

Senate Bill 695

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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

A BILL FOR AN ACT

1
2 Relating to mandamus actions; creating new provisions; amending ORS 34.105 and 34.210; and de-
3 claring an emergency.

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

5 **SECTION 1.** ORS 34.105 is amended to read:

6 34.105. As used in ORS 34.105 to 34.240:

7 (1) "Adverse party" means a beneficially interested party to a judicial or administrative pro-
8 ceeding from which a mandamus proceeding arises, whose interests are adverse to the relator.

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

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

13 (4) **"False return" means a return that:**

14 (a) **Contains a false representation of fact;**

15 (b) **Contains an unreasonable interpretation of law;**

16 (c) **Is intended to delay the proceedings; or**

17 (d) **Fails to state the true reason for defendant's failure to act.**

18 [(4)] (5) "Relator" means the beneficially interested party on whose relation a mandamus pro-
19 ceeding is brought.

20 (6) **"Return" means an answer to a writ or a motion to dismiss a writ.**

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

22 34.210. (1) If the court orders issuance of a peremptory writ of mandamus, [*the relator shall re-*
23 *cover from the defendant damages which*] **the court shall designate a prevailing party under ORS**
24 **20.077 and award to the relator:**

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

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

28 [(2)] *The court in its discretion may designate a prevailing party and award attorney fees, costs and*
29 *disbursements to the prevailing party, but no attorney fees, costs and disbursements shall be awarded*
30 *against a judge as a defendant in a mandamus action for any action taken in the judge's official ca-*
31 *capacity. Attorney fees, costs and disbursements may only be awarded against adverse parties who have*

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 *been served with the petition and writ.]*

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

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

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

8 **(a) Attorney fees, costs and disbursements may not be awarded against a judge as a de-**
9 **fendant in a mandamus action for any action taken in the official capacity of the judge.**

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

12 **SECTION 3. The amendments to ORS 34.105 and 34.210 by sections 1 and 2 of this 2013**
13 **Act apply only to petitions for writs of mandamus filed on or after the effective date of this**
14 **2013 Act.**

15 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**
16 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
17 **on its passage.**

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