

House Bill 3541

Sponsored by Representatives PARRISH, RICHARDSON; Representatives BENTZ, BERGER, CONGER, DAVIS, ESQUIVEL, GILLIAM, HANNA, HUFFMAN, JENSON, JOHNSON, KENNEMER, KRIEGER, MCLANE, SMITH, THATCHER, THOMPSON, WEIDNER, WHISNANT, 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**.

Exempts claims based on conduct that constitutes child abuse, or conduct that constitutes knowingly allowing, permitting or encouraging child abuse, from notice requirement of Oregon Tort Claims Act.

Revives certain causes of action barred because of notice requirement or statute of limitations or statute of repose. Requires revived claim to be filed within two years after effective date of Act.

A BILL FOR AN ACT

1
2 Relating to the Oregon Tort Claims Act; creating new provisions; and amending ORS 30.275.

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

4 **SECTION 1.** ORS 30.275 is amended to read:

5 30.275. (1) No action arising from any act or omission of a public body or an officer, employee
6 or agent of a public body within the scope of ORS 30.260 to 30.300 shall be maintained unless notice
7 of claim is given as required by this section.

8 (2) Notice of claim shall be given within the following applicable period of time, not including
9 the period, not exceeding 90 days, during which the person injured is unable to give the notice be-
10 cause of the injury or because of minority, incompetency or other incapacity:

11 (a) For wrongful death, within one year after the alleged loss or injury.

12 (b) For all other claims, within 180 days after the alleged loss or injury.

13 (3) Notice of claim required by this section is satisfied by:

14 (a) Formal notice of claim as provided in subsections (4) and (5) of this section;

15 (b) Actual notice of claim as provided in subsection (6) of this section;

16 (c) Commencement of an action on the claim by or on behalf of the claimant within the appli-
17 cable period of time provided in subsection (2) of this section; or

18 (d) Payment of all or any part of the claim by or on behalf of the public body at any time.

19 (4) Formal notice of claim is a written communication from a claimant or representative of a
20 claimant containing:

21 (a) A statement that a claim for damages is or will be asserted against the public body or an
22 officer, employee or agent of the public body;

23 (b) A description of the time, place and circumstances giving rise to the claim, so far as known
24 to the claimant; and

25 (c) The name of the claimant and the mailing address to which correspondence concerning the
26 claim may be sent.

27 (5) Formal notice of claim shall be given by mail or personal delivery:

28 (a) If the claim is against the state or an officer, employee or agent thereof, to the office of the

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 Director of the Oregon Department of Administrative Services.

2 (b) If the claim is against a local public body or an officer, employee or agent thereof, to the
 3 public body at its principal administrative office, to any member of the governing body of the public
 4 body, or to an attorney designated by the governing body as its general counsel.

5 (6) Actual notice of claim is any communication by which any individual to whom notice may
 6 be given as provided in subsection (5) of this section or any person responsible for administering tort
 7 claims on behalf of the public body acquires actual knowledge of the time, place and circumstances
 8 giving rise to the claim, where the communication is such that a reasonable person would conclude
 9 that a particular person intends to assert a claim against the public body or an officer, employee
 10 or agent of the public body. A person responsible for administering tort claims on behalf of a public
 11 body is a person who, acting within the scope of the person's responsibility, as an officer, employee
 12 or agent of a public body or as an employee or agent of an insurance carrier insuring the public
 13 body for risks within the scope of ORS 30.260 to 30.300, engages in investigation, negotiation, ad-
 14 justment or defense of claims within the scope of ORS 30.260 to 30.300, or in furnishing or accepting
 15 forms for claimants to provide claim information, or in supervising any of those activities.

16 (7) In an action arising from any act or omission of a public body or an officer, employee or
 17 agent of a public body within the scope of ORS 30.260 to 30.300, the plaintiff has the burden of
 18 proving that notice of claim was given as required by this section.

19 (8) The requirement that a notice of claim be given under subsections (1) to (7) of this section
 20 does not apply if:

21 (a)(A) The claimant was under the age of 18 years when the acts or omissions giving rise to a
 22 claim occurred;

23 (B) The claim is against the Department of Human Services or the Oregon Youth Authority; and

24 (C) The claimant was in the custody of the Department of Human Services pursuant to an order
 25 of a juvenile court under ORS 419B.150, 419B.185, 419B.337 or 419B.527, or was in the custody of
 26 the Oregon Youth Authority under the provisions of ORS 419C.478, 420.011 or 420A.040, when the
 27 acts or omissions giving rise to a claim occurred[.];

28 (b) The claim is against a private, nonprofit organization that provides public transportation
 29 services described under ORS 30.260 (4)(d)[.]; or

30 **(c) The claim is based on conduct that constitutes child abuse, as defined in ORS 12.117,**
 31 **against a person under 18 years of age, or conduct that constitutes knowingly allowing,**
 32 **permitting or encouraging child abuse, as defined in ORS 12.117, against a person under 18**
 33 **years of age.**

34 (9) Except as provided in ORS 12.117, 12.120, 12.135 and 659A.875, but notwithstanding any other
 35 provision of ORS chapter 12 or other statute providing a limitation on the commencement of an
 36 action, an action arising from any act or omission of a public body or an officer, employee or agent
 37 of a public body within the scope of ORS 30.260 to 30.300 shall be commenced within two years after
 38 the alleged loss or injury.

39 **(10) The exemption from the notice requirement of subsections (1) to (7) of this section**
 40 **provided by subsection (8)(c) of this section does not apply to claims of negligence arising**
 41 **out of the provision of health care.**

42 **SECTION 2. (1) The amendments to ORS 30.275 by section 1 of this 2013 Act apply to all**
 43 **causes of action arising before, on or after the effective date of this 2013 Act.**

44 **(2) The amendments to ORS 30.275 by section 1 of this 2013 Act revive a cause of action**
 45 **based on conduct that constitutes child abuse, as defined in ORS 12.117, against a person**

1 under 18 years of age, or conduct that constitutes knowingly allowing, permitting or en-
2 couraging child abuse, as defined in ORS 12.117, against a person under 18 years of age if:

3 (a) A civil action alleging the cause of action was filed before the effective date of this
4 2013 Act; and

5 (b) The cause of action was adjudicated based on the provisions of ORS 30.275 as in effect
6 immediately before the effective date of this 2013 Act, or based on the plaintiff's failure to
7 comply with a statute of limitations or statute of repose.

8 (3) A cause of action revived under subsection (2) of this section must be refiled within
9 two years after the effective date of this 2013 Act.

10