

## **LC 23**

### **SUBJECT:**

**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.**

### **SPONSOR:**

#### **Existing Law:**

- The tort claims law, ORS 30.265(6)(a), immunizes all public bodies and their employees from liability for the death or injury of any person covered by workers' compensation law.
- The workers' compensation exclusive remedy provision, ORS 656.018, is currently silent on the liability of a public body for the death of a person who is not an employee of the public body and who is covered by workers' compensation law and not an employee of the public body.

#### **This bill:**

- Creates an exemption to the immunity law concerning actions against public bodies for a wrongful death claim against a public body, its officers, or agents, where the public body was not the employer of the decedent and the decedent was covered by workers' compensation law.
- Adds an exemption to the workers' compensation exclusive remedy law to exclude from immunity a public body, its officers or agents, for a wrongful death action on behalf of a deceased who was not an employee of the public body.
- Makes a clarifying, non-substantive format and language change to ORS 656.018 by breaking the current subsection (b) into new subsections (B) and (C).
- Applies only to claims arising on or after May 1, 2012.
- Allows a claim, previously barred under ORS 30.265, to be brought by a person filing a claim within one year after the act's effective date.
- Declares emergency; takes effect on passage.

#### **Analysis:**

1. The workers' compensation law currently provides that ORS Chapter 656 is the exclusive remedy against a worker's employer for a worker injured on the job. The current exclusive remedy provision in workers' compensation law does not expressly address wrongful death actions against public bodies.

2. The tort claims law, ORS 30.265(6)(a), specifically provides immunity protection for public bodies shielding them from a wrongful death action on behalf of a person who was covered by workers' compensation law.
3. This bill amends the workers' compensation exclusive remedy protection that applies to employers generally. The bill creates an exception from the exclusive remedy protection to allow a wrongful death action for the death of a person, who was not an employee of the public body, against public bodies, their agents, and employees.
4. The bill amends the tort claims law to allow a wrongful death action against a public body, its agents, and employees, for the death of a person who was not an employee of the public body and who was covered by workers' compensation law.
5. The purpose of the change to the workers' compensation exclusive remedy provision is not clear. The exclusive remedy provision only protects the employer of the injured worker. But the bill creates an exception that only applies where the public body was not the deceased worker's employer. Thus, the bill creates an exception where the exclusive remedy provision would not apply. The workers' compensation law, through ORS 656.154, already permits a legal action on behalf of an injured or deceased worker against a third party that may have been responsible for the injury or death of the worker.
6. The bill may have extremely broad application and implications. In any wrongful death action where the decedent was covered by workers' compensation, an action can be brought against any public body that was not the decedent's employer, if a theory of liability can be postulated – for example, this could include agencies such as OSHA for working conditions, or ODOT for road conditions, and many others.

**Questions and/or suggested amendments:** None

**Fiscal Impact to DCBS:** This concept does not change the regulatory efforts of the department, so there should not be any fiscal impact.

**Other Economic Impact:** Unknown. Public bodies may see increased costs for lawsuits filed under the provisions of the bill.

**Support:** Unknown

**Opposition:** Unknown

Prepared by: Meyer Goldstein, WCD Legal Issues Coordinator, 503-947-7723