

SB 180 -1 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 2/27

WHAT THE MEASURE DOES:

The measure prohibits a person from filing a retaliatory defamation lawsuit against an individual who, in good faith, makes a statement regarding an incident of sexual assault, harassment, or discrimination. The measure provides a prevailing defendant with the right to recover their associated attorney fees along with remedial sanctions.

Detailed Summary:

- Prohibits the filing of defamation lawsuits against an individual who, upon a reasonable belief and without malice, makes a communication regarding an incident of sexual assault, harassment, or discrimination, regardless of whether the individual filed a formal complaint.
- Allows a prevailing defendant to recover their reasonable attorney fees and remedial sanctions.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 The amendment changes the measure to define incidents of sexual assault, harassment or discrimination; to clarify whose communications are protected; and to change a prevailing defendant's remedies.

Detailed Summary:

- Defines an incident of sexual assault, harassment, or discrimination to include:
 - Unwanted and coercive conduct of a sexual nature;
 - Discrimination as defined by ORS 659A.030; and
 - Unlawful dissemination of an intimate image as defined by ORS 163.472.
- Clarifies that the communications protected are those made by the subject or victim of the associated assault, harassment, or discrimination.
- Entitles a prevailing defendant to file a counterclaim for their economic and noneconomic damages, treble damages, and punitive damages as opposed to sanctions.

BACKGROUND:

A SLAPP (strategic lawsuit against public participation) is typically a lawsuit, such as a defamation lawsuit, filed in retaliation against a victim, complainant, witness, whistleblower, advocate, or journalist to intimidate or silence the person from speaking out. Oregon has an existing anti-SLAPP statute, ORS 31.150, which provides a special process for early dismissal of a claim alleged in a lawsuit when the claim arises out of the defendant's exercise of specified categories of protected speech such as communications made in a public forum, in connection with an issue of public concern, or pursuant to a governmental process. However, ORS 31.150's specified categories of protected speech do not directly address, apply to, or protect those speaking out about an incident of sexual assault, harassment, or discrimination. This measure allows a prevailing defendant to recover their fees and costs incurred in defending against claims of defamation for speaking out about such incidents. Several states have adopted or are considering statutes comparable to this measure. *See, e.g.* CA Code, CIV 47.1, AB 933; NJ SB 3758 (2024); and IL HB 2836 (2023).