

# D R A F T

## SUMMARY

Limits liability of school districts, public charter schools, education service districts and community colleges for certain claims arising during COVID-19 emergency period.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to civil claims arising during the COVID-19 emergency period; and  
3 declaring an emergency.

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

### **SECTION 1. As used in sections 1 to 3 of this 2021 Act:**

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6 (1) **“COVID-19 emergency rule” means an executive order, order of**  
7 **the Superintendent of Public Instruction, declaration, directive or**  
8 **other state or federal authorization, policy, statement, guidance, rule**  
9 **or regulation that creates a standard or waives, suspends or modifies**  
10 **otherwise applicable state or federal law, regulations or standards re-**  
11 **garding the rendering of education services.**

12 (2) **“Education program” means programs or activities operated on**  
13 **school district property and any school district program or activity**  
14 **operated on or off school district property.**

15 (3) **“School district” means a common school district, a union high**  
16 **school district, an education service district, a public charter school**  
17 **or a community college district.**

18 **SECTION 2. (1) A person may not bring a claim for damages related**  
19 **to COVID-19 infection suffered as a result of acts or omissions per-**  
20 **formed by a school district:**

1 (a) In the course of operating an education program; and

2 (b) When the school district is operating in compliance with  
3 COVID-19 emergency rules in effect at the time of the act or omission.

4 (2) A person engaged in activities on school district property that  
5 are not operated by a school district may not bring a claim against the  
6 school district for damages related to COVID-19 infection.

7 (3) The immunity provided by this section does not apply to reck-  
8 less, wanton or intentional misconduct.

9 (4) This section does not limit any other cause of action or remedy  
10 available to an injured party, including but not limited to the following  
11 claims:

12 (a) Claims subject to ORS chapter 654;

13 (b) Claims subject to ORS chapter 656;

14 (c) Claims under state and federal anti-discrimination, anti-  
15 retaliation, leave and wage and hour laws; and

16 (d) Claims under state and federal specialized instruction laws.

17 **SECTION 3.** (1) A school district may move at any time to strike a  
18 claim in a civil action that is barred by section 2 of this 2021 Act. A  
19 motion to strike under this section shall be treated as a motion to  
20 dismiss under ORCP 21 A but is not subject to ORCP 21 F. Upon  
21 granting a motion under this section, the court shall enter a judgment  
22 of dismissal without prejudice. If the court denies a motion under this  
23 section, the court shall enter a limited judgment denying the motion.

24 (2)(a) A school district that moves to strike a claim under this  
25 section has the initial burden of making a prima facie showing that  
26 the claim is barred under section 2 of this 2021 Act.

27 (b) If the school district meets the burden under paragraph (a) of  
28 this subsection, the burden shifts to the plaintiff in the action to es-  
29 tablish that a genuine issue of material fact exists that the claim is  
30 not barred under section 2 of this 2021 Act. If the plaintiff meets the  
31 burden under this paragraph, the court shall deny the motion.

1       **(c) The court shall consider only the pleadings and supporting and**  
2 **opposing affidavits in determining whether a genuine issue of material**  
3 **fact exists. If the court determines that a genuine issue of material**  
4 **fact exists:**

5       **(A) The fact that the determination has been made and the sub-**  
6 **stance of the determination may not be admitted in evidence at any**  
7 **later stage of the case; and**

8       **(B) The determination does not affect the burden of proof or**  
9 **standard of proof that is applied in the proceeding.**

10       **SECTION 4.** **Sections 1 to 3 of this 2021 Act apply to claims arising**  
11 **during the period in which any declaration of a state of emergency**  
12 **related to COVID-19 and issued by the Governor on March 8, 2020, and**  
13 **any extension of the declaration, is in effect.**

14       **SECTION 5.** **This 2021 Act being necessary for the immediate pres-**  
15 **ervation of the public peace, health and safety, an emergency is de-**  
16 **clared to exist, and this 2021 Act takes effect on its passage.**

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