

A-Engrossed
House Bill 4048

Ordered by the House February 13
Including House Amendments dated February 13

Sponsored by Representative WITT, Senator JOHNSON (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.

[Provides that public body and its officers, employees and agents are not immune from liability for wrongful death of person who is covered by workers' compensation law and not employed by that public body.]

Provides that public body and its officers, employees and agents are not immune from liability for wrongful death of person who is covered by workers' compensation law if death occurred in course and scope of decedent's employment, death occurred as result of criminal conduct and decedent was not employed by public body at time of death.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to claims for wrongful death; creating new provisions; amending ORS 30.265; and declaring
3 an emergency.

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

5 **SECTION 1.** ORS 30.265 is amended to read:

6 30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is subject to civil
7 action for its torts and those of its officers, employees and agents acting within the scope of their
8 employment or duties, whether arising out of a governmental or proprietary function or while op-
9 erating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598.

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

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

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

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 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)(a) Subsection (6)(a) of this section does not apply to a claim for wrongful death if:**

30 **(A) The death occurred in the course and scope of the decedent's employment;**

31 **(B) The death occurred as a result of the conduct of another person that could be**
32 **charged as a crime; and**

33 **(C) The decedent was not employed by a public body at the time of death.**

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

37 **SECTION 2. (1) The amendments to ORS 30.265 by section 1 of this 2014 Act apply only**
38 **to claims arising on or after May 1, 2012.**

39 **(2) If the amendments to ORS 30.265 by section 1 of this 2014 Act operate to revive a**
40 **claim that was barred under ORS 30.265 (6)(a) immediately before the effective date of this**
41 **2014 Act, the person asserting the claim must give notice of the claim as provided in ORS**
42 **30.275 within one year after the effective date of this 2014 Act.**

43 **SECTION 3. This 2014 Act being necessary for the immediate preservation of the public**
44 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**
45 **on its passage.**

