

D R A F T

SUMMARY

Modifies provisions relating to mandamus actions.
Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to mandamus actions; creating new provisions; amending ORS 34.105 and 34.210; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 34.105 is amended to read:

34.105. As used in ORS 34.105 to 34.240:

(1) “Adverse party” means a beneficially interested party to a judicial or administrative proceeding from which a mandamus proceeding arises, whose interests are adverse to the relator.

(2) “Counsel for defendant” means the attorney who appears on behalf of the defendant in a mandamus proceeding as provided in ORS 34.130 (4).

(3) “Defendant” means the court, corporation, board, officer or person against whom relief is sought in a mandamus proceeding.

(4) “False return” means a return that:

(a) Contains a false representation of fact;

(b) Contains an unreasonable interpretation of law;

(c) Is intended to delay the proceedings; or

(d) Fails to state the true reason for defendant’s failure to act.

~~(4)~~ (5) “Relator” means the beneficially interested party on whose relation a mandamus proceeding is brought.

(6) “Return” means an answer to a writ or a motion to dismiss a

1 writ.

2 **SECTION 2.** ORS 34.210 is amended to read:

3 34.210. (1) If the court orders issuance of a peremptory writ of mandamus,
4 *[the relator shall recover from the defendant damages which]* **the court shall**
5 **designate a prevailing party under ORS 20.077 and award to the relator:**

6 **(a) The damages that** the relator has sustained from a false return, to
7 be ascertained in the same manner as in an action[.]; **and**

8 **(b) The attorney fees, costs and disbursements of the relator.**

9 *[(2) The court in its discretion may designate a prevailing party and award*
10 *attorney fees, costs and disbursements to the prevailing party, but no attorney*
11 *fees, costs and disbursements shall be awarded against a judge as a defendant*
12 *in a mandamus action for any action taken in the judge's official capacity.*
13 *Attorney fees, costs and disbursements may only be awarded against adverse*
14 *parties who have been served with the petition and writ.]*

15 **(2) An action for false return may be joined with the original**
16 **mandamus proceeding or commenced separately within 30 days after**
17 **judgment is entered in the original mandamus proceeding.**

18 **(3) If the peremptory writ is not issued, the court shall designate a**
19 **prevailing party under ORS 20.077 and may award attorney fees, costs**
20 **and disbursements to the prevailing party.**

21 **(4) Notwithstanding subsections (1) and (3) of this section:**

22 **(a) Attorney fees, costs and disbursements may not be awarded**
23 **against a judge as a defendant in a mandamus action for any action**
24 **taken in the official capacity of the judge.**

25 **(b) Attorney fees, costs and disbursements may be awarded only**
26 **against adverse parties who have been served with the petition and**
27 **writ.**

28 **SECTION 3.** The amendments to ORS 34.105 and 34.210 by sections
29 **1 and 2 of this 2013 Act apply only to petitions for writs of mandamus**
30 **filed on or after the effective date of this 2013 Act.**

31 **SECTION 4.** This 2013 Act being necessary for the immediate pres-

1 **ervation of the public peace, health and safety, an emergency is de-**
2 **clared to exist, and this 2013 Act takes effect on its passage.**

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