



STATE OF OREGON  
Legislative Counsel Committee

March 3, 2023

To: Representative Rob Nosse  
From: Suzanne C. Trujillo, Senior Deputy Legislative Counsel  
Subject: Remedy Clause Issue

You requested amendments to House Bill 2486 to allow a pharmacist, or a pharmacy technician under the supervision of a pharmacist, to administer vaccines that are recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and to prohibit someone from bringing an action against a pharmacist or pharmacy technician for negligence or gross negligence committed while administering a vaccine. The enclosed -1 amendments accomplish both of those goals.

As discussed through e-mail, prohibiting an injured person from bringing an action against a pharmacist or pharmacy technician who commits negligence or gross negligence in administering a vaccine likely is in violation of the Remedy Clause of the Oregon Constitution. The Remedy Clause provides, “. . . every man shall have remedy by due course of law for injury done him in his person, property, or reputation.” Article I, section 10, Oregon Constitution. The Remedy Clause limits the ability of the Legislative Assembly to modify common law causes of action and remedies available for those claims. *Horton v. Oregon Health and Science University*, 359 Or. 168 (2016). The Court set forth three categories of legislative action, the first of which is relevant to these amendments:

[W]hen the legislature has not altered a duty but has denied a person injured as a result of a breach of that duty any remedy, our cases have held that the complete denial of a remedy violates the remedy clause. Similarly, our cases have held that providing for an insubstantial remedy for a breach of a recognized duty also violates the remedy clause.

*Horton*, 359 Or. at 219 (citation omitted). Here, the recognized duty is for the pharmacist or pharmacy technician to exercise a certain level of care when administering a vaccine. The -1 amendments do not completely deny a remedy to a person injured by a pharmacist or pharmacy technician who breaches a duty while administering a vaccine, because they still allow an action for “willful or wanton misconduct.” However, the amendments may provide an insubstantial remedy for a breach of duty by disallowing an injured person to bring an action for negligence or gross negligence in the administration of a vaccine. In this way, the amendments likely violate the Remedy Clause of the Oregon Constitution, and therefore would not be effective in protecting pharmacists and pharmacy technicians from liability.

Encl.