

House Bill 2207

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**.

Raises limitation on damages for torts of local public bodies to amount of limitation on damages for torts of state.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to limitations on damages under the Oregon Tort Claims Act; creating new provisions;
3 amending ORS 30.265, 30.269, 30.271, 30.274 and 433.755; repealing ORS 30.272; and declaring an
4 emergency.

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

6 **SECTION 1.** ORS 30.271 is amended to read:

7 30.271. (1) The limitations imposed by this section apply to claims that:

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

9 (b) Are made against [*the state*] **a public body**, or against an officer, employee or agent of [*the*
10 *state*] **a public body** acting within the person's scope of employment or duties;

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

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

13 (2) The liability of [*the state*] **a public body**, and the liability of [*the state's*] **a public body's** of-
14 ficers, employees and agents acting within the scope of their employment or duties, to any single
15 claimant for claims described in subsection (1) of this section may not exceed:

16 [(a) \$1.5 million, for causes of action arising on or after December 28, 2007, and before July 1,
17 2010.]

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

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

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

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

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

23 **(a) \$2,307,500, for causes of action arising before July 1, 2021.**

24 [(g)] **(b)** The adjusted limitation provided by subsection (4) of this section, for causes of action
25 arising on or after July 1, [2015] **2021**.

26 (3) The liability of [*the state*] **a public body**, and the liability of [*the state's*] **a public body's** of-
27 ficers, employees and agents acting within the scope of their employment or duties, to all claimants
28 for claims described in subsection (1) of this section may not exceed:

29 [(a) \$3 million, for causes of action arising on or after December 28, 2007, and before July 1,
30 2010.]

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

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

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

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

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

5 **(a) \$4,615,000, for causes of action arising before July 1, 2021.**

6 *[(g)]* **(b)** The adjusted limitation provided by subsection (4) of this section, for causes of action
7 arising on or after July 1, *[2015]* **2021**.

8 (4) Beginning in 2015, and every year thereafter, the State Court Administrator shall determine
9 the percentage increase or decrease in the cost of living for the previous calendar year, based on
10 changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as pub-
11 lished by the Bureau of Labor Statistics of the United States Department of Labor. On or before
12 July 1 of the year in which the State Court Administrator makes the determination required by this
13 subsection, the State Court Administrator shall adjust the limitations imposed under subsections (2)
14 and (3) of this section for the following calendar year by multiplying the limitation amounts appli-
15 cable to the calendar year in which the adjustment is made by the percentage amount determined
16 under this subsection. The adjustment may not exceed three percent for any year. The State Court
17 Administrator shall round the adjusted limitation amount to the nearest \$100, but the unrounded
18 amount shall be used to calculate the adjustments to the limitations in subsequent calendar years.
19 The adjusted limitation becomes effective on July 1 of the year in which the adjustment is made,
20 and applies to all causes of action arising on or after July 1 of that year and before July 1 of the
21 subsequent year.

22 (5) The limitations imposed by this section apply to claims against Oregon Health and Science
23 University.

24 (6) The limitations imposed by this section apply to claims against the State Fair Council.

25 **SECTION 2.** ORS 30.265 is amended to read:

26 30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is subject to civil
27 action for its torts and those of its officers, employees and agents acting within the scope of their
28 employment or duties, whether arising out of a governmental or proprietary function or while op-
29 erating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598.

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

36 (3) If an action under ORS 30.260 to 30.300 alleges damages in an amount equal to or less than
37 the damages allowed under ORS 30.271~~], 30.272]~~ or 30.273, the sole cause of action for a tort com-
38 mitted by officers, employees or agents of a public body acting within the scope of their employment
39 or duties and eligible for representation and indemnification under ORS 30.285 or 30.287 is an action
40 against the public body. If an action is filed against an officer, employee or agent of a public body,
41 and the plaintiff alleges damages in an amount equal to or less than the damages allowed under ORS
42 30.271~~], 30.272]~~ or 30.273, the court upon motion shall substitute the public body as the defendant.
43 Substitution of the public body as the defendant does not exempt the public body from making any
44 report required under ORS 742.400.

45 (4) If an action under ORS 30.260 to 30.300 alleges damages in an amount greater than the

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

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

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

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

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

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

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

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

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

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

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

32 **SECTION 3.** ORS 30.269 is amended to read:

33 30.269. (1) Punitive damages may not be awarded on any claim subject to ORS 30.260 to 30.300.

34 (2) Claims subject to ORS 30.260 to 30.300 are not subject to the limitation imposed by ORS
 35 31.710.

36 (3) A court may not apply the limitations imposed on recovery under ORS 30.271[, 30.272] and
 37 30.273 until after the entry of a verdict or a stipulation by the parties to the amount of the damages.

38 (4) The limitations imposed under ORS 30.271 (2) [*and 30.272 (2)*] on single claimants include
 39 damages claimed for loss of services or loss of support arising out of the same tort.

40 (5) If two or more claimants recover on a claim that arises out of a single accident or occur-
 41 rence, and the recovery is subject to a limitation imposed by ORS 30.271 (3)[, 30.272 (3)] or 30.273
 42 (2)(b), any party to the action in which the claim is made may apply to the court to apportion to
 43 each claimant the proper share of the amount allowed by ORS 30.271 (3)[, 30.272 (3)] or 30.273 (2)(b).
 44 The share apportioned to each claimant shall be in the proportion that the ratio of the award or
 45 settlement made to the claimant bears to the aggregate awards and settlements for all claims arising

1 out of the accident or occurrence.

2 (6) Liability of any public body and one or more of its officers, employees or agents, or two or
 3 more officers, employees or agents of a public body, on claims arising out of a single accident or
 4 occurrence, may not exceed in the aggregate the amounts allowed by ORS 30.271[30.272] and
 5 30.273.

6 (7) ORS 30.271[30.272] and 30.273 do not apply to a claim arising in connection with a nuclear
 7 incident covered by an insurance or indemnity agreement under 42 U.S.C. 2210.

8 (8) For the purposes of the limitations imposed by ORS 30.271[30.272] and 30.273, events giving
 9 rise to a proclamation of a state of emergency under ORS 401.165, or a proclamation of a public
 10 health emergency under ORS 433.441, do not constitute a single accident or occurrence.

11 **SECTION 4.** ORS 30.274 is amended to read:

12 30.274. (1) At the request of any party to an action under ORS 30.260 to 30.300, the court shall
 13 enter a limited judgment that is limited to the issue of the application of the limitations imposed by
 14 ORS 30.271[30.272] or 30.273. A limited judgment may be entered under this section only after:

15 (a) The parties have stipulated to the total damages in the action; or

16 (b) The finder of fact has decided the total damages in the action.

17 (2) If a limited judgment is entered under this section, the court may not enter a general judg-
 18 ment until an appellate judgment on any appeal of the limited judgment has been entered.

19 (3) A limited judgment entered under this section may be appealed only by filing a notice of
 20 appeal directly with the Supreme Court within the time and in the manner specified in ORS chapter
 21 19 for civil appeals to the Court of Appeals. Any party filing a notice of appeal under this subsection
 22 must note in the notice of appeal that the case is subject to this subsection.

23 (4) An appeal filed under this section may not raise any issue relating to the case other than
 24 the application of a limitation imposed under ORS 30.271[30.272] or 30.273.

25 (5) If a limited judgment is not requested under this section, a party may seek judicial review
 26 of the imposition of any of the limitations under ORS 30.271[30.272] or 30.273 in an appeal from the
 27 general judgment in the action.

28 **SECTION 5.** ORS 433.755 is amended to read:

29 433.755. (1) In reviewing an application for a permit to hold an outdoor mass gathering, the
 30 county governing body may require such plans, specifications and reports as it may deem necessary
 31 for proper review and it may request and shall receive from all public officers, departments and
 32 agencies of the state and its political subdivisions such cooperation and assistance as it may deem
 33 necessary. If the county governing body determines upon examination of the permit application that
 34 the outdoor mass gathering creates a potential for injury to persons or property, the county gov-
 35 erning body may require organizers to obtain an insurance policy in an amount commensurate with
 36 the risk, but not exceeding the limitation for liability of a [local] public body under ORS [30.272
 37 (3)] **30.271 (3)**. The policy of casualty insurance shall provide coverage against liability for death,
 38 injury or disability of any human or for damage to property arising out of the outdoor mass gath-
 39 ering. The county shall be named as an additional insured under the policy.

40 (2) In the event of failure to remove all debris or residue and repair any damage to personal or
 41 real property arising out of the outdoor mass gathering within 72 hours after its termination and
 42 to remove any temporary structures used at the outdoor mass gathering within three weeks after
 43 its termination, the county governing body may file suit against the organizer for financial settle-
 44 ment as is needed to remove debris, residue or temporary structures and to repair such damage to
 45 real or personal property of persons not attending the outdoor mass gathering. The organizer shall

1 be wholly responsible for payment of any fines imposed under ORS 433.990 (7).

2 **SECTION 6. ORS 30.272 is repealed.**

3 **SECTION 7. (1) Except as provided in subsection (2) of this section, the amendments to**
4 **ORS 30.265, 30.269, 30.271, 30.274 and 433.755 by sections 1 to 5 of this 2021 Act and the repeal**
5 **of ORS 30.272 by section 6 of this 2021 Act apply to all causes of action arising before, on or**
6 **after the effective date of this 2021 Act.**

7 **(2) The amendments to ORS 30.265, 30.269, 30.271, 30.274 and 433.755 by sections 1 to 5 of**
8 **this 2021 Act and the repeal of ORS 30.272 by section 6 of this 2021 Act do not apply to a**
9 **cause of action for which a judgment has been entered before the effective date of this 2021**
10 **Act.**

11 **SECTION 8. This 2021 Act being necessary for the immediate preservation of the public**
12 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
13 **on its passage.**

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