

LC 21 (12/15/2020-1) STAFF MEASURE SUMMARY

Joint Interim Committee on the Third Special Session of 2020

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WHAT THE MEASURE DOES: Prohibits claims for damages related to COVID-19 infection suffered from acts or omissions of a school district if the act or omission was performed in the course of operating an education program and the school district was in compliance with COVID-19 emergency rules in effect at the time of act or omission. Prohibits claims for activities on school district property if such activities are not operated by the school district. Excludes reckless, wanton, or intentional misconduct. Excludes causes of actions and remedies for claims arising from laws relating to state worker safety and health, workers' compensation, state or federal leave and wage, state and federal discrimination or retaliation, or state and federal specialized instruction. Provides whistleblower protections for school services employees who report or file complaints relating to violations of laws, regulations, or standards governing the COVID-19 pandemic. Specifies process for striking prohibited claims. Places initial burden of showing prima facie bar of claim on school district. Shifts burden to plaintiff to establish genuine issue of material fact that claim is not barred. Defines COVID-19 emergency rules, education program, and school district. Excludes private schools, Oregon School for the Deaf, youth corrections education program, and juvenile detention education program from provisions of measure. Applies to school district-sponsored activities occurring on or off campuses. Declares emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

LC 29 prohibits claims for damages against certain health care providers and health care facilities if the provider or facility was providing health care services and the act or omission at issue was in order to comply with COVID-19 emergency rules in effect at the time of the act or omission. LC 29 does not provide immunity for claims based on gross negligence; reckless, wanton, or intentional misconduct; fraud; false claim actions brought on behalf of the state; or deceptive acts or practices. The measure does not provide immunity when delay or cancellation of a nonurgent or elective surgery puts a person at risk of irreversible harm and is not based on a reasonable interpretation of the available medical evidence. Provides that irreversible harm includes threats to a patient's life or irreversible harm to the mental or physical health of the person, threat of permanent dysfunction, risk of cancer metastasis or progression, or risk of rapidly worsening condition. Specifies that no other causes of action, including whistleblower or discrimination, are prohibited. Provides process for striking claim. Declares emergency, effective on passage.

BACKGROUND:

In response to the COVID-19 pandemic and the Governor's Executive Orders limiting in-person gatherings, Oregon's public schools began operating primarily via comprehensive distance learning in April, 2020. If school districts meet specific metrics related to the prevalence of COVID-19 infections in the community, those schools can offer limited in-person instruction. Exemptions also exist for limited instruction of specific student groups, small remote schools, and other circumstances. In anticipation of some in-person instruction, the Oregon Department of Education (ODE) has issued guidance, with input from school districts, on standards for public health protocols, including standards for cleaning, disinfection, and ventilation, health services, and ways of limiting the risk of infection in a variety of scenarios. ODE also published guidance in the form of a toolkit to guide districts through COVID-19 scenarios.

Most of Oregon's public school districts are insured through the Property and Casualty Coverage for Education (PACE) insurance trust. PACE provides property and liability insurance to school districts, education service districts, community colleges, and public charter schools. Currently, PACE provides insurance to 194 of Oregon's 197 school districts, while Portland Public Schools, Salem-Keizer School District, and Beaverton School District are self-insured. PACE pays the first \$1 million of each claim, while the remainder is paid by reinsurance. ORS 30.282 (6)(g) requires

PACE to maintain adequate reinsurance coverage. However, PACE has been unable to purchase reinsurance coverage for COVID-19 because reinsurers are not offering policies.

LC 21 prohibits claims against school districts for damages arising from COVID-19 infections if the school district's act or omission was made in compliance with the Governor's Executive Orders, rules, or other forms of guidance. The concept does not prohibit causes of actions based on workers' compensation, occupational health and safety, wage and hour laws, discrimination, retaliation, or specialized instruction laws. The measure provides whistleblower protections to third party contractors, such as janitorial service providers, bus drivers, and food service providers. LC 21 sets up a mechanism for an early offramp for claims that may be barred, while allowing claims that show a genuine issue of material fact to continue through the court process.

This summary has not been adopted or officially endorsed by action of the committee.

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