

House Bill 2638

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

1
2 Relating to limitations of liability during the COVID-19 emergency.

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

4 **SECTION 1. (1) As used in this section:**

5 (a) **“COVID-19 emergency period” means the time in which any declaration of a state of**
6 **emergency issued by the Governor related to COVID-19, and any extension of the declara-**
7 **tion, is in effect.**

8 (b) **“Executive order” means any executive order issued by the Governor in response to**
9 **the COVID-19 emergency.**

10 (c) **“Federal guidelines” means directives issued by an entity representing the federal**
11 **government of the United States, including but not limited to formally promulgated rules,**
12 **ratified legislation and informational materials issued pursuant to an agency’s discretionary**
13 **authority, related to the COVID-19 emergency.**

14 (d) **“Guidance” means executive orders, federal guidelines, state rules, local rules and**
15 **state informational materials that create a standard or waive, suspend or modify otherwise**
16 **applicable state or local laws or ordinances relating to the offering or providing of profes-**
17 **sional or business services during the COVID-19 emergency.**

18 (e) **“Local rule” means the equivalent of an executive order or state rule issued by a local**
19 **government as defined in ORS 174.116.**

20 (f) **“State agency” means any state office, authority, board, commission, bureau or de-**
21 **partment, or division thereof, in the executive branch of state government.**

22 (g) **“State informational materials” means informational materials issued by a state**
23 **agency to provide Oregonians with safety information targeting the COVID-19 emergency,**
24 **regardless of whether the materials are the product of standard rulemaking processes.**

25 (h) **“State rule” means a rule promulgated or adopted by a state agency, or an order,**
26 **declaration, statement or directive issued by the director of any state agency, in response**
27 **to the COVID-19 emergency.**

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

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 **ness activities.**

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

6 **(3) This section does not limit liability for:**

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

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

10 **(c) Fraud.**

11 **(d) Claims subject to ORS chapter 656.**

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

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

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

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

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

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

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

38