

House Bill 2204

Sponsored by Representative WILDE (Presession 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 safety officer who represents that person is acting as employee or agent of public body is acting in scope of employment for purposes of Oregon Tort Claims Act.

Increases damages limitations under Oregon Tort Claims Act for claims for acts or omissions of public safety officers. Provides for award of attorney fees.

Provides that person may bring civil action for damages incurred as result of police officer's failure to report or intervene in misconduct.

Expands statewide online database maintained by Department of Public Safety Standards and Training to include settlements of claims against police officers involving misconduct. Requires department to investigate settlements to determine if discipline is warranted.

A BILL FOR AN ACT

1
2 Relating to public safety; creating new provisions; and amending ORS 30.265, 30.271 and 30.272 and
3 section 2, chapter 5, Oregon Laws 2020 (first special session), and section 3, chapter 7, Oregon
4 Laws 2020 (first special session).

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

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

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

11 **(b) A public safety officer, as defined in ORS 181A.355, who represents that the person**
12 **is acting as an employee or agent of a public body is acting in the scope of employment for**
13 **purposes of this section.**

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

20 (3) If an action under ORS 30.260 to 30.300 alleges damages in an amount equal to or less than
21 the damages allowed under ORS 30.271, 30.272 or 30.273, the sole cause of action for a tort com-
22 mitted by officers, employees or agents of a public body acting within the scope of their employment
23 or duties and eligible for representation and indemnification under ORS 30.285 or 30.287 is an action
24 against the public body. If an action is filed against an officer, employee or agent of a public body,
25 and the plaintiff alleges damages in an amount equal to or less than the damages allowed under ORS
26 30.271, 30.272 or 30.273, the court upon motion shall substitute the public body as the defendant.
27 Substitution of the public body as the defendant does not exempt the public body from making any

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 report required under ORS 742.400.

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

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

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

- 15 (a) Any claim for injury to or death of any person covered by any workers' compensation law.
- 16 (b) Any claim in connection with the assessment and collection of taxes.
- 17 (c) Any claim based upon the performance of or the failure to exercise or perform a discretion-
 18 ary function or duty, whether or not the discretion is abused.
- 19 (d) Any claim that is limited or barred by the provisions of any other statute, including but not
 20 limited to any statute of ultimate repose.
- 21 (e) Any claim arising out of riot, civil commotion or mob action or out of any act or omission
 22 in connection with the prevention of any of the foregoing.

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

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

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

34 **SECTION 2.** ORS 30.271 is amended to read:

35 30.271. (1) The limitations imposed by this section apply to claims that:

- 36 (a) Are subject to ORS 30.260 to 30.300;
- 37 (b) Are made against the state, or against an officer, employee or agent of the state acting
 38 within the person's scope of employment or duties;
- 39 (c) Arise out of a single accident or occurrence; and
- 40 (d) Are not claims for damage to or destruction of property.

41 (2) **Except as provided in subsection (4) of this section,** the liability of the state, and the li-
 42 ability of the state's officers, employees and agents acting within the scope of their employment or
 43 duties, to any single claimant for claims described in subsection (1) of this section may not exceed:

- 44 (a) \$1.5 million, for causes of action arising on or after December 28, 2007, and before July 1,
 45 2010.

1 (b) \$1.6 million, for causes of action arising on or after July 1, 2010, and before July 1, 2011.

2 (c) \$1.7 million, for causes of action arising on or after July 1, 2011, and before July 1, 2012.

3 (d) \$1.8 million, for causes of action arising on or after July 1, 2012, and before July 1, 2013.

4 (e) \$1.9 million, for causes of action arising on or after July 1, 2013, and before July 1, 2014.

5 (f) \$2 million, for causes of action arising on or after July 1, 2014, and before July 1, 2015.

6 (g) The adjusted limitation provided by subsection [(4)] (5) of this section, for causes of action
7 arising on or after July 1, 2015.

8 (3) **Except as provided in subsection (4) of this section**, the liability of the state, and the li-
9 ability of the state's officers, employees and agents acting within the scope of their employment or
10 duties, to all claimants for claims described in subsection (1) of this section may not exceed:

11 (a) \$3 million, for causes of action arising on or after December 28, 2007, and before July 1, 2010.

12 (b) \$3.2 million, for causes of action arising on or after July 1, 2010, and before July 1, 2011.

13 (c) \$3.4 million, for causes of action arising on or after July 1, 2011, and before July 1, 2012.

14 (d) \$3.6 million, for causes of action arising on or after July 1, 2012, and before July 1, 2013.

15 (e) \$3.8 million, for causes of action arising on or after July 1, 2013, and before July 1, 2014.

16 (f) \$4 million, for causes of action arising on or after July 1, 2014, and before July 1, 2015.

17 (g) The adjusted limitation provided by subsection [(4)] (5) of this section, for causes of action
18 arising on or after July 1, 2015.

19 (4)(a) **The liability of the state for the acts or omissions of public safety officers, as de-**
20 **defined in ORS 181A.355, and the liability of the public safety officers employed by the state**
21 **acting within the scope of their employment or duties, to any single claimant for claims de-**
22 **scribed in subsection (1) of this section may not exceed:**

23 (A) **\$5 million, for causes of action arising on or after July 1, 2021, and before July 1, 2022.**

24 (B) **The adjusted limitation provided by subsection (5) of this section, for causes of action**
25 **arising on or after July 1, 2022.**

26 (b) **There is no limitation on the liability of the state for the acts or omissions of public**
27 **safety officers, as defined in ORS 181A.355, and the liability of the public safety officers em-**
28 **ployed by the state acting within the scope of their employment or duties, to all claimants**
29 **for claims described in subsection (1) of this section.**

30 [(4)] (5) Beginning in 2015, and every year thereafter, the State Court Administrator shall de-
31 termine the percentage increase or decrease in the cost of living for the previous calendar year,
32 based on changes in the Consumer Price Index for All Urban Consumers, West Region (All Items),
33 as published by the Bureau of Labor Statistics of the United States Department of Labor. On or
34 before July 1 of the year in which the State Court Administrator makes the determination required
35 by this subsection, the State Court Administrator shall adjust the limitations imposed under sub-
36 sections (2) [and (3)] to (4) of this section for the following calendar year by multiplying the limi-
37 tation amounts applicable to the calendar year in which the adjustment is made by the percentage
38 amount determined under this subsection. The adjustment may not exceed three percent for any
39 year. The State Court Administrator shall round the adjusted limitation amount to the nearest \$100,
40 but the unrounded amount shall be used to calculate the adjustments to the limitations in subse-
41 quent calendar years. The adjusted limitation becomes effective on July 1 of the year in which the
42 adjustment is made, and applies to all causes of action arising on or after July 1 of that year and
43 before July 1 of the subsequent year.

44 [(5)] (6) The limitations imposed by this section apply to claims against Oregon Health and Sci-
45 ence University.

1 [(6)] (7) The limitations imposed by this section apply to claims against the State Fair Council.

2 **SECTION 3.** ORS 30.272 is amended to read:

3 30.272. (1) The limitations imposed by this section apply to claims that:

4 (a) Are subject to ORS 30.260 to 30.300;

5 (b) Are made against a local public body, or against an officer, employee or agent of a local
6 public body acting within the person's scope of employment or duties;

7 (c) Arise out of a single accident or occurrence; and

8 (d) Are not claims for damage to or destruction of property.

9 (2) **Except as provided in subsection (4) of this section,** the liability of a local public body,
10 and the liability of the public body's officers, employees and agents acting within the scope of their
11 employment or duties, to any single claimant for claims described in subsection (1) of this section
12 may not exceed:

13 (a) \$500,000, for causes of action arising on or after July 1, 2009, and before July 1, 2010.

14 (b) \$533,300, for causes of action arising on or after July 1, 2010, and before July 1, 2011.

15 (c) \$566,700, for causes of action arising on or after July 1, 2011, and before July 1, 2012.

16 (d) \$600,000, for causes of action arising on or after July 1, 2012, and before July 1, 2013.

17 (e) \$633,300, for causes of action arising on or after July 1, 2013, and before July 1, 2014.

18 (f) \$666,700, for causes of action arising on or after July 1, 2014, and before July 1, 2015.

19 (g) The adjusted limitation provided by subsection [(4)] (5) of this section, for causes of action
20 arising on or after July 1, 2015.

21 (3) **Except as provided in subsection (4) of this section,** the liability of a local public body,
22 and the liability of the public body's officers, employees and agents acting within the scope of their
23 employment or duties, to all claimants for claims described in subsection (1) of this section may not
24 exceed:

25 (a) \$1 million, for causes of action arising on or after July 1, 2009, and before July 1, 2010.

26 (b) \$1,066,700, for causes of action arising on or after July 1, 2010, and before July 1, 2011.

27 (c) \$1,133,300, for causes of action arising on or after July 1, 2011, and before July 1, 2012.

28 (d) \$1,200,000, for causes of action arising on or after July 1, 2012, and before July 1, 2013.

29 (e) \$1,266,700, for causes of action arising on or after July 1, 2013, and before July 1, 2014.

30 (f) \$1,333,300, for causes of action arising on or after July 1, 2014, and before July 1, 2015.

31 (g) The adjusted limitation provided by subsection [(4)] (5) of this section, for causes of action
32 arising on or after July 1, 2015.

33 (4)(a) **The liability of a local public body for the acts or omissions of public safety officers,**
34 **as defined in ORS 181A.355, and the liability of the public safety officers employed by a public**
35 **body acting within the scope of their employment or duties, to any single claimant for claims**
36 **described in subsection (1) of this section may not exceed:**

37 (A) **\$5 million, for causes of action arising on or after July 1, 2021, and before July 1, 2022.**

38 (B) **The adjusted limitation provided by subsection (5) of this section, for causes of action**
39 **arising on or after July 1, 2022.**

40 (b) **There is no limitation on the liability of a local public body for the acts or omissions**
41 **of public safety officers, as defined in ORS 181A.355, and the liability of the public safety of-**
42 **ficers employed by a local public body acting within the scope of their employment or duties,**
43 **to all claimants for claims described in subsection (1) of this section.**

44 [(4)] (5) Beginning in 2015, and every year thereafter, the State Court Administrator shall de-
45 termine the percentage increase or decrease in the cost of living for the previous calendar year,

1 based on changes in the Consumer Price Index for All Urban Consumers, West Region (All Items),
 2 as published by the Bureau of Labor Statistics of the United States Department of Labor. On or
 3 before July 1 of the year in which the State Court Administrator makes the determination required
 4 by this subsection, the State Court Administrator shall adjust the limitations imposed under sub-
 5 sections (2) *[and (3)]* **to (4)** of this section for the following calendar year by multiplying the limi-
 6 tation amounts applicable to the calendar year in which the adjustment is made by the percentage
 7 amount determined under this subsection. The adjustment may not exceed three percent for any
 8 year. The State Court Administrator shall round the adjusted limitation amount to the nearest \$100,
 9 but the unrounded amount shall be used to calculate the adjustments to the limitations in subse-
 10 quent calendar years. The adjusted limitation becomes effective on July 1 of the year in which the
 11 adjustment is made, and applies to all causes of action arising on or after July 1 of that year and
 12 before July 1 of the subsequent year.

13 *[(5)]* **(6)** The limitations imposed by this section do not apply to claims against Oregon Health
 14 and Science University.

15 **SECTION 4. Section 5 of this 2021 Act is added to and made a part of ORS 30.260 to 30.300.**

16 **SECTION 5. (1) The court shall award reasonable attorney fees and costs to a plaintiff**
 17 **who prevails in an action under ORS 30.260 to 30.300 for the acts or omissions of a public**
 18 **safety officer, as defined in ORS 181A.355.**

19 **(2) The court may award reasonable attorney fees and costs to a prevailing defendant in**
 20 **an action under ORS 30.260 to 30.300 for the acts or omissions of a public safety officer if the**
 21 **court determines that the plaintiff's claim was frivolous, unreasonable or without founda-**
 22 **tion.**

23 **SECTION 6. Section 2, chapter 5, Oregon Laws 2020 (1st special session), is amended to read:**

24 **Sec. 2.** (1) As used in this section, "misconduct" means:

25 (a) Unjustified or excessive force that is objectively unreasonable under the circumstances or
 26 in violation of the use of force policy for the law enforcement unit employing the offending officer;

27 (b) Sexual harassment or sexual misconduct;

28 (c) Discrimination against a person based on race, color, religion, sex, sexual orientation, na-
 29 tional origin, disability or age;

30 (d) A crime; or

31 (e) A violation of the minimum standards for physical, emotional, intellectual and moral fitness
 32 for public safety personnel established under ORS 181A.410.

33 (2) Without regard to rank or assignment, a police officer or reserve officer shall intervene to
 34 prevent or stop another police officer or reserve officer engaged in any act the intervening officer
 35 knows or reasonably should know is misconduct, unless the intervening officer cannot intervene
 36 safely.

37 (3) A police officer or reserve officer who witnesses another police officer or reserve officer
 38 engaging in misconduct shall report the misconduct **in writing** to a supervisor as soon as practica-
 39 ble, but no later than 72 hours after witnessing the misconduct.

40 (4) Failure to intervene or report as required by subsections (2) and (3) of this section is grounds
 41 for disciplinary action against a police officer or reserve officer by the law enforcement unit em-
 42 ploying the officer or for the Department of Public Safety Standards and Training to suspend or
 43 revoke the officer's certification as provided in ORS 181A.630, 181A.640 and 181A.650.

44 (5) An employer may not discharge, demote, suspend or in any manner discriminate or retaliate
 45 against a police officer or reserve officer with regard to promotion, compensation or other terms,

1 conditions or privileges of employment for the reason that the officer intervened or reported as re-
 2 quired by subsections (2) and (3) of this section. Violation of this subsection is an unlawful employ-
 3 ment practice as provided in ORS 659A.199.

4 **(6) A person injured by a violation of subsections (2) or (3) of this section may bring a**
 5 **claim for damages under ORS 30.265.**

6 [(6)] (7) The Department of Public Safety Standards and Training shall report at least annually
 7 to an appropriate committee of the Legislative Assembly on any rules adopted by the department
 8 implementing this section.

9 **SECTION 8.** Section 3, chapter 7, Oregon Laws 2020 (1st special session), is amended to read:

10 **Sec. 3.** (1) The Department of Public Safety Standards and Training shall establish a statewide
 11 online database of suspensions and revocations of the certifications of police officers, **and of**
 12 **settlements of civil claims involving police officer misconduct**, that is accessible by the public.

13 (2) The department shall publish information on the database when the department suspends or
 14 revokes the certification of a police officer under ORS 181A.630, 181A.640 and 181A.650, including
 15 but not limited to:

- 16 (a) The name of the officer;
- 17 (b) The law enforcement unit at which the officer was employed; and
- 18 (c) A description of the facts underlying the suspension or revocation.

19 (3) The department shall publish the information required under subsection (2) of this section
 20 within 10 days after:

- 21 (a) The time for filing an appeal of the department's decision under ORS 181A.650 has passed
 22 and no appeal has been filed; or
- 23 (b) The decision of the department is appealed under ORS 181A.650 and the department's deci-
 24 sion has been sustained by the Court of Appeals or the appeal has been dropped.

25 **(4)(a) A law enforcement unit shall report to the department if a civil action involving**
 26 **misconduct of a police officer employed by the law enforcement unit is settled.**

27 **(b) When the department receives a report under paragraph (a) of this subsection, the**
 28 **department shall promptly publish the report in the database.**

29 **(c) The department may adopt rules implementing this subsection and specifying the re-**
 30 **quired components of a report under this subsection.**

31 [(4)] (5) The department shall submit an annual report to an appropriate committee of the Leg-
 32 islative Assembly summarizing and analyzing the data in the database.

33 **SECTION 9.** Section 10 of this 2021 Act is added to and made a part of ORS 181A.355 to
 34 **181A.670.**

35 **SECTION 10.** When the Department of Public Safety Standards and Training receives a
 36 report of a settlement under section 3, chapter 7, Oregon Laws 2020 (first special session),
 37 the department shall investigate the report to determine if discipline against the police offi-
 38 cer who is the subject of the settlement is warranted.