

HB 2204-3  
(LC 1152)  
4/7/21 (MNJ/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Representative Janelle Bynum)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2204**

1 On page 1 of the printed bill, line 2, delete “, 30.271”.

2 Delete lines 6 through 27 and delete pages 2 through 6 and insert:

3 **“SECTION 1. ORS 30.265 is amended to read:**

4 “30.265. (1)(a) Subject to the limitations of ORS 30.260 to 30.300, every  
5 public body is subject to civil action for its torts and those of its officers,  
6 employees and agents acting within the scope of their employment or duties,  
7 whether arising out of a governmental or proprietary function or while op-  
8 erating a motor vehicle in a ridesharing arrangement authorized under ORS  
9 276.598.

10 **“(b) A public safety officer, as defined in ORS 181A.355, is acting in**  
11 **the scope of employment for purposes of this section if:**

12 **“(A)(i) The officer represents in connection with a tort that the**  
13 **officer is a public safety officer; and**

14 **“(ii) If the tort occurred when the officer was off duty, the employer**  
15 **of the officer has a formal or informal policy requiring the officer to**  
16 **act as if the officer is on duty at all times; or**

17 **“(B) Equipment lawfully issued to the officer by the employer was**  
18 **used in the commission of a tort.**

19 “(2) The sole cause of action for a tort committed by officers, employees  
20 or agents of a public body acting within the scope of their employment or  
21 duties and eligible for representation and indemnification under ORS 30.285

1 or 30.287 is an action under ORS 30.260 to 30.300. The remedy provided by  
2 ORS 30.260 to 30.300 is exclusive of any other action against any such officer,  
3 employee or agent of a public body whose act or omission within the scope  
4 of the officer's, employee's or agent's employment or duties gives rise to the  
5 action. No other form of civil action is permitted.

6 “(3) If an action under ORS 30.260 to 30.300 alleges damages in an amount  
7 equal to or less than the damages allowed under ORS 30.271, 30.272 or 30.273,  
8 the sole cause of action for a tort committed by officers, employees or agents  
9 of a public body acting within the scope of their employment or duties and  
10 eligible for representation and indemnification under ORS 30.285 or 30.287  
11 is an action against the public body. If an action is filed against an officer,  
12 employee or agent of a public body, and the plaintiff alleges damages in an  
13 amount equal to or less than the damages allowed under ORS 30.271, 30.272  
14 or 30.273, the court upon motion shall substitute the public body as the de-  
15 fendant. Substitution of the public body as the defendant does not exempt the  
16 public body from making any report required under ORS 742.400.

17 “(4) If an action under ORS 30.260 to 30.300 alleges damages in an amount  
18 greater than the damages allowed under ORS 30.271, 30.272 or 30.273, the  
19 action may be brought and maintained against an officer, employee or agent  
20 of a public body, whether or not the public body is also named as a defend-  
21 ant. An action brought under this subsection is subject to the limitations on  
22 damages imposed under ORS 30.271, 30.272 or 30.273, and the total combined  
23 amount recovered in the action may not exceed those limitations for a single  
24 accident or occurrence without regard to the number or types of defendants  
25 named in the action.

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

30 “(6) Every public body and its officers, employees and agents acting

1 within the scope of their employment or duties, or while operating a motor  
2 vehicle in a ridesharing arrangement authorized under ORS 276.598, are im-  
3 mune from liability for:

4 “(a) Any claim for injury to or death of any person covered by any  
5 workers’ compensation law.

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

7 “(c) Any claim based upon the performance of or the failure to exercise  
8 or perform a discretionary function or duty, whether or not the discretion  
9 is abused.

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

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

15 “(f) Any claim arising out of an act done or omitted under apparent au-  
16 thority of a law, resolution, rule or regulation that is unconstitutional, in-  
17 valid or inapplicable except to the extent that they would have been liable  
18 had the law, resolution, rule or regulation been constitutional, valid and  
19 applicable, unless such act was done or omitted in bad faith or with malice.

20 “(7) This section applies to any action of any officer, employee or agent  
21 of the state relating to a nuclear incident, whether or not the officer, em-  
22 ployee or agent is acting within the scope of employment, and provided the  
23 nuclear incident is covered by an insurance or indemnity agreement under  
24 42 U.S.C. 2210.

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

29 **“SECTION 2.** ORS 30.272 is amended to read:

30 “30.272. (1) The limitations imposed by this section apply to claims that:

1       “(a) Are subject to ORS 30.260 to 30.300;

2       “(b) Are made against a local public body, or against an officer, employee  
3 or agent of a local public body acting within the person’s scope of employ-  
4 ment or duties;

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

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

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

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

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

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

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

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

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

24       “(g) The adjusted limitation provided by subsection [(4)] (5) of this sec-  
25 tion, for causes of action arising on or after July 1, 2015.

26       “(3) **Except as provided in subsection (4) of this section**, the liability  
27 of a local public body, and the liability of the public body’s officers, em-  
28 ployees and agents acting within the scope of their employment or duties,  
29 to all claimants for claims described in subsection (1) of this section may  
30 not exceed:

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

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

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

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

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

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

13 “(g) The adjusted limitation provided by subsection [(4)] (5) of this sec-  
14 tion, for causes of action arising on or after July 1, 2015.

15 “(4) **The liability of a local public body for the acts or omissions of**  
16 **police officers and reserve officers, as defined in ORS 181A.355, and the**  
17 **liability of the police officers and reserve officers employed by a public**  
18 **body acting within the scope of their employment or duties, for claims**  
19 **described in subsection (1) of this section may not exceed the limita-**  
20 **tions on damages imposed under ORS 30.271.**

21 “[4] (5) Beginning in 2015, and every year thereafter, the State Court  
22 Administrator shall determine the percentage increase or decrease in the  
23 cost of living for the previous calendar year, based on changes in the Con-  
24 sumer Price Index for All Urban Consumers, West Region (All Items), as  
25 published by the Bureau of Labor Statistics of the United States Department  
26 of Labor. On or before July 1 of the year in which the State Court Admin-  
27 istrator makes the determination required by this subsection, the State Court  
28 Administrator shall adjust the limitations imposed under subsections (2) and  
29 (3) of this section for the following calendar year by multiplying the limita-  
30 tion amounts applicable to the calendar year in which the adjustment is

1 made by the percentage amount determined under this subsection. The ad-  
2 justment may not exceed three percent for any year. The State Court Ad-  
3 ministrator shall round the adjusted limitation amount to the nearest \$100,  
4 but the unrounded amount shall be used to calculate the adjustments to the  
5 limitations in subsequent calendar years. The adjusted limitation becomes  
6 effective on July 1 of the year in which the adjustment is made, and applies  
7 to all causes of action arising on or after July 1 of that year and before July  
8 1 of the subsequent year.

9 “[5] (6) The limitations imposed by this section do not apply to claims  
10 against Oregon Health and Science University.

11 **“SECTION 3. Section 4 of this 2021 Act is added to and made a part  
12 of ORS 30.260 to 30.300.**

13 **“SECTION 4. (1) The court shall award reasonable attorney fees and  
14 costs to a plaintiff who prevails in an action under ORS 30.260 to 30.300  
15 for the acts or omissions of a police officer or reserve officer, as de-  
16 fined in ORS 181A.355.**

17 **“(2) The court may award reasonable attorney fees and costs to a  
18 prevailing defendant in an action under ORS 30.260 to 30.300 for the  
19 acts or omissions of a police officer or reserve officer if the court de-  
20 termines that the plaintiff’s claim was frivolous, unreasonable or  
21 without foundation.**

22 **“SECTION 5. Section 2, chapter 5, Oregon Laws 2020 (1st special ses-  
23 sion), 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  
26 the circumstances or in violation of the use of force policy for the law  
27 enforcement unit employing the offending officer;**

28 **“(b) Sexual harassment or sexual misconduct;**

29 **“(c) Discrimination against a person based on race, color, religion, sex,  
30 sexual orientation, national origin, disability or age;**

1 “(d) A crime; or

2 “(e) A violation of the minimum standards for physical, emotional, intel-  
3 lectual and moral fitness for public safety personnel established under ORS  
4 181A.410.

5 “(2) Without regard to rank or assignment, a police officer or reserve of-  
6 ficer shall intervene to prevent or stop another police officer or reserve of-  
7 ficer engaged in any act the intervening officer knows or reasonably should  
8 know is misconduct, unless the intervening officer cannot intervene safely.

9 “(3) A police officer or reserve officer who witnesses another police offi-  
10 cer or reserve officer engaging in misconduct shall report the misconduct **in**  
11 **writing** to a supervisor as soon as practicable, but no later than 72 hours  
12 after witnessing the misconduct.

13 “(4) Failure to intervene or report as required by subsections (2) and (3)  
14 of this section is grounds for disciplinary action against a police officer or  
15 reserve officer by the law enforcement unit employing the officer or for the  
16 Department of Public Safety Standards and Training to suspend or revoke  
17 the officer’s certification as provided in ORS 181A.630, 181A.640 and  
18 181A.650.

19 “(5) An employer may not discharge, demote, suspend or in any manner  
20 discriminate or retaliate against a police officer or reserve officer with re-  
21 gard to promotion, compensation or other terms, conditions or privileges of  
22 employment for the reason that the officer intervened or reported as required  
23 by subsections (2) and (3) of this section. Violation of this subsection is an  
24 unlawful employment practice as provided in ORS 659A.199.

25 “**(6) A person injured by a violation of subsection (2) or (3) of this**  
26 **section may bring a claim for damages under ORS 30.265.**

27 “[~~(6)~~] (7) The Department of Public Safety Standards and Training shall  
28 report at least annually to an appropriate committee of the Legislative As-  
29 sembly on any rules adopted by the department implementing this section.

30 “**SECTION 6.** Section 3, chapter 7, Oregon Laws 2020 (1st special ses-

1 sion), is amended to read:

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

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

9 “(a) The name of the officer;

10 “(b) The law enforcement unit at which the officer was employed; and

11 “(c) A description of the facts underlying the suspension or revocation.

12 “(3) The department shall publish the information required under sub-  
13 section (2) of this section within 10 days after:

14 “(a) The time for filing an appeal of the department’s decision under ORS  
15 181A.650 has passed and no appeal has been filed; or

16 “(b) The decision of the department is appealed under ORS 181A.650 and  
17 the department’s decision has been sustained by the Court of Appeals or the  
18 appeal has been dropped.

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

22 “(b) **When the department receives a report under paragraph (a) of**  
23 **this subsection, the department shall promptly publish the report in**  
24 **the database.**

25 “(c) **The department may adopt rules implementing this subsection**  
26 **and specifying the required components of a report under this sub-**  
27 **section.**

28 “[4] (5) The department shall submit an annual report to an appropriate  
29 committee of the Legislative Assembly summarizing and analyzing the data  
30 in the database.



1       **“SECTION 7. Section 8 of this 2021 Act is added to and made a part**  
2 **of ORS 181A.355 to 181A.670.**

3       **“SECTION 8. When the Department of Public Safety Standards and**  
4 **Training receives a report of a settlement under section 3, chapter 7,**  
5 **Oregon Laws 2020 (first special session), the department shall investi-**  
6 **gate the report to determine if discipline against the police officer who**  
7 **is the subject of the settlement is warranted, whether or not the em-**  
8 **ployer of the officer disciplined the officer. The department may con-**  
9 **sider the employer’s decision to discipline or not discipline the police**  
10 **officer in determining whether discipline is warranted.”.**

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