

SB 65 -4 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 2/10, 3/25

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.

FISCAL: May have fiscal impact, but no statement yet issued.

REVENUE: May have revenue impact, but no statement yet issued.

ISSUES DISCUSSED:

- Aligning with federal law
- 42 U.S.C. Sect. 1983 is only for federal rights
- Attorneys don't take injunctive relief claims on a contingency fee basis
- Who should bear litigation costs
- Potential impacts on local government service

EFFECT OF AMENDMENT:

-4 The amendment replaces the measure, creating a civil cause of action for the deprivation of any rights, privileges or immunities secured by Article I of the Oregon Constitution by a person acting under color of law, and allows a plaintiff to seek economic and noneconomic damages, injunctive or equitable relief, and attorney fees if successful. The amendment directs that the Oregon Tort Claims Act's provision are applicable to the cause of action, and that the measure applies to deprivations that occur on or after the measure's effective date. Takes effect on the 91st day following adjournment sine die.

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).

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 person'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 predates its statehood but sovereign immunity may be waived. The Oregon Tort Claims Act (OTCA) 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](#).