

Enrolled Senate Bill 167

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CHAPTER

AN ACT

Relating to youth offenders; amending ORS 30.297 and 30.298.

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

SECTION 1. ORS 30.297 is amended to read:

30.297. (1) Notwithstanding ORS 125.235, the Department of Human Services is liable for damages resulting from the intentional torts of a foster child who is **residing in**:

(a) [*Residing in*] A foster home that has been certified by the department under the provisions of ORS 418.625 to 418.645, even though the child [*may be*] **is** temporarily absent from that home; [*or*]

(b) [*Residing in*] An approved home that is receiving payment from the department under the provisions of ORS 418.027 or under the provisions of ORS 420.810 and 420.815, even though the child [*may be*] **is** temporarily absent from that home[.]; **or**

[(2)] (c) [*Notwithstanding ORS 125.235, the department is liable for damages resulting from the intentional torts of a foster child who is residing in*] A developmental disability child foster home that has been certified by the department under the provisions of ORS 443.830 and 443.835, even though the foster child [*may be*] **is** temporarily absent from that home.

(2) Notwithstanding ORS 125.235, the Oregon Youth Authority is liable for damages resulting from the intentional torts of a youth offender who is residing in a youth offender foster home that has been certified by the authority under the provisions of ORS 420.888 to 420.892, even though the youth offender is temporarily absent from that home.

(3) Except as otherwise provided in this section, the liability of the department **and the authority** under this section [*shall be*] **is** subject to the same requirements and limitations provided in ORS 30.260 to 30.300, and a claim under this section shall be treated as a claim for damages within the scope of ORS 30.260 to 30.300 for the purposes of ORS 278.120.

(4) Notwithstanding subsections (1) and (2) of this section:

(a) The department [*shall not be*] **and the authority are not** liable for any damages arising out of the operation of a motor vehicle by a foster child **or youth offender**; and

(b) The department [*shall*] **and the authority are** only [*be*] liable for theft by a foster child **or youth offender** upon a showing by clear and convincing evidence that the foster child **or youth offender** committed the theft.

(5) For the purposes of this section:

(a) **“Authority” means the Oregon Youth Authority.**

[(a)] (b) **“Department” means the Department of Human Services.**

[(b)] (c) "Foster child" means:

(A) A minor child under the custody or guardianship of the department by reason of appointment pursuant to ORS chapter 125, 419A, 419B or 419C;

(B) A minor child under the physical custody of the department pursuant to a voluntary agreement with the parent under ORS 418.015 (1);

(C) A minor child placed in a certified foster home, pending hearing, by any person authorized by the department to make that placement;

(D) A person under 21 years of age who has been placed in an approved home that is receiving payment from the department under the provisions of ORS 418.027 or under the provisions of ORS 420.810 and 420.815; or

(E) A child residing in a developmental disability child foster home certified under ORS 443.830 and 443.835.

(d) **"Youth offender" has the meaning given in ORS 420.888.**

SECTION 2. ORS 30.298 is amended to read:

30.298. (1) Except as otherwise provided in this section, the Department of Human Services is liable, without regard to fault, for injury to the person of foster parents or damage to the property of foster parents caused by a foster child if **the foster child is residing in:**

(a) *[The foster child resides in]* A foster home that is maintained by the foster parents and that has been certified by the department under the provisions of ORS 418.625 to 418.645; *[or]*

(b) *[The foster child is residing in]* An approved home that is maintained by the foster parents and that is receiving payment from the department under the provisions of ORS 418.027 or under the provisions of ORS 420.810 and 420.815[.]; **or**

[(2)] (c) *[Except as otherwise provided in this section, the department is liable, without regard to fault, for injury to the person of foster parents or damage to the property of foster parents caused by a foster child if the foster child is residing in]* A developmental disability child foster home that has been certified by the department under the provisions of ORS 443.830 and 443.835.

(2) Except as otherwise provided in this section, the Oregon Youth Authority is liable, without regard to fault, for injury to the person of foster parents or damage to the property of foster parents caused by a youth offender if the youth offender resides in a youth offender foster home that is maintained by the foster parents and that has been certified by the authority under the provisions of ORS 420.888 to 420.892.

(3) Except as otherwise provided in this section, the liability of the department **and of the authority** under this section *[shall be]* **is** subject to the same requirements and limitations provided in ORS 30.260 to 30.300, and a claim under this section shall be treated as a claim for damages within the scope of ORS 30.260 to 30.300 for the purposes of ORS 278.120.

(4) Notwithstanding ORS 30.260 to 30.300:

(a) In no event shall the liability of the department **or the authority** under this section exceed \$5,000 for any number of claims arising out of a single occurrence;

(b) The liability of the department **and the authority** under this section is limited to economic damages, and in no event shall the department **or the authority** be liable for noneconomic damages;

(c) The department *[is]* **and the authority are** liable under this section only to the extent the loss is not covered by other insurance; and

(d) No claim shall be allowed under this section unless written notice of the claim is delivered to the Oregon Department of Administrative Services within 90 days after the alleged loss or injury.

(5) The department *[is]* **and the authority are** not liable under this section for:

(a) Damage to or destruction of currency, securities or any other intangible property;

(b) The unexplained disappearance of any property; or

(c) Loss or damage that is due to wear and tear, inherent vice or gradual deterioration.

(6) In no event *[shall]* **does** the liability of the department **or the authority** under this section for damage to property exceed the difference between the fair market value of the property immediately before its damage or destruction and its fair market value immediately thereafter. The department *[shall not be]* **and the authority are not** liable for the costs of any betterments to the

property that may be required by code, statute or other law as a condition of repair, replacement or reconstruction.

(7) The liability imposed under this section is in addition to that imposed for the intentional torts of a foster child **or youth offender** under ORS 30.297, but any amounts paid under this section shall reduce any recovery that may be made under ORS 30.297.

(8) For the purposes of this section:

(a) **“Authority” means the Oregon Youth Authority.**

[(a)] (b) “Department” means the Department of Human Services.

[(b)] (c) “Economic damages” and “noneconomic damages” have those meanings given in ORS 18.560.

[(c)] (d) “Foster child” has that meaning given in ORS 30.297.

(e) **“Youth offender” has the meaning given in ORS 420.888.**

Passed by Senate February 25, 2003

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Secretary of Senate

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President of Senate

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Speaker of House

Received by Governor:

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Approved:

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Governor

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