

SB 310 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 1/24, 1/31

WHAT THE MEASURE DOES:

Increases maximum civil penalty Attorney General may seek for violation of antitrust statute, from \$250,000 to \$1 million. Allows Attorney General to seek equitable relief, including disgorgement of any gains, as well as injunctive and monetary relief. Includes business registration among items subject to forfeiture for violation, if use of the registration was material to the violation. Repeals special venue provision. Increases criminal penalty from Class A misdemeanor to Class B felony. Permits Attorney General to commence both criminal prosecution and civil action for a violation. All changes are applicable to cases commenced after the effective date, as well as to ongoing cases for which a judgment or decree has not yet been entered. Takes effect on 91st day following adjournment sine die.

REVENUE: Has minimal revenue impact

FISCAL: Indeterminate

ISSUES DISCUSSED:

- Recent cases involved large technology manufacturers and generic pharmaceutical companies
- Securities violations and public investment fraud are Class B felonies
- Factors affecting application of maximum penalty
- Retroactivity to currently pending cases

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Oregon's antitrust law, sometimes referred to as Oregon's "little Sherman Act," is patterned after its federal counterpart and explicitly provides that federal court opinions shall be persuasive in interpreting Oregon's law. Both laws prohibit the unreasonable restraint of trade; the federal statute can only reach cases that involve interstate commerce, while Oregon's law applies to activities that occur within the state, or between Oregon and another state.

Federal cases have ordered disgorgement – handing over the earnings that flows from the unlawful act – as an equitable remedy for antitrust violations. Federal Sherman Act violations may result in a civil penalty of up to \$100 million from a corporation or \$1 million from an individual, and result in a prison sentence of up to 10 years at the same time. Oregon last increased the civil penalty amount in 1999, raising it to \$250,000 from \$100,000. The crime is currently classified as a Class A misdemeanor in Oregon, punishable by imprisonment for up to 364 days. The Oregon Attorney General is currently barred from criminally prosecuting an antitrust violation if a civil trial has already commenced about the same act.

Senate Bill 310 would increase civil and criminal penalties for a violation of Oregon's antitrust law, permit the Attorney General to pursue both civil and criminal actions for a violation, and explicitly include disgorgement of monetary gains as an equitable remedy.