

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

Action:	Do Pass as Amended and Be Printed Engrossed and Be Referred to the Committee on Ways and Means
Vote:	6 - 2 - 1
Yeas:	Barton, Krieger, Lininger, Tomei, Williamson, Barker
Nays:	Cameron, Hicks
Exc.:	Olson
Prepared By:	Bill Taylor, Counsel
Meeting Dates:	2/3, 2/11

WHAT THE MEASURE DOES: Allows the family of a deceased person to sue the state or a local government entity or their employees for wrongful death under the Tort Claims Act if: (a) The decedent's death occurred in the course and scope of employment; (b) Was the result of the criminal act of another person; and, (c) The decedent was not an employee of a state or local government entity at the time of death. Revives causes of action barred by the statute of limitations, one year for wrongful death, if notice of suit is given within one year of the effective date of this measure. Declares emergency, effective upon passage.

ISSUES DISCUSSED:

- Need not have a conviction
- Evidence that the conduct constituted the elements of a crime is sufficient

EFFECT OF COMMITTEE AMENDMENT: Allows recovery if: (a) the decedent's death occurred in the course and scope of employment; (b) was the result of the criminal act of another person; and, (c) the decedent was not an employee of a state or local government entity at the time of death.

BACKGROUND: ORS 30.260 to 30.300 sets forth under what circumstances a person may sue the state or local government for damages caused by the negligence of the government entity's employees. ORS 30.265 currently does not allow a person to sue for injury of death if the person injured is covered by workers' compensation at the time of the injury.

Under ORS 656.018 an employer with workers' compensation coverage for the employer's employees is not subject to civil liability for injuries or diseases arising out of the employee's employment. In short, the only remedy an injured worker has is workers' compensation. However, unlike a tort action for negligence, the worker does not have to show that the injury was the result of the employer's negligence. He or she only has to show that he or she was injured.

What makes ORS 30.265 different is that exclusive remedies provision of workers' compensation not only applies to the employees of the respective government entity, but any person covered by workers' compensation at the time of injury or death. Consequently, if a person employed by a private business is killed or injured by the negligence of a government employee, the only action the person has is recovery against his employers' workers' compensation carrier.

Two years ago, a mental health worker in Columbia County, while on a mental health home visit, was brutally murdered and her body cut up by a person under the supervision of the Psychiatric Security Review Board. The victim was not employed by Columbia County or the State of Oregon. She worked for a nonprofit entity that provided mental health services to the mentally ill in Columbia County. Her employer provided her with workers' compensation coverage. Since she was employed at the time of her death, her family could not sue the State of Oregon even though she was not an employee of the State of Oregon. Under workers' compensation, her family was entitled to approximately \$15,000 in death benefits.

2/12/2014 4:44:00 PM

This summary has not been adopted or officially endorsed by action of the committee.