

## SENATE AMENDMENTS TO SENATE BILL 1041

By COMMITTEE ON RULES

July 30

1 In line 2 of the printed bill, before the period insert “; and declaring an emergency”.

2 Delete lines 4 through 24 and insert:

3 **“SECTION 1. (1) Any of the following persons may bring a civil action to secure damages**  
4 **against any and all persons whose actions are unlawful under ORS 163.257 (1)(a):**

5 **“(a) A person who is 18 years of age or older and who has been taken, enticed or kept in**  
6 **violation of ORS 163.257 (1)(a); or**

7 **“(b) A person whose custodial rights have been interfered with if, by reason of the in-**  
8 **terference:**

9 **“(A) The person has reasonably and in good faith reported a person missing to any city,**  
10 **county or state police agency; or**

11 **“(B) A defendant in the action has been charged with a violation of ORS 163.257 (1)(a).**

12 **“(2) An entry of judgment or a certified copy of a judgment against the defendant for a**  
13 **violation of ORS 163.257 (1)(a) is prima facie evidence of liability if the plaintiff was injured**  
14 **by the defendant’s unlawful action under the conviction.**

15 **“(3)(a) For purposes of this section, a public or private entity that provides counseling**  
16 **and shelter services to victims of domestic violence is not considered to have violated ORS**  
17 **163.257 (1)(a) if the entity provides counseling or shelter services to a person who violates**  
18 **ORS 163.257 (1)(a).**

19 **“(b) As used in this subsection, ‘victim of domestic violence’ means an individual against**  
20 **whom domestic violence, as defined in ORS 135.230, 181.610, 411.117 or 657.176, has been**  
21 **committed.**

22 **“(4) Bringing an action under this section does not prevent the prosecution of any crim-**  
23 **inal action under ORS 163.257.**

24 **“(5) A person bringing an action under this section must establish by a preponderance**  
25 **of the evidence that a violation of ORS 163.257 (1)(a) has occurred.**

26 **“(6) It is an affirmative defense to civil liability for an action under this section that the**  
27 **defendant reasonably and in good faith believed that the defendant’s violation of ORS 163.257**  
28 **(1)(a) was necessary to preserve the physical safety of:**

29 **“(a) The defendant;**

30 **“(b) The person who was taken, enticed or kept in violation of ORS 163.257 (1)(a); or**

31 **“(c) The parent or guardian of the person who was taken, enticed or kept in violation of**  
32 **ORS 163.257 (1)(a).**

33 **“(7)(a) If the person taken, enticed or kept in violation of ORS 163.257 (1)(a) is under 18**  
34 **years of age at the time an action is brought under this section, the court may:**

35 **“(A) Appoint an attorney who is licensed to practice law in Oregon to act as guardian**

1 ad litem for the person; and

2 “(B) Appoint one of the following persons to provide counseling services to the person:

3 “(i) A psychiatrist.

4 “(ii) A psychologist licensed under ORS 675.010 to 675.150.

5 “(iii) A clinical social worker licensed under ORS 675.510 to 675.600.

6 “(iv) A professional counselor or marriage and family therapist licensed under ORS  
7 675.715.

8 “(b) The court may assess against the parties all costs of the attorney or person pro-  
9 viding counseling services appointed under this subsection.

10 “(8) If an action is brought under this section by a person described under subsection  
11 (1)(b) of this section and a party shows good cause that it is appropriate to do so, the court  
12 may order the parties to obtain counseling directed toward educating the parties on the im-  
13 pact that the parties’ conflict has on the person taken, enticed or kept in violation of ORS  
14 163.257 (1)(a). The court may assess against the parties all costs of obtaining counseling  
15 ordered under this subsection.

16 “(9) Upon prevailing in an action under this section, the plaintiff may recover:

17 “(a) Special and general damages, including damages for emotional distress; and

18 “(b) Punitive damages.

19 “(10) The court may award reasonable attorney fees to the prevailing party in an action  
20 under this section.

21 “(11)(a) Notwithstanding ORS 12.110, 12.115, 12.117 or 12.160, an action under this section  
22 must be commenced within six years after the violation of ORS 163.257 (1)(a). An action un-  
23 der this section accruing while the person who is entitled to bring the action is under 18  
24 years of age must be commenced not more than six years after that person attains 18 years  
25 of age.

26 “(b) The period of limitation does not run during any time when the person taken, enticed  
27 or kept in violation of ORS 163.257 (1)(a) is removed from this state as a result of the de-  
28 fendant’s actions in violation of ORS 163.257 (1)(a).

29 “SECTION 2. Section 1 of this 2005 Act applies to causes of action arising on or after the  
30 effective date of this 2005 Act.

31 “SECTION 3. This 2005 Act being necessary for the immediate preservation of the public  
32 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect  
33 on its passage.”.