

HB 2928-4  
(LC 742)  
3/1/21 (MNJ/ps)

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

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2928**

1 On page 1 of the printed bill, delete lines 6 through 26 and delete pages  
2 2 through 5 and insert:

3 **“SECTION 1. Section 1, chapter 8, Oregon Laws 2020 (first special**  
4 **session), is repealed.**

5 **“SECTION 2. (1) As used in this section:**

6 **“(a) ‘Chemical incapacitant’ means the following, together or sep-**  
7 **arately:**

8 **“(A) Toxic chemicals and their precursors, except where intended**  
9 **for purposes not prohibited under this section, as long as the types and**  
10 **quantities are consistent with such purposes;**

11 **“(B) Munitions and devices specifically designed to cause temporary**  
12 **pain, temporary irritation, temporary disruption of vital processes,**  
13 **temporary incapacitation, temporary disability or permanent harm**  
14 **through the toxic properties of toxic chemicals that would be released**  
15 **as a result of the employment of the munitions and devices; and**

16 **“(C) Any equipment specifically designed for use directly in con-**  
17 **nection with the employment of munitions and devices as described in**  
18 **subparagraph (B) of this paragraph.**

19 **“(b) ‘Key component of a binary or multicomponent chemical sys-**  
20 **tem’ means the precursor that plays the most important role in de-**  
21 **termining the toxic properties of the final product and that reacts**

1 rapidly with other chemicals in a binary or multicomponent system.

2 “(c) ‘Kinetic impact projectile’ means all nonlethal, less-lethal or  
3 semilethal projectiles, including but not limited to rubber and plastic  
4 bullets, beanbag rounds, sponge rounds and pellet rounds.

5 “(d) ‘Law enforcement agency’ means the Department of State Po-  
6 lice, the Department of Justice, a district attorney, a political subdi-  
7 vision of the State of Oregon, a municipal corporation of the State of  
8 Oregon and a university, that maintains a law enforcement unit as  
9 defined in ORS 181A.355 (12)(a)(A).

10 “(e) ‘Precursor’ means any chemical reactant that takes part at any  
11 stage in the production by whatever method of a toxic chemical, in-  
12 cluding any key component of a binary or multicomponent chemical  
13 system.

14 “(f) ‘Toxic chemical’ means any chemical that through its chemical  
15 action on biological processes can cause death, temporary pain, tem-  
16 porary irritation, temporary disruption of vital processes, temporary  
17 incapacitation, temporary disability or permanent harm to humans or  
18 animals.

19 “(2)(a) A law enforcement agency may not use a chemical  
20 incapacitant for crowd control, except when one or more individuals  
21 in the crowd have engaged in conduct otherwise justifying the use of  
22 physical force by a peace officer.

23 “(b) A law enforcement agency may not use a kinetic impact  
24 projectile for crowd control or discharge a kinetic impact projectile in  
25 a manner that intentionally targets the head of a person, except  
26 against an individual engaged in conduct otherwise justifying the use  
27 of deadly physical force by a peace officer.

28 “(c) A law enforcement agency may not use a sound device for  
29 crowd control for any purpose other than announcements. Whenever  
30 possible, a law enforcement agency shall provide announcements for

1 purposes of crowd control both audibly and visually.

2 “(d) A law enforcement agency may not use a strobe light for crowd  
3 control.

4 “(3) When using chemical incapacitants, kinetic impact projectiles,  
5 sound devices or strobe lights in compliance with this section, and  
6 when it is possible to do so safely, a law enforcement agency:

7 “(a) Shall attempt to take injured persons to safety or allow injured  
8 persons to seek medical help.

9 “(b) May not prevent emergency medical services from reaching  
10 injured persons.

11 “(c) Shall take reasonable action to accommodate disabilities when  
12 issuing or enforcing orders to disperse.

13 “(4) A law enforcement agency shall inform federal law enforcement  
14 agencies of the requirements of this section.

15 **“SECTION 3. (1) As used in this section, ‘law enforcement agency’**  
16 **means the Department of State Police, the Department of Justice, a**  
17 **district attorney, a political subdivision of the State of Oregon, a mu-**  
18 **nicipal corporation of the State of Oregon and a university, that**  
19 **maintains a law enforcement unit as defined in ORS 181A.355**  
20 **(12)(a)(A).**

21 “(2) A law enforcement agency or a person acting on behalf of a law  
22 enforcement agency may not:

23 “(a) Use a proxy law enforcement agency to enact measures that a  
24 court or statute has barred the law enforcement agency from using.

25 “(b) Act in concert with another law enforcement agency to engage  
26 in misconduct barred by a court order or statute.

27 “(3) Intentional violation of this section constitutes official mis-  
28 conduct in the second degree under ORS 162.405.

29 **“SECTION 4. ORS 30.265 is amended to read:**

30 **“30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every public**

1 body is subject to civil action for its torts and those of its officers, employees  
2 and agents acting within the scope of their employment or duties, whether  
3 arising out of a governmental or proprietary function or while operating a  
4 motor vehicle in a ridesharing arrangement authorized under ORS 276.598.

5 “(2) The sole cause of action for a tort committed by officers, employees  
6 or agents of a public body acting within the scope of their employment or  
7 duties and eligible for representation and indemnification under ORS 30.285  
8 or 30.287 is an action under ORS 30.260 to 30.300. The remedy provided by  
9 ORS 30.260 to 30.300 is exclusive of any other action against any such officer,  
10 employee or agent of a public body whose act or omission within the scope  
11 of the officer’s, employee’s or agent’s employment or duties gives rise to the  
12 action. No other form of civil action is permitted.

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

24 “(4) If an action under ORS 30.260 to 30.300 alleges damages in an amount  
25 greater than the damages allowed under ORS 30.271, 30.272 or 30.273, the  
26 action may be brought and maintained against an officer, employee or agent  
27 of a public body, whether or not the public body is also named as a defend-  
28 ant. An action brought under this subsection is subject to the limitations on  
29 damages imposed under ORS 30.271, 30.272 or 30.273, and the total combined  
30 amount recovered in the action may not exceed those limitations for a single

1 accident or occurrence without regard to the number or types of defendants  
2 named in the action.

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

7 “(6) Every public body and its officers, employees and agents acting  
8 within the scope of their employment or duties, or while operating a motor  
9 vehicle in a ridesharing arrangement authorized under ORS 276.598, are im-  
10 mune from liability for:

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

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

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

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

19 “(e) Any claim arising out of riot[, *civil commotion or mob action*] **or**  
20 **group disturbance** or out of any act or omission in connection with the  
21 prevention of [*any of the foregoing*] **riot or group disturbance that takes**  
22 **place in:**

23 “(A) **A youth correction facility as that term is defined in ORS**  
24 **420.005;**

25 “(B) **A Department of Corrections institution as that term is de-**  
26 **finied in ORS 421.005; or**

27 “(C) **A juvenile detention facility, local correctional facility, or**  
28 **lockup as those terms are defined in ORS 169.005.**

29 “(f) Any claim arising out of an act done or omitted under apparent au-  
30 thority of a law, resolution, rule or regulation that is unconstitutional, in-

1 valid or inapplicable except to the extent that they would have been liable  
2 had the law, resolution, rule or regulation been constitutional, valid and  
3 applicable, unless such act was done or omitted in bad faith or with malice.

4 “(7) This section applies to any action of any officer, employee or agent  
5 of the state relating to a nuclear incident, whether or not the officer, em-  
6 ployee or agent is acting within the scope of employment, and provided the  
7 nuclear incident is covered by an insurance or indemnity agreement under  
8 42 U.S.C. 2210.

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

13 **“SECTION 5. (1) The amendments to ORS 30.265 by section 4 of this**  
14 **2021 Act apply to claims that arise on or after July 1, 2016.**

15 **“(2) Notwithstanding ORS 30.275 (2), a person whose claim arose on**  
16 **or after July 1, 2016, and before the effective date of this 2021 Act, and**  
17 **whose claim would have been barred by ORS 30.265 before the effective**  
18 **date of this 2021 Act, may give notice of claim under ORS 30.275 no**  
19 **later than 180 days after the effective date of this 2021 Act.**

20 **“(3) Notwithstanding ORS 30.275 (9), a person whose claim arose on**  
21 **or after July 1, 2016, and before the effective date of this 2021 Act, and**  
22 **whose claim would have been barred by ORS 30.265 before the effective**  
23 **date of this 2021 Act, must commence an action for the claim within**  
24 **two years after the effective date of this 2021 Act.**

25 **“(4) The amendments to ORS 30.265 by section 4 of this 2021 Act do**  
26 **not act to revive any civil action in which a judgment was entered**  
27 **before the effective date of this 2021 Act.”.**

28 **“SECTION 6. This 2021 Act being necessary for the immediate**  
29 **preservation of the public peace, health and safety, an emergency is**  
30 **declared to exist, and this 2021 Act takes effect on its passage.”.**

