

SB 180 A STAFF MEASURE SUMMARY**Carrier:** Sen. McLane**Senate Committee On Judiciary****Action Date:** 04/07/25**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 6-0-0-0**Yeas:** 6 - Broadman, Gelser Blouin, Manning Jr, McLane, Prozanski, Thatcher**Fiscal:** Has minimal fiscal impact**Revenue:** Has minimal revenue impact**Prepared By:** Kris Kolta, LPRO Analyst**Meeting Dates:** 2/27, 4/7**WHAT THE MEASURE DOES:**

This measure creates a special motion to strike a claim or lawsuit arising out of a good faith communication regarding an incident of sexual assault.

Detailed Summary

The measure creates a new basis under ORS 31.150, Oregon’s anti-SLAPP statute, for a special motion to strike a claim or lawsuit arising out of a good faith communication regarding an incident of sexual assault. The measure places the burden first on a defendant to a motion to strike to show an objectively reasonable belief that the sexual assault occurred and then shifts the burden to the plaintiff to show a probability of prevailing on their defamation claim, including a probability that the defendant made the subject communication with malice. This measure also requires a defamation plaintiff, regarding a communication about sexual assault, to establish the communication was made with malice as an element of their claim.

ISSUES DISCUSSED:

- Oregon's existing anti-SLAPP statute
- Speech in private forums such as social media
- Proper scope of recovery and associated deterrent against SLAPP lawsuits
- Malice as defined in case law, including *New York Times v. Sullivan*, 376 US 254 (1964)
- Balancing of interests to ensure free speech

EFFECT OF AMENDMENT:

This amendment reworked the measure, creating a new basis under ORS 31.150, Oregon’s anti-SLAPP statute, for a motion to strike a claim or lawsuit arising out of a good faith communication regarding an incident of sexual assault. Once a defendant carries their initial burden on a motion to strike by showing an objectively reasonable belief that the sexual assault occurred, the burden then shifts to the plaintiff to show a probability of prevailing on their defamation claim, including a probability that the defendant made the subject communication with malice. This amendment also requires a defamation plaintiff, regarding a communication about sexual assault, to establish the communication was made with malice as an element of their claim.

BACKGROUND:

A SLAPP (strategic lawsuit against public participation) is typically a lawsuit, such as a defamation lawsuit, filed against a person for exercising protected speech, where the defendant is typically a victim, complainant, witness, whistleblower, advocate, or journalist. Oregon’s anti-SLAPP statute, ORS 31.150, provides a special process (an anti-SLAPP motion) 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 current categories of protected speech do not directly address, apply to, or protect those speaking out about an

SB 180 A STAFF MEASURE SUMMARY

incident of sexual assault. ORS 31.152 sets out the procedure and timeline for filing an anti-SLAPP motion and allows the prevailing party to recover their attorney fees and costs. Several states have adopted or are considering statutes to protect those speaking out about incidents of sexual assault. *See, e.g.*, CA Code, CIV 47.1, AB 933; NJ SB 3758 (2024); and IL HB 2836 (2023).