House Bill 2638

Sponsored by Representatives DRAZAN, GOMBERG; Representatives BONHAM, BOSHART DAVIS, BREESE-IVERSON, MOORE-GREEN, NEARMAN, OWENS, POST, SMITH G (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.

Limits liability for certain claims for damages arising out of acts or omissions taken during COVID-19 emergency period in reasonable compliance with government guidance related to COVID-19.

A BILL FOR AN ACT

Relating to limitations of liability during the COVID-19 emergency.

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

SECTION 1. (1) As used in this section:
(a) “COVID-19 emergency period” means the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect.
(b) “Executive order” means any executive order issued by the Governor in response to the COVID-19 emergency.
(c) “Federal guidelines” means directives issued by an entity representing the federal government of the United States, including but not limited to formally promulgated rules, ratified legislation and informational materials issued pursuant to an agency’s discretionary authority, related to the COVID-19 emergency.
(d) “Guidance” means executive orders, federal guidelines, state rules, local rules and state informational materials that create a standard or waive, suspend or modify otherwise applicable state or local laws or ordinances relating to the offering or providing of professional or business services during the COVID-19 emergency.
(e) “Local rule” means the equivalent of an executive order or state rule issued by a local government as defined in ORS 174.116.
(f) “State agency” means any state office, authority, board, commission, bureau or department, or division thereof, in the executive branch of state government.
(g) “State informational materials” means informational materials issued by a state agency to provide Oregonians with safety information targeting the COVID-19 emergency, regardless of whether the materials are the product of standard rulemaking processes.
(h) “State rule” means a rule promulgated or adopted by a state agency, or an order, declaration, statement or directive issued by the director of any state agency, in response to the COVID-19 emergency.

(2) (a) Except as provided in subsection (3) of this section, a person is not liable for damages arising out of acts or omissions taken during the COVID-19 emergency period in reasonable compliance with guidance that is applicable to the person’s professional or busi-
ness activities.

(b) If multiple sources of guidance are applicable to a person's professional or business activities, the person is not liable for damages arising out of acts or omissions taken during the COVID-19 emergency period if the acts or omissions are in reasonable compliance with any guidance that is applicable to the person's professional or business activities.

(3) This section does not limit liability for:

(a) Acts or omissions constituting gross negligence, reckless, wanton or intentional misconduct or failure to provide services in good faith.

(b) False claims actions brought by or on behalf of the state.

(c) Fraud.

(d) Claims subject to ORS chapter 656.

(e) Actions unrelated to the COVID-19 emergency.

(4)(a) A defendant may make a special motion to strike any claim for damages that is barred by subsection (2) of this section. The special motion to strike shall be treated as a motion to dismiss under ORCP 21 A but is not subject to ORCP 21 F. Upon granting the special motion to strike, the court shall enter a judgment of dismissal without prejudice. If the court denies a special motion to strike, the court shall enter a limited judgment denying the motion.

(b) A defendant that moves to strike a claim under this section has the initial burden of making a prima facie showing that the claim arises out of acts or omissions taken during the COVID-19 emergency period in reasonable compliance with guidance that is applicable to the defendant's professional or business activities. If the defendant meets this burden, the burden shifts to the plaintiff in the civil action to establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case that the claim does not arise out of acts or omissions taken during the COVID-19 emergency period in reasonable compliance with guidance that is applicable to the defendant's professional or business activities. If the plaintiff meets this burden, the court shall deny the motion.

(c) In making a determination under paragraph (b) of this subsection, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(d) If the court determines that the plaintiff has established a probability that the plaintiff will prevail on the claim:

(A) The fact that the determination has been made and the substance of the determination may not be admitted in evidence at any later stage of the case; and

(B) The determination does not affect the burden of proof or standard of proof that is applied in the proceeding.