 30.285. (1) The governing body of any public body shall defend, save harmless and indemnify any
7 of its officers, employees and agents, whether elective or appointive, against any tort claim or de-
8 mand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the
9 performance of duty.

10 (2)(a) The provisions of subsection (1) of this section do not apply in case of malfeasance in of-
11 fice or willful or wanton neglect of duty.

12 **(b) Notwithstanding subsection (1) of this section, the state may not indemnify a person**
13 **in an exempt service position as described in ORS 240.200, an unclassified service position**
14 **as described in ORS 240.205 or a management service position as described in ORS 240.212 for**
15 **the costs of counsel and other costs of defending the claim when a judgment is entered**
16 **against the person based on a determination that the person has engaged in an unlawful**
17 **employment practice as defined in ORS 659A.001.**

18 (3) If any civil action, suit or proceeding is brought against any state officer, employee or agent
19 which on its face falls within the provisions of subsection (1) of this section, or which the state of-
20 ficer, employee or agent asserts to be based in fact upon an alleged act or omission in the per-
21 formance of duty, the state officer, employee or agent may, after consulting with the Oregon
22 Department of Administrative Services file a written request for counsel with the Attorney General.
23 The Attorney General shall thereupon appear and defend the officer, employee or agent unless after
24 investigation the Attorney General finds that the claim or demand does not arise out of an alleged
25 act or omission occurring in the performance of duty, or that the act or omission complained of
26 amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Attorney
27 General shall reject defense of the claim.

28 (4) Any officer, employee or agent of the state against whom a claim within the scope of this
29 section is made shall cooperate fully with the Attorney General and the department in the defense

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 of such claim. If the Attorney General after consulting with the department determines that such
2 officer, employee or agent has not so cooperated or has otherwise acted to prejudice defense of the
3 claim, the Attorney General may at any time reject the defense of the claim.

4 (5) If the Attorney General rejects defense of a claim under subsection (3) of this section or this
5 subsection, no public funds shall be paid in settlement of said claim or in payment of any judgment
6 against such officer, employee or agent. Such action by the Attorney General shall not prejudice the
7 right of the officer, employee or agent to assert and establish *[an]* **in** appropriate proceedings that
8 the claim or demand in fact arose out of an alleged act or omission occurring in the performance
9 of duty, or that the act or omission complained of *[did not amount to malfeasance in office or willful*
10 *or wanton neglect of duty]* **is not subject to subsection (2) of this section**, in which case the offi-
11 cer, employee or agent shall be indemnified against liability and reasonable costs of defending the
12 claim, cost of such indemnification to be a charge against the Insurance Fund established by ORS
13 278.425.

14 (6) Nothing in subsection (3), (4) or (5) of this section shall be deemed to increase the limits of
15 liability of any public officer, agent or employee under ORS 30.260 to 30.300, or obviate the necessity
16 of compliance with ORS 30.275 by any claimant, nor to affect the liability of the state itself or of
17 any other public officer, agent or employee on any claim arising out of the same accident or oc-
18 currence.

19 (7) As used in this section, "state officer, employee or agent" includes district attorneys and
20 deputy district attorneys, special prosecutors and law clerks of the office of district attorney who
21 act in a prosecutorial capacity, but does not include any other employee of the office of district at-
22 torney or any employee of the justice or circuit courts whose salary is paid wholly or in part by the
23 county.

24 **SECTION 2. The amendments to ORS 30.285 by section 1 of this 2011 Act apply only to**
25 **causes of action that arise on or after the effective date of this 2011 Act.**

26 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**
27 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
28 **on its passage.**

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