

HB 3766 -2 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 3/24, 4/8

WHAT THE MEASURE DOES:

The measure provides a civil cause of action against an adult who transmits an image depicting sexual conduct or uncovered human genitals without the plaintiff's consent and with the intent to harass, degrade or humiliate the plaintiff. The measure permits the plaintiff to recover economic and emotional distress damages or unspecified statutory damages, and attorney fees. It bars actions against third party internet sites and communication services, and actions against health care providers transmitting an intimate image for a legitimate medical purpose.

ISSUES DISCUSSED:

- Prior proposed legislation
- Cyberflashing impacts on recipients
- Definition of harass
- Small claims court

EFFECT OF AMENDMENT:

-2 The amendment clarifies that the action may be maintained against a person who was 18 years or age or older when the person committed the act. It also allows a plaintiff to recover the greater of \$500 or the plaintiff's economic and noneconomic damages not to exceed \$10,000.

BACKGROUND:

ORS 30.831 currently provides a right of action against a defendant who 1) made or disseminated a visual recording of the plaintiff in a state of nudity without consent and in a place and circumstance the plaintiff had a reasonable expectation of privacy, or 2) for the purposes of sexual arousal or gratification of the defendant observed the plaintiff in a state of nudity and in a place and circumstance the plaintiff had a reasonable expectation of privacy, or 3) for the purpose of sexual arousal or gratification of any person, viewed or made a visual recording of an intimate area of the plaintiff without consent. An intimate area is defined to include undergarments, genitals, pubic areas, or specific parts of breasts that are covered by clothing and are intended to be protected from being seen. Nudity includes genitals, pubic areas, or specific parts of breasts that are uncovered or less than opaquely covered. ORS 30.831 allows a prevailing plaintiff to recover compensatory damages and attorney fees.

ORS 30.833 allows a person or their parent or guardian to file a civil action against a defendant whose actions meet the elements of the crime of unlawful dissemination of an intimate image in ORS 163.472, regardless of whether the crime has been prosecuted. A person commits the crime of unlawful dissemination of an intimate image if, 1) with the intent to harass, humiliate or injure another person, knowingly causes an identifiable image of another person whose intimate parts are visible or who is engaged in sexual conduct, 2) the person reasonably should have known was without consent, 3) the other person was harassed, humiliated or injured by the disclosure, and 4) a reasonable person would be harassed, humiliated or injured by the disclosure. In a civil action under ORS 30.833, the plaintiff may recover statutory damages, economic and emotional distress damages, the wrongdoer's economic gain, punitive damages, and attorney fees. The statute defines intimate parts as uncovered human genitals, pubic areas, or female nipples.

PRELIMINARY