

Requested by Representative WILDE

**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 police officer or reserve officer, as defined in ORS 181A.355,**
11 **who represents that the person is acting as an employee or agent of**
12 **a public body is acting in the scope of employment for purposes of this**
13 **section.**

14 “(2) The sole cause of action for a tort committed by officers, employees
15 or agents of a public body acting within the scope of their employment or
16 duties and eligible for representation and indemnification under ORS 30.285
17 or 30.287 is an action under ORS 30.260 to 30.300. The remedy provided by
18 ORS 30.260 to 30.300 is exclusive of any other action against any such officer,
19 employee or agent of a public body whose act or omission within the scope
20 of the officer’s, employee’s or agent’s employment or duties gives rise to the
21 action. No other form of civil action is permitted.

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

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

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

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

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

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

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

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

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

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

15 “(7) This section applies to any action of any officer, employee or agent
16 of the state relating to a nuclear incident, whether or not the officer, em-
17 ployee or agent is acting within the scope of employment, and provided the
18 nuclear incident is covered by an insurance or indemnity agreement under
19 42 U.S.C. 2210.

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

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

25 “30.272. (1) The limitations imposed by this section apply to claims that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 “(c) \$1,133,300, for causes of action arising on or after July 1, 2011, and

1 before July 1, 2012.

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

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

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

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

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

16 “[4] (5) Beginning in 2015, and every year thereafter, the State Court
17 Administrator shall determine the percentage increase or decrease in the
18 cost of living for the previous calendar year, based on changes in the Con-
19 sumer Price Index for All Urban Consumers, West Region (All Items), as
20 published by the Bureau of Labor Statistics of the United States Department
21 of Labor. On or before July 1 of the year in which the State Court Admin-
22 istrator makes the determination required by this subsection, the State Court
23 Administrator shall adjust the limitations imposed under subsections (2) and
24 (3) of this section for the following calendar year by multiplying the limita-
25 tion amounts applicable to the calendar year in which the adjustment is
26 made by the percentage amount determined under this subsection. The ad-
27 justment may not exceed three percent for any year. The State Court Ad-
28 ministrator shall round the adjusted limitation amount to the nearest \$100,
29 but the unrounded amount shall be used to calculate the adjustments to the
30 limitations in subsequent calendar years. The adjusted limitation becomes

1 effective on July 1 of the year in which the adjustment is made, and applies
2 to all causes of action arising on or after July 1 of that year and before July
3 1 of the subsequent year.

4 “[5] (6) The limitations imposed by this section do not apply to claims
5 against Oregon Health and Science University.

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

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

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

17 **“SECTION 5. Section 2, chapter 5, Oregon Laws 2020 (1st special ses-
18 sion), is amended to read:**

19 **“Sec. 2. (1) As used in this section, ‘misconduct’ means:**

20 **“(a) Unjustified or excessive force that is objectively unreasonable under
21 the circumstances or in violation of the use of force policy for the law
22 enforcement unit employing the offending officer;**

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

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

26 **“(d) A crime; or**

27 **“(e) A violation of the minimum standards for physical, emotional, intel-
28 lectual and moral fitness for public safety personnel established under ORS
29 181A.410.**

30 **“(2) Without regard to rank or assignment, a police officer or reserve of-**

1 ficer shall intervene to prevent or stop another police officer or reserve of-
2 ficer engaged in any act the intervening officer knows or reasonably should
3 know is misconduct, unless the intervening officer cannot intervene safely.

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

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

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

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

22 “[6] (7) The Department of Public Safety Standards and Training shall
23 report at least annually to an appropriate committee of the Legislative As-
24 sembly on any rules adopted by the department implementing this section.

25 “**SECTION 6.** Section 3, chapter 7, Oregon Laws 2020 (1st special ses-
26 sion), is amended to read:

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

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

4 “(a) The name of the officer;

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

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

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

9 “(a) The time for filing an appeal of the department’s decision under ORS
10 181A.650 has passed and no appeal has been filed; or

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

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

17 “(b) **When the department receives a report under paragraph (a) of**
18 **this subsection, the department shall promptly publish the report in**
19 **the database.**

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

23 “[4] (5) The department shall submit an annual report to an appropriate
24 committee of the Legislative Assembly summarizing and analyzing the data
25 in the database.

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

28 “**SECTION 8. When the Department of Public Safety Standards and**
29 **Training receives a report of a settlement under section 3, chapter 7,**
30 **Oregon Laws 2020 (first special session), the department shall investi-**

1 **gate the report to determine if discipline against the police officer who**
2 **is the subject of the settlement is warranted, whether or not the em-**
3 **ployer of the officer disciplined the officer. The department may con-**
4 **sider the employer's decision to discipline or not discipline the police**
5 **officer in determining whether discipline is warranted.”.**

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