

SB 783 A STAFF MEASURE SUMMARY

Carrier: Sen. Taylor

Senate Committee On Judiciary

Action Date: 03/18/19

Action: Do pass with amendments. (Printed A-Eng.)

Vote: 6-0-1-0

Yeas: 6 - Bentz, Gelser, Linthicum, Manning Jr, Prozanski, Thatcher

Exc: 1 - Fagan

Fiscal: Has minimal fiscal impact

Revenue: No revenue impact

Prepared By: Gillian Fischer, Counsel

Meeting Dates: 3/12, 3/13, 3/18

WHAT THE MEASURE DOES:

Requires a copy of a complaint initiated under ORS 124.100, civil action for abuse of a vulnerable person, be mailed to the Attorney General at the time the action commences or any time prior to the entry of judgment. Prohibits a court from entering a judgment for the plaintiff until proof of mailing is filed with the court.

ISSUES DISCUSSED:

- Failure to meet notice requirements is a procedural, not jurisdictional, defect
- Unintended loophole allows for dismissal of otherwise valid claims
- Elder abuse is an under-reported crime, but increasing in frequency
- One in ten seniors is abused each year in the United States

EFFECT OF AMENDMENT:

Adds that the failure to provide notice may be cured at any time prior to entry of judgment.

BACKGROUND:

ORS 124.100(6) provides that a person commencing a civil action for the abuse of a vulnerable person must serve a copy of their complaint on the Attorney General within 30 days after the action is commenced. The notice provision was not intended to prevent vulnerable plaintiffs from proceeding with a meritorious case if the plaintiff fails to timely notify the Attorney General of the action. In a 2016 Court of Appeals case, *Bishop v. Waters*, 280 Or App 537, a plaintiff's claim was dismissed for failure to provide notice pursuant to the current language of the statute bringing attention to statute's unintended consequences.

Senate Bill 783 A remedies this issue by removing the requirement that notice be filed prior to proceeding with a claim.