

A-Engrossed Senate Bill 180

Ordered by the Senate April 14
Including Senate Amendments dated April 14

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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. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act says that a person making some defamation claims has to prove malice. The Act lets a defendant in some defamation claims bring a special motion to strike. (Flesch Readability Score: 69.5).

[Digest: The Act says that a plaintiff may not sue a person who talks about certain bad behavior for defamation if the person has a reasonable belief that it happened. The Act says that the plaintiff has to pay the person's lawyer fees and sanctions. (Flesch Readability Score: 61.4).]

[Provides that a person may not bring an action for defamation against an individual who, without malice, makes a communication regarding an incident of sexual assault, harassment or discrimination if, at the time of making the communication, the individual has a reasonable belief that sexual assault, harassment or discrimination occurred. Allows the prevailing defendant to recover attorney fees and provides for imposition of remedial sanctions against the plaintiff.]

Provides that malice is an element of a defamation claim against an individual who makes a communication regarding an incident of sexual assault committed against the individual.

Allows a defendant in a defamation action regarding an incident of sexual assault committed against an individual to bring a special motion to strike the defamation claim, under certain circumstances.

A BILL FOR AN ACT

Relating to retaliatory actions for defamation; creating new provisions; and amending ORS 31.150.

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

SECTION 1. In a claim for defamation against an individual who makes a communication regarding an incident of sexual assault committed against the individual, in addition to the other elements required to prove a claim of defamation, it is an element of the claim that the individual made the communication with malice.

SECTION 2. ORS 31.150 is amended to read:

31.150. (1) A defendant may make a special motion to strike against a claim in a civil action described in subsection (2) of this section. The court shall grant the motion unless the plaintiff establishes in the manner provided by subsection (4) **or (5)** of this section that there is a probability that the plaintiff will prevail on the claim. The special motion to strike shall be treated as a motion to dismiss under ORCP 21 A but shall not be subject to ORCP 21 F. Upon granting the special motion to strike, the court shall enter a judgment of dismissal without prejudice. If the court denies a special motion to strike, the court shall enter a limited judgment denying the motion.

(2) A special motion to strike may be made under this section against any claim in a civil action that arises out of:

(a)(A) Any oral statement made, or written statement or other document submitted, in a legis-

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.

lative, executive or judicial proceeding or other proceeding authorized by law;

[(b)] (B) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive or judicial body or other proceeding authorized by law;

[(c)] (C) Any oral statement made, or written statement or other document presented, in a place open to the public or a public forum in connection with an issue of public interest; or

[(d)] (D) Any other conduct in furtherance of the exercise of the constitutional right of assembly, petition or association or the constitutional right of free speech or freedom of the press in connection with a public issue or an issue of public interest[.]; or

(b) Any oral statement made, or written statement or other document presented, regarding an incident of sexual assault committed against an individual, if the statement or document is made or presented in good faith and with an objectively reasonable belief that the incident of sexual assault occurred.

(3) A special motion to strike may not be made against a claim under this section 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.

(4) A defendant making a special motion to strike under the provisions of this section has the initial burden of making a prima facie showing that the claim against which the motion is made arises out of a statement, document or conduct described in subsection (2) of this section. **Except as provided in subsection (5) of this section,** if the defendant meets this burden, the burden shifts to the plaintiff in the action to establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case. If the plaintiff meets this burden, the court shall deny the motion.

(5) In addition to the requirements of subsection (4) of this section, if the special motion to strike is against a claim of defamation and the defendant meets the initial burden of making a prima facie showing that the defamation claim arises out of a statement, document or conduct described in subsection (2)(b) of this section, the burden shifts to the plaintiff in the action to establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case, and that there is a probability that the defendant acted with malice in making the communication. If the plaintiff meets this burden, the court shall deny the motion.

[(5)] (6) In making a determination under subsection (1) of this section, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

[(6)] (7) If the court determines that the plaintiff has established a probability that the plaintiff will prevail on the claim:

(a) The fact that the determination has been made and the substance of the determination may not be admitted in evidence at any later stage of the case; and

(b) The determination does not affect the burden of proof or standard of proof that is applied in the proceeding.