

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: SB 764

81st Oregon Legislative Assembly – 2021 Regular Session
Legislative Fiscal Office*Only Impacts on Original or Engrossed
Versions are Considered Official*Prepared by: Libby Chamberlin
Reviewed by: John Borden
Date: March 29, 2021**Measure Description:**

Provides that Attorney General and court must presume that resolution agreement that ends dispute over alleged infringement of patent or violation of other protection for protected drug has anticompetitive effects if alleged infringer receives item of value as part of or in connection with resolution agreement or if alleged infringer agrees to limit or stop researching, developing, manufacturing, marketing or selling competing drug.

Government Unit(s) Affected:

Department of Justice (DOJ), Oregon Judicial Department (OJD)

Summary of Fiscal Impact:

Costs related to the measure may require budgetary action - See analysis.

Summary of Expenditure Impact:

Agency-Fund type	2021-23 Biennium	2023-25 Biennium
Department of Justice - General Fund		
Personal Services	\$479,278	\$570,773
Services and Supplies	132,077	143,122
Total Funds	\$611,355	\$713,895
Positions	2	2
FTE	1.75	2.00

Analysis:

SB 764 directs the Attorney General and the court to presume that a resolution agreement ending a dispute over alleged infringement of a patent for a protected drug has anticompetitive effects if the alleged infringer receives an item of value or agrees to limit or stop researching, developing, manufacturing, marketing, or selling a competing drug. The measure also specifies the basis on which a party to a resolution agreement may overcome this presumption. The Attorney General is authorized under the measure to bring action for violations for recovery of civil penalties in an amount that is equivalent to three times the value of the item that the alleged infringer received or \$10 million, whichever is greater. Any civil penalties recovered from such actions will be deposited in the General Fund for general governmental purposes. The measure has an emergency clause and takes effect on the 91st day following adjournment sine die.

The Oregon Department of Justice (DOJ) anticipates that in order to comply with the requirements of the bill and due to the technical, confidential, and proprietary nature of patent resolution agreements it will need to hire one Senior Assistant Attorney General (0.88 FTE) and one Paralegal (0.88 FTE), at a cost of \$611,355 General Fund in the 2021-2023 biennium and \$713,895 General Fund and two positions (2.00 FTE) for the 2023-25 biennium. Based on similar investigations in other states, DOJ believes there may be cases that could incur high legal and expert fees to litigate, but the number of cases and the amount of such costs is indeterminate.

The Oregon Judicial Department (OJD) anticipates a minimal fiscal impact from this measure. OJD believes that the number of additional cases will be limited due to relatively few drug patent holders but notes that any cases that are filed may require more pretrial and trial activity. OJD believes it can absorb additional workload and costs within existing resources.