

SB 1563-2
(LC 214)
2/11/26 (MNJ/ps)

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 1563**

1 After line 2 of the printed bill, insert:

2 "Whereas since the earliest days of the nation, the United States Supreme
3 Court has held, in cases such as *Little v. Barreme*, 6 U.S. 170 (1804), and
4 *Murray v. The Charming Betsy*, 6 U.S. 64 (1804), that federal officials may
5 be liable in damages for violations of federal laws; and

6 "Whereas the United States Supreme Court has long held that federal
7 employees are not inherently beyond the reach of state laws simply because
8 they are federal employees; and

9 "Whereas for example, in *Johnson v. Maryland*, 254 U.S. 51 (1920), the
10 Court noted that 'an employee of the United States does not secure a general
11 immunity from state law while acting in the course of his employment[,]' and
12 in *Colorado v. Symes*, 286 U.S. 510 (1932), the Court stated, 'Federal officers
13 and employees are not, merely because they are such, granted immunity from
14 prosecution in state courts for crimes against state law'; and

15 "Whereas decades later, the United States Supreme Court continued to
16 recognize the role of state law in holding federal officials accountable for
17 legal violations, noting in *Wheeldin v. Wheeler*, 373 U.S. 647 (1963), 'When
18 it comes to suits for damages for abuse of power, federal officials are usually
19 governed by local law'; and

20 "Whereas when the United States Supreme Court recognized a federal law
21 cause of action for violation of certain constitutional rights in *Bivens v. Six*

1 *Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), that cause of action was
2 in addition to, rather than instead of, traditional state law remedies; and

3 “Whereas even one of the dissenting justices in Bivens noted the ongoing
4 role of state law, writing, ‘The task of evaluating the pros and cons of cre-
5 ating judicial remedies for particular wrongs is a matter for Congress and
6 the legislatures of the States’; and

7 “Whereas more recently, Congress has made federal statutory law the
8 exclusive remedy for certain claims sounding in tort, but this exclusivity
9 specifically ‘does not extend or apply to a civil action against an employee
10 of the Government . . . which is brought for a violation of the Constitution
11 of the United States,’ 28 U.S.C. 2679; and

12 “Whereas the prime sponsor of legislation amending the Federal Tort
13 Claims Act to provide for limited exclusivity took pains to clarify, ‘We make
14 special provisions here to make clear that the more controversial issue of
15 constitutional torts is not covered by this bill. If you are accused of having
16 violated someone’s constitutional rights, this bill does not affect it[,]’ 134
17 Cong. Rec. 15963 (1988); and

18 “Whereas in 2001, the Ninth Circuit Court of Appeals held that federal
19 agents are not protected by the federal supremacy clause when they act in
20 an objectively unreasonable manner, *Idaho v. Horiuchi*, 253 F.3d 359 (9th Cir.
21 2001), vacated as moot, 266 F.3d 979 (9th Cir. 2001); and

22 “Whereas in 2022, in declining to extend the scope of the Bivens action
23 in *Egbert v. Boule*, 596 U.S. 482 (2022), the United States Supreme Court ob-
24 served that legislatures, not courts, are the better branches of government
25 to fashion damages remedies; and

26 “Whereas violating the federal constitutional rights of residents of the
27 United States has never been and can never be ‘necessary and proper’ to the
28 execution of the laws and powers of the United States within the meaning
29 of Article I, section 8, clause 18, of the United States Constitution; and

30 “Whereas Oregon has a long history of expanding state constitutional

1 rights that are more extensive than the United States Constitution; and
2 “Whereas nothing in this Act limits or diminishes the state constitutional
3 rights of Oregonians; and

4 “Whereas in enacting this Act, the Legislative Assembly affirms its
5 longstanding and rightful role as a sovereign state in providing forum in its
6 courts for adjudication of claims of federal constitutional violations; now,
7 therefore.”.

8 In line 2, after “rights;” delete the rest of the line and insert “and de-
9 claring an emergency.”.

10 Delete lines 4 through 18 and insert:

11 **“SECTION 1. (1) A person who is injured by another person who**
12 **under color of law violates the United States Constitution may bring**
13 **a civil action against the other person and may recover economic and**
14 **noneconomic damages, as defined in ORS 31.705, equitable relief and**
15 **any other appropriate relief.**

16 **“(2)(a) In an action brought under this section, the court shall**
17 **award reasonable attorney fees and costs to a prevailing plaintiff. In**
18 **an action for injunctive relief under this section, the court shall deem**
19 **a plaintiff to have prevailed if the plaintiff’s suit was a substantial**
20 **factor or significant catalyst in obtaining the results sought by the**
21 **litigation.**

22 **“(b) The court may award reasonable attorney fees and costs to a**
23 **defendant in an action under this section for defending any claims the**
24 **court finds frivolous.**

25 **“(3) To the maximum extent permissible under the United States**
26 **Constitution, a grant of immunity to a defendant, including but not**
27 **limited to sovereign immunity, official immunity, intergovernmental**
28 **immunity, qualified immunity, supremacy clause immunity, statutory**
29 **immunity or common law immunity, does not apply in an action**
30 **brought pursuant to this section.**

1 **“(4) A person may not bring an action under this section against a**
2 **person subject to suit for the injury under 42 U.S.C. 1983, including**
3 **but not limited to a law enforcement agency or an officer, as those**
4 **terms are defined in ORS 181A.822.**

5 **“(5) An action under this section must be commenced within two**
6 **years after the cause of action accrues.**

7 **“SECTION 2. This 2026 Act being necessary for the immediate**
8 **preservation of the public peace, health and safety, an emergency is**
9 **declared to exist, and this 2026 Act takes effect on its passage.”.**

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