

## HB 3766 A STAFF MEASURE SUMMARY

### Senate Committee On Judiciary

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**Meeting Dates:** 5/12, 5/19

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#### WHAT THE MEASURE DOES:

The measure provides a civil cause of action against person who transmits an image depicting sexual conduct or uncovered human genitals to the plaintiff, without the plaintiff's consent and with the intent to harass, degrade or humiliate the plaintiff, and the person was 18 years of age or older when the person committed the act. The measure permits the plaintiff to recover the greater of \$500 or the plaintiff's economic and noneconomic damages not to exceed \$10,000, as well as 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.

*FISCAL: Has minimal fiscal impact*

*REVENUE: Has minimal revenue impact*

*HOUSE VOTE: Ayes, 57; Nays, 0*

#### ISSUES DISCUSSED:

- Attorneys cannot appear in small claims court
- Attorney fees are not available for the tort of intentional infliction of emotional distress
- Statistics of digital indecent exposure occurrence
- Apple AirDrop use in cyberflashing
- Settings to disable AirDrop

#### EFFECT OF AMENDMENT:

No amendment.

#### 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 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.

PRELIMINARY