

House Bill 4048

Sponsored by Representative WITT, Senator JOHNSON (Pre-session filed.)

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**.

Provides that public body and its officers, employees and agents are not immune from liability for wrongful death of person who is covered by workers' compensation law and not employed by that public body.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to claims for wrongful death; creating new provisions; amending ORS 30.265 and 656.018;
3 and declaring an emergency.

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

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

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

10 (2) The sole cause of action for a tort committed by officers, employees or agents of a public
11 body acting within the scope of their employment or duties and eligible for representation and
12 indemnification under ORS 30.285 or 30.287 is an action under ORS 30.260 to 30.300. The remedy
13 provided by ORS 30.260 to 30.300 is exclusive of any other action against any such officer, employee
14 or agent of a public body whose act or omission within the scope of the officer's, employee's or
15 agent's employment or duties gives rise to the action. No other form of civil action is permitted.

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

25 (4) If an action under ORS 30.260 to 30.300 alleges damages in an amount greater than the
26 damages allowed under ORS 30.271, 30.272 or 30.273, the action may be brought and maintained
27 against an officer, employee or agent of a public body, whether or not the public body is also named
28 as a defendant. An action brought under this subsection is subject to the limitations on damages
29 imposed under ORS 30.271, 30.272 or 30.273, and the total combined amount recovered in the action
30 may not exceed those limitations for a single accident or occurrence without regard to the number

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 or types of defendants named in the action.

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

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

8 (a) Any claim for injury to [*or death of*] any person covered by any workers' compensation
9 law, **with the exception of a claim for wrongful death against a public body, or its officers,**
10 **employees or agents, that is not the employer of the decedent.**

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

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

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

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

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

22 (7) This section applies to any action of any officer, employee or agent of the state relating to
23 a nuclear incident, whether or not the officer, employee or agent is acting within the scope of em-
24 ployment, and provided the nuclear incident is covered by an insurance or indemnity agreement
25 under 42 U.S.C. 2210.

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

29 **SECTION 2.** ORS 656.018 is amended to read:

30 656.018. (1)(a) The liability of every employer who satisfies the duty required by ORS 656.017 (1)
31 is exclusive and in place of all other liability arising out of injuries, diseases, symptom complexes
32 or similar conditions arising out of and in the course of employment that are sustained by subject
33 workers, the workers' beneficiaries and anyone otherwise entitled to recover damages from the em-
34 ployer on account of such conditions or claims resulting therefrom, specifically including claims for
35 contribution or indemnity asserted by third persons from whom damages are sought on account of
36 such conditions, except as specifically provided otherwise in this chapter.

37 (b) This subsection shall not apply to claims for:

38 (A) Indemnity or contribution asserted by a railroad, as defined in ORS 824.020[, *or*];

39 (B) **Indemnity or contribution asserted** by a corporation, individual or association of indi-
40 viduals [*which*] **that** is subject to regulation pursuant to ORS chapter 757 or 759[.]; **or**

41 (C) **Wrongful death against a public body, or its officers, employees or agents, that is not**
42 **the employer of the deceased worker as described in ORS 30.265 (6).**

43 (c) Except as provided in paragraph (b) of this subsection, all agreements or warranties contrary
44 to the provisions of paragraph (a) of this subsection entered into after July 19, 1977, are void.

45 (2) The rights given to a subject worker and the beneficiaries of the subject worker under this

1 chapter for injuries, diseases, symptom complexes or similar conditions arising out of and in the
 2 course of employment are in lieu of any remedies they might otherwise have for such injuries, dis-
 3 eases, symptom complexes or similar conditions against the worker's employer under ORS 654.305
 4 to 654.336 or other laws, common law or statute, except to the extent the worker is expressly given
 5 the right under this chapter to bring suit against the employer of the worker for an injury, disease,
 6 symptom complex or similar condition.

7 (3) The exemption from liability given an employer under this section is also extended to the
 8 employer's insurer, the self-insured employer's claims administrator, the Department of Consumer
 9 and Business Services, and to the contracted agents, employees, partners, limited liability company
 10 members, general partners, limited liability partners, limited partners, officers and directors of the
 11 employer, the employer's insurer, the self-insured employer's claims administrator and the depart-
 12 ment, except that the exemption from liability shall not apply:

13 (a) If the willful and unprovoked aggression by a person otherwise exempt under this subsection
 14 is a substantial factor in causing the injury, disease, symptom complex or similar condition;

15 (b) If the worker and the person otherwise exempt under this subsection are not engaged in the
 16 furtherance of a common enterprise or the accomplishment of the same or related objectives;

17 (c) If the failure of the employer to comply with a notice posted pursuant to ORS 654.082 is a
 18 substantial factor in causing the injury, disease, symptom complex or similar condition; or

19 (d) If the negligence of a person otherwise exempt under this subsection is a substantial factor
 20 in causing the injury, disease, symptom complex or similar condition and the negligence occurs
 21 outside of the capacity that qualifies the person for exemption under this section.

22 (4) The exemption from liability given an employer under this section applies to a worker leasing
 23 company and the client to whom workers are provided when the worker leasing company and the
 24 client comply with ORS 656.850 (3).

25 (5)(a) The exemption from liability given an employer under this section applies to a temporary
 26 service provider, as *[that term is used]* **defined** in ORS 656.850, and also extends to the client to
 27 whom workers are provided when the temporary service provider complies with ORS 656.017.

28 (b) The exemption from liability given a client under paragraph (a) of this subsection is also
 29 extended to the client's insurer, the self-insured client's claims administrator, the department, and
 30 the contracted agents, employees, officers and directors of the client, the client's insurer, the self-
 31 insured client's claims administrator and the department, except that the exemption from liability
 32 shall not apply:

33 (A) If the willful and unprovoked aggression by a person otherwise exempt under this subsection
 34 is a substantial factor in causing the injury, disease, symptom complex or similar condition;

35 (B) If the worker and the person otherwise exempt under this subsection are not engaged in the
 36 furtherance of a common enterprise or the accomplishment of the same or related objectives;

37 (C) If the failure of the client to comply with a notice posted pursuant to ORS 654.082 is a
 38 substantial factor in causing the injury, disease, symptom complex or similar condition; or

39 (D) If the negligence of a person otherwise exempt under this subsection is a substantial factor
 40 in causing the injury, disease, symptom complex or similar condition and the negligence occurs
 41 outside of the capacity that qualifies the person for exemption under this subsection.

42 (6) Nothing in this chapter shall prohibit payment, voluntarily or otherwise, to injured workers
 43 or their beneficiaries in excess of the compensation required to be paid under this chapter.

44 (7) The exclusive remedy provisions and limitation on liability provisions of this chapter apply
 45 to all injuries and to diseases, symptom complexes or similar conditions of subject workers arising

1 out of and in the course of employment whether or not they are determined to be compensable under
2 this chapter.

3 **SECTION 3.** (1) The amendments to ORS 30.265 and 656.018 by sections 1 and 2 of this
4 2014 Act apply only to claims arising on or after May 1, 2012.

5 (2) If the amendments to ORS 30.265 by section 1 of this 2014 Act operate to revive a
6 claim that was barred under ORS 30.265 (6)(a) immediately before the effective date of this
7 2014 Act, the person asserting the claim must give notice of the claim as provided in ORS
8 30.275 within one year after the effective date of this 2014 Act.

9 **SECTION 4.** This 2014 Act being necessary for the immediate preservation of the public
10 peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect
11 on its passage.
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