

D R A F T

SUMMARY

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 repose. Requires revived claim to be filed within two years after effective date of Act.

A BILL FOR AN ACT

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

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

SECTION 1. ORS 30.275 is amended to read:

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

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

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

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

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

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

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

2 (c) Commencement of an action on the claim by or on behalf of the
3 claimant within the applicable period of time provided in subsection (2) of
4 this section; or

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

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

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

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

13 (c) The name of the claimant and the mailing address to which corre-
14 spondence concerning the claim may be sent.

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

16 (a) If the claim is against the state or an officer, employee or agent
17 thereof, to the office of the Director of the Oregon Department of Adminis-
18 trative Services.

19 (b) If the claim is against a local public body or an officer, employee or
20 agent thereof, to the public body at its principal administrative office, to any
21 member of the governing body of the public body, or to an attorney desig-
22 nated by the governing body as its general counsel.

23 (6) Actual notice of claim is any communication by which any individual
24 to whom notice may be given as provided in subsection (5) of this section
25 or any person responsible for administering tort claims on behalf of the
26 public body acquires actual knowledge of the time, place and circumstances
27 giving rise to the claim, where the communication is such that a reasonable
28 person would conclude that a particular person intends to assert a claim
29 against the public body or an officer, employee or agent of the public body.
30 A person responsible for administering tort claims on behalf of a public body
31 is a person who, acting within the scope of the person's responsibility, as

1 an officer, employee or agent of a public body or as an employee or agent
2 of an insurance carrier insuring the public body for risks within the scope
3 of ORS 30.260 to 30.300, engages in investigation, negotiation, adjustment or
4 defense of claims within the scope of ORS 30.260 to 30.300, or in furnishing
5 or accepting forms for claimants to provide claim information, or in super-
6 vising any of those activities.

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

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

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

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

17 (C) The claimant was in the custody of the Department of Human Services
18 pursuant to an order of a juvenile court under ORS 419B.150, 419B.185,
19 419B.337 or 419B.527, or was in the custody of the Oregon Youth Authority
20 under the provisions of ORS 419C.478, 420.011 or 420A.040, when the acts or
21 omissions giving rise to a claim occurred[.];

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

24 **(c) The claim is based on conduct that constitutes child abuse, as**
25 **defined in ORS 12.117, against a person under 18 years of age, or con-**
26 **duct that constitutes knowingly allowing, permitting or encouraging**
27 **child abuse, as defined in ORS 12.117, against a person under 18 years**
28 **of age.**

29 (9) Except as provided in ORS **12.117**, 12.120, 12.135 and 659A.875, but
30 notwithstanding any other provision of ORS chapter 12 or other statute
31 providing a limitation on the commencement of an action, an action arising

1 from any act or omission of a public body or an officer, employee or agent
2 of a public body within the scope of ORS 30.260 to 30.300 shall be commenced
3 within two years after the alleged loss or injury.

4 **SECTION 2. (1) The amendments to ORS 30.275 by section 1 of this**
5 **2015 Act apply to all causes of action arising before, on or after the**
6 **effective date of this 2015 Act.**

7 **(2) The amendments to ORS 30.275 by section 1 of this 2015 Act re-**
8 **vive a cause of action based on conduct that constitutes child abuse,**
9 **as defined in ORS 12.117, against a person under 18 years of age, or**
10 **conduct that constitutes knowingly allowing, permitting or encourag-**
11 **ing child abuse, as defined in ORS 12.117, against a person under 18**
12 **years of age if:**

13 **(a) A civil action alleging the cause of action was filed before the**
14 **effective date of this 2015 Act; and**

15 **(b) The cause of action was adjudicated based on the provisions of**
16 **ORS 30.275 as in effect immediately before the effective date of this**
17 **2015 Act, or based on the plaintiff's failure to comply with a statute**
18 **of limitations or statute of repose.**

19 **(3) A cause of action revived under subsection (2) of this section**
20 **must be refiled within two years after the effective date of this 2015**
21 **Act.**

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