

# House Bill 2389

Sponsored by Representative CANNON (Presession filed.)

## 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**.

Provides that host or operator of Internet site is not liable for defamatory statement published on Internet site by another person unless host or operator failed to exercise due care to prevent publication of defamatory statement.

Provides that noneconomic damages may be awarded against host or operator of Internet site for defamatory statement published on site only if demand for correction or retraction is made and host or operator does not publish correction or retraction.

## A BILL FOR AN ACT

1  
2 Relating to defamation; creating new provisions; amending ORS 31.200, 31.210 and 31.215; and re-  
3 pealing ORS 31.205 and 31.225.

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

5 **SECTION 1.** ORS 31.200 is amended to read:

6 31.200. (1) The owner, licensee, **host** or operator of a radio **station**, [*or*] television  
7 [*broadcasting*] station **or Internet site**, and the agents or employees of the owner, licensee, **host**  
8 or operator, [*shall not be liable for any damages*] **are not liable** for any defamatory statement pub-  
9 lished [*or uttered*] in a radio or television broadcast, **or published on the Internet site**, by [*one*]  
10 **a person** other than the owner, licensee, **host** or operator[,] or agent or employee [*thereof*] **of the**  
11 **owner, licensee, host or operator**, unless it is alleged and proved by the complaining party that  
12 the owner, licensee, **host**, operator, agent or employee failed to exercise due care to prevent the  
13 publication [*or utterance of such statement in such broadcast*] **of the defamatory statement**.

14 (2) [*In no event shall any*] **The** owner, licensee or operator of a radio or television [*broadcasting*  
15 *station, or any agent or employee thereof, be liable for any damages*] **station and the agents or**  
16 **employees of the owner, licensee or operator are not liable** for any defamatory statement pub-  
17 lished [*or uttered by one*] **by a person** other than [*such*] **the** owner, licensee, operator, agent or  
18 employee, in or as part of a radio or television broadcast, by any candidate for public office, [*which*  
19 *broadcast*] **that** cannot be censored by reason of federal statute or regulations of the Federal Com-  
20 munications Commission.

21 **SECTION 2. For the purposes of ORS 31.210, 31.215 and 31.220:**

22 (1) **"Print or broadcast media"** means a radio broadcast, a television broadcast, a movie,  
23 **an Internet site or a newspaper, a magazine or another printed periodical.**

24 (2) **"Publisher"** means:

25 (a) **A person who owns or operates a radio station, television station or movie theater;**

26 (b) **A person who hosts or operates an Internet site; and**

27 (c) **A person who prints a newspaper, a magazine or another printed periodical.**

28 **SECTION 3.** ORS 31.210 is amended to read:

29 31.210. (1) In an action for damages [*on account of*] **caused by** a defamatory statement published

**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 or broadcast in [*a newspaper, magazine, other printed periodical, or by radio, television or motion*  
 2 *pictures*] **print or broadcast media**, the plaintiff [*shall*] **may not recover** [*general*] **noneconomic**  
 3 **damages as defined in ORS 31.710** unless:

4 (a) A correction or retraction is demanded but not published [*as*] **in the manner** provided [*in*]  
 5 **by ORS 31.215**; or

6 (b) The plaintiff proves by a preponderance of the evidence that the defendant actually intended  
 7 to defame the plaintiff.

8 [*(2) Where the plaintiff is entitled to recover general damages, the publication of a correction or*  
 9 *retraction may be considered in mitigation of damages.*]

10 **(2) This section and ORS 31.215 and 31.220 do not affect consideration of the publication**  
 11 **of a correction or retraction in mitigation of damages, even though the publication of a**  
 12 **correction or retraction does not prevent the award of noneconomic damages under this**  
 13 **section.**

14 **SECTION 4.** ORS 31.215 is amended to read:

15 31.215. (1) [*The*] **A** demand for correction or retraction [*shall*] **under ORS 31.210 must** be in  
 16 writing, signed by the [*defamed person*] **claimant** or the **claimant's** attorney [*of the person*], and  
 17 **must** be delivered to the publisher of the defamatory statement, either personally, by registered mail  
 18 or by certified mail with return receipt at the publisher's place of business or residence within 20  
 19 days after the [*defamed person*] **claimant** receives actual knowledge of the **allegedly** defamatory  
 20 statement. The demand shall specify which [*statements are false and*] **statement is asserted to be**  
 21 defamatory and request that [*they*] **the statement** be corrected or retracted. The demand may also  
 22 refer to the sources from which the [*true*] facts may be ascertained [*with accuracy*].

23 (2) The publisher of the defamatory statement [*shall have*] **has** not more than two weeks after  
 24 receipt of the demand for correction or retraction in which to investigate the demand[; *and, after*  
 25 *making such investigation*]. **If the publisher determines that the statement specified in the de-**  
 26 **mand is defamatory**, the publisher [*shall*] **must** publish the correction or retraction [*in*] **by:**

27 (a) **Printing the correction or retraction in** the first issue [*thereafter*] published **after expi-**  
 28 **ration of the two-week investigatory period**, in the case of newspapers, magazines or other  
 29 printed periodicals.

30 (b) [*The first broadcast or telecast thereafter made*] **Broadcasting the correction or retraction**  
 31 **not more than two weeks after receipt of the demand**, in the case of radio or television stations.

32 (c) [*The first public exhibition thereafter made*] **Displaying the correction or retraction at the**  
 33 **movie theater not more than two weeks after receipt of the demand**, in the case of [*motion*  
 34 *picture*] **movie theaters.**

35 (d) **Posting the correction or retraction on the Internet site not more than two weeks**  
 36 **after receipt of the demand, in the case of an Internet site.**

37 (3) [*The*] **A** correction or retraction **published under this section** shall consist of a statement  
 38 by the publisher substantially to the effect that the defamatory [*statements*] **statement** previously  
 39 made [*are*] **is** not factually supported and that the publisher regrets the original publication  
 40 [*thereof*] **of the statement.**

41 (4) The correction or retraction [*shall*] **must** be published in substantially as conspicuous a  
 42 manner as the defamatory statement.

43 **SECTION 5.** **Section 2 of this 2009 Act and the amendments to ORS 31.200, 31.210 and**  
 44 **31.215 by sections 1, 3 and 4 of this 2009 Act apply only to publications made on or after the**  
 45 **effective date of this 2009 Act.**

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**SECTION 6. ORS 31.205 and 31.225 are repealed.**

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