

SB 305 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 2/7, 2/14

WHAT THE MEASURE DOES:

For a special motion to strike in a court case, adds that the motion may be made against any claim in a civil action that arises out of any conduct in furtherance of the exercise of the constitutional right of assembly, or association, or freedom of the press in connection with a public issue on an issue of public interest. Specifies that a special motion to strike may not be made against a claim against a person primarily engaged in the business of selling or leasing goods or services if the claim arises out of a communication related to the person's sale or lease of the goods or services. Allows a judge to rule on other motions in the case while a discovery stay is in effect. Clarifies that a voluntary dismissal without prejudice of a responding party's claim that is subject to the special motion to strike does not affect the moving party's right to obtain a ruling on a motion for reasonable attorney fees and costs, and that a voluntary dismissal with prejudice by the responding party on a claim that is subject to the special motion to strike establishes for the purposes of attorney fees and costs that the moving party prevailed on the motion to strike. Allows a moving party to appeal a denial of a motion to strike.

REVENUE: *No revenue impact*

FISCAL: *Has minimal fiscal impact*

ISSUES DISCUSSED:

- Law protects people who are exercising their rights
- Examples of the types of actions the law protects
- "Public issue" and "public interest" have same meaning
- Categories of motions not subject to Anti-SLAPP provisions
- Recent ULC revisions; adopted by three states thus far

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Senate Bill 305 modifies what are known as anti-SLAPP laws (Strategic Lawsuits Against Public Participation). The proposed revisions are modeled after the Uniform Law Commission's (ULC) Uniform Public Expression Protection Act (UPEPA). Anti-SLAPP provisions provide a special process for seeking to dismiss certain claims – specifically “to provide for the dismissal of claims against persons participating in public issues . . . before the defendant is subject to substantial expenses in defending against them.” *Staten v. Steel*, 222 Or App 17, 29, 191 P3d 778 (2008). These laws were enacted to “permit a defendant who is sued over certain actions taken in the public arena to have a questionable case dismissed at an early stage.” *Staten*, 222 Or App at 27. ORS 31.152(4) directs that the anti-SLAPP statute “be liberally construed in favor of the exercise of the rights of expression described in ORS 31.150(2).” ORS 31.150(2) provides that a defendant may file a special motion to strike “against any claim in a civil action that arises out of” specific types of oral statements or actions that a person has a right to engage in. Currently the law allows a plaintiff to avoid paying (prevailing party) attorney fees and costs in cases like these by voluntarily dismissing their claim before the judge can rule on the special motion to strike and the accompanying request for reasonable fees and costs.

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SB 305 expands the types of protected activity that a special motion to strike may apply to; clarifies that during the automatic discovery stay, the court may rule on other motions in the case; allows for direct appeal of a denial of a special motion to strike; specifies that if the responding party voluntarily dismisses their claim that is subject to a special motion to strike, the court may still consider a motion for fees and costs.