

SB 65 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 2/10

WHAT THE MEASURE DOES:

The measure creates a civil cause of action for the deprivation of any rights, privileges or immunities secured by the Oregon Constitution or Oregon laws by another person who is acting under color of state or local laws, ordinances or rules. The measure provides economic and noneconomic damages, injunctive or other equitable relief, and attorney fees and costs for a prevailing plaintiff. It also permits a court to award a prevailing defendant's attorney fees and costs if the court determines the plaintiff's claim was frivolous, unreasonable or without foundation.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Federal law, [42 USC sect. 1983](#) ("Section 1983") permits civil actions for the deprivation of an individual's rights, privileges, or immunities secured by the United States Constitution and laws by any person acting under color of state law. Government officials can be sued in their official capacities and be held personally liable. The plaintiff must assert the violation of a federal constitutional provision or a federal law that unmistakably confers individual rights onto the class of beneficiaries the plaintiff belongs to. *Gonzaga Univ. v. Doe*, [536 US 273](#), 282-285 (2002). Section 1983 actions are not precluded by the Federal Tort Claims Act, which otherwise is the exclusive remedy for claims alleging negligence by federal employees within the scope of their employment. [28 USC sect. 2679 \(b\)\(2\)](#).

No specific right of action currently exists to award damages for the deprivation of rights guaranteed by the [Oregon Constitution](#). Laws, regulations, and government actions may be challenged as unconstitutional and thereby be rendered unenforceable as written or as applied. A person can also ask the court to make a declaration as to the person's rights and whether another's action is unconstitutional or unlawful. [ORS 28.010 to ORS 28.160](#). The court may grant further relief based on a declaratory judgment "whenever necessary and proper." ORS 28.080. Oregon's sovereignty preexisted its statehood but may be waived as with the Oregon Tort Claims Act (OTCA), which partially waived sovereign immunity and allowed capped remedies against state and local government bodies for personal or property injuries in tort claims. [ORS 30.260 to ORS 30.300](#).