

Senate Bill 1020

Sponsored by Senator FAGAN, Representative KOTEK; Senator GELSER, Representative WILLIAMSON (at the request of Beth Creighton)

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 limitations on liability of public bodies for tort claims do not apply when plaintiff proves elements of state or federal crime arising from same facts as tort claim.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to claims under the Oregon Tort Claims Act; creating new provisions; amending ORS 30.265
3 and 65.369; 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) If an action under ORS 30.260 to 30.300 results in an award of damages for a tort claim**
 3 **in which the plaintiff proves, by a preponderance of the evidence, the elements of a crime**
 4 **under state or federal law arising from the same facts as the tort claim, the limitations on**
 5 **damages imposed under ORS 30.271, 30.272 and 30.273 do not apply to the award of damages.**

6 [(5)] (6) Every public body is immune from liability for any claim for injury to or death of any
 7 person or injury to property resulting from an act or omission of an officer, employee or agent of
 8 a public body when such officer, employee or agent is immune from liability.

9 [(6)] (7) Every public body and its officers, employees and agents acting within the scope of their
 10 employment or duties, or while operating a motor vehicle in a ridesharing arrangement authorized
 11 under ORS 276.598, are immune from liability for:

12 (a) Any claim for injury to or death of any person covered by any workers' compensation law.

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

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

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

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

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

24 [(7)] (8) This section applies to any action of any officer, employee or agent of the state relating
 25 to a nuclear incident, whether or not the officer, employee or agent is acting within the scope of
 26 employment, and provided the nuclear incident is covered by an insurance or indemnity agreement
 27 under 42 U.S.C. 2210.

28 [(8)] (9) Subsection [(6)(c)] (7)(c) of this section does not apply to any discretionary act that is
 29 found to be the cause or partial cause of a nuclear incident covered by an insurance or indemnity
 30 agreement under the provisions of 42 U.S.C. 2210, including but not limited to road design and route
 31 selection.

32 **SECTION 2.** ORS 65.369 is amended to read:

33 65.369. (1) The civil liability of a qualified director for the performance or nonperformance of
 34 the director's duties shall be limited to gross negligence or intentional misconduct.

35 (2) This section does not affect the civil liability of the entity which a qualified director serves.

36 (3) For the purposes of this section, "qualified director" means a person who serves without
 37 compensation for personal services as:

38 (a) A member of a board or commission of the state or a governmental subdivision for the pur-
 39 pose of setting policy and controlling or otherwise overseeing the activities or functional responsi-
 40 bilities of the board or commission but, notwithstanding ORS 30.265 [(5)] (6), the entity is not
 41 thereby rendered immune from liability;

42 (b) An officer, director or member of an executive board for the purpose of setting policy and
 43 controlling or otherwise overseeing the activities or functional responsibilities of a nonprofit cor-
 44 poration, unincorporated association or nonprofit cooperative corporation that has as its primary
 45 purpose:

- 1 (A) Religion;
- 2 (B) Charity;
- 3 (C) Benevolence;
- 4 (D) Providing goods or services at no charge to the general public;
- 5 (E) Education;
- 6 (F) Scientific activity;
- 7 (G) Medical or hospital services at reduced costs; or
- 8 (H) Engaging in activities of the nature specified in section 501 of the Internal Revenue Code
- 9 of 1986, as amended;

10 (c) A director for the purpose of setting policy and controlling or otherwise overseeing the ac-
11 tivities or functional responsibilities of an organization which acts as an advocate for its members
12 and which has as its members individuals or organizations that are:

- 13 (A) Members of a particular trade or industry; or
- 14 (B) Members of the business community of a particular municipality or area of the state; or
- 15 (d) An officer, director or member of an executive board for the purpose of setting policy and
16 controlling or otherwise overseeing the activities or functional responsibilities of a nonprofit cor-
17 poration, unincorporated association or nonprofit cooperative corporation composed of owners or
18 lessees of units or interests in any condominium submitted to the provisions of ORS 100.005 to
19 100.627, any planned community as defined in ORS 94.550, any timeshare property as defined in ORS
20 94.803, any residential cooperative community or any other residential or commercial common in-
21 terest real estate community.

22 (4) An otherwise qualified director shall not be considered to be compensated for personal ser-
23 vices if the director receives payment only for actual expenses incurred in attending meetings or
24 performing a director’s duties or receives a stipend which is paid only to compensate the director
25 for average expenses incurred over the course of a year.

26 **SECTION 3. (1) Except as provided in subsection (2) of this section, the amendments to**
27 **ORS 30.265 by section 1 of this 2019 Act apply to all causes of action, whether arising before,**
28 **on or after the effective date of this 2019 Act.**

29 **(2)(a) The amendments to ORS 30.265 by section 1 of this 2019 Act do not apply to any**
30 **award of damages for which a final judgment has been entered before the effective date of**
31 **this 2019 Act.**

32 **(b) As used in this subsection, “final judgment” means a judgment for which the time to**
33 **appeal has expired without any party filing an appeal or that is not subject to further appeal**
34 **or review.**

35 **SECTION 4. This 2019 Act being necessary for the immediate preservation of the public**
36 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
37 **on its passage.**

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