

Enrolled
House Bill 4027

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CHAPTER

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)(A) "Charitable [*corporation*] **organization**" [*has the meaning given that term in ORS 128.620.*] **means a charitable organization, as defined in ORS 128.620, that:**

(i) **Spends at least 65 percent of its revenues on charitable programs; and**

(ii) **Has a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization.**

(B) **"Charitable organization" does not include hospitals, intermediate care facilities or long term care facilities, as those terms are defined in ORS 442.015.**

(b) "Health care provider" means [*any person*] **an individual** 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 any*] assistance, services or advice [*directly related to the charitable purposes of the corporation*] **through a charitable organization** if:

(A) The assistance, services or advice **that caused the damages** are within the scope of the license of the health care provider; [*or*] **and**

(B) **The health care provider was acting within the course and scope of the provider's volunteer duties when the damages occurred; 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 **described in subsection (2) of this section.**

(b) A person operating a motor vehicle, vessel, aircraft or other vehicle for which the person or owner of the vehicle, vessel, aircraft or other vehicle is required to possess an operator's license or to maintain insurance.

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

~~[(c)]~~ **(d) Any activity for which a person is otherwise strictly liable without regard to fault.**

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

(a) "Homeless individual" has the meaning given that term in 42 U.S.C. 11302, as in effect on the effective date of this 2012 Act.

(b) "Outreach services" includes, but is not limited to:

(A) Case management services such as assessment and referral for alcohol or other drug-related services and for housing, financial, educational and related services; and

(B) Medical or dental services provided by a health practitioner who complies with ORS 676.340 and 676.345.

(2) Except as provided in subsection (3) of this section, a person providing outreach services to homeless individuals or individuals at risk of becoming homeless individuals is immune from civil liability for all acts or omissions in providing the care if:

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

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

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

SECTION 3. ORS 676.340 is amended to read:

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

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

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

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

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

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

(7) This section applies only to:

(a) A physician licensed under ORS 677.100 to 677.228;

- (b) A nurse licensed under ORS 678.040 to 678.101;
- (c) A nurse practitioner licensed under ORS 678.375 to 678.390;
- (d) A clinical nurse specialist certified under ORS 678.370 and 678.372;
- (e) A physician assistant licensed under ORS 677.505 to 677.525;
- (f) A dental hygienist licensed under ORS 680.010 to 680.205; [and]
- (g) A dentist licensed under ORS 679.060 to 679.180[.];
- (h) A pharmacist licensed under ORS chapter 689; and**
- (i) An optometrist licensed under ORS chapter 683.**

SECTION 4. ORS 676.345 is amended to read:

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

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

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

- (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;
- (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
- (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.

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

SECTION 5. Section 2 of this 2012 Act and the amendments to ORS 30.792 by section 1 of this 2012 Act apply to causes of action that arise on or after the effective date of this 2012 Act.

SECTION 6. (1) The amendments to ORS 676.340 and 676.345 by sections 3 and 4 of this 2012 Act become operative on January 1, 2013.

(2) The State Board of Pharmacy and the Oregon Board of Optometry may take any action necessary before the operative date specified in subsection (1) of this section to enable the boards to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the boards by the amendments to ORS 676.340 and 676.345 by sections 3 and 4 of this 2012 Act.

SECTION 7. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.

Passed by House February 21, 2012

Repassed by House February 29, 2012

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate February 29, 2012

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2012

Approved:

.....M,....., 2012

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2012

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Kate Brown, Secretary of State