

SB 1563 -1, -2, -3 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 2/4, 2/16, 2/16

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: Indeterminate fiscal impact issued

REVENUE: No revenue impact

ISSUES DISCUSSED:

- Provisions of the measure

EFFECT OF AMENDMENT:

-1 The amendment requires private sector trial attorneys to provide 120 hours of public defense services before the end of 2029, if the attorney has appeared as counsel in any court in Oregon in 2026. It tasks the Oregon State Bar with training the lawyers in criminal defense law.

-2 The amendment replaces the measure. It creates a civil cause of action for a person injured by a violation of the United States Constitution by any person acting under the color of law, if the action is brought within two years of accrual. Declares an emergency, effective on passage.

Detailed Summary

- Does not apply to persons acting under color of state law
- Renders immunities inapplicable to the extent permitted by the United States Constitution
- Provides economic and noneconomic damages, equitable relief, and attorney fees and costs for a prevailing plaintiff, and attorney fees
- Provides attorney fees for a plaintiff in an injunctive relief action if the action was a substantial factor or significant catalyst in obtaining the results sought
- Permits a court to award a prevailing defendant's attorney fees and costs if the court determines the plaintiff's claim was frivolous

FISCAL: Indeterminate fiscal impact issued

REVENUE: No revenue impact

-3 The amendment creates a cause of action against a person acting under color of law for deprivations of rights, privileges or immunities secured by the United States Constitution.

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

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

BACKGROUND:

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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.

PRELIMINARY