

SENATE AMENDMENTS TO SENATE BILL 180

By COMMITTEE ON JUDICIARY

April 14

1 In line 2 of the printed bill, before the period insert “; creating new provisions; and amending
2 ORS 31.150”.

3 Delete lines 4 through 15 and insert:

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

8 **“SECTION 2.** ORS 31.150 is amended to read:

9 **“31.150. (1)** A defendant may make a special motion to strike against a claim in a civil action
10 described in subsection (2) of this section. The court shall grant the motion unless the plaintiff es-
11 tablishes in the manner provided by subsection (4) **or (5)** of this section that there is a probability
12 that the plaintiff will prevail on the claim. The special motion to strike shall be treated as a motion
13 to dismiss under ORCP 21 A but shall not be subject to ORCP 21 F. Upon granting the special mo-
14 tion to strike, the court shall enter a judgment of dismissal without prejudice. If the court denies
15 a special motion to strike, the court shall enter a limited judgment denying the motion.

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

18 **“(a)(A)** Any oral statement made, or written statement or other document submitted, in a leg-
19 islative, executive or judicial proceeding or other proceeding authorized by law;

20 **“[(b)] (B)** Any oral statement made, or written statement or other document submitted, in con-
21 nection with an issue under consideration or review by a legislative, executive or judicial body or
22 other proceeding authorized by law;

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

25 **“[(d)] (D)** Any other conduct in furtherance of the exercise of the constitutional right of as-
26 sembly, petition or association or the constitutional right of free speech or freedom of the press in
27 connection with a public issue or an issue of public interest[.]; **or**

28 **“(b) Any oral statement made, or written statement or other document presented, re-
29 garding an incident of sexual assault committed against an individual, if the statement or
30 document is made or presented in good faith and with an objectively reasonable belief that
31 the incident of sexual assault occurred.**

32 **“(3)** A special motion to strike may not be made against a claim under this section against a
33 person primarily engaged in the business of selling or leasing goods or services if the claim arises
34 out of a communication related to the person’s sale or lease of the goods or services.

35 **“(4)** A defendant making a special motion to strike under the provisions of this section has the

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

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

15 “[5] (6) In making a determination under subsection (1) of this section, the court shall consider
16 pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense
17 is based.

18 “[6] (7) If the court determines that the plaintiff has established a probability that the plaintiff
19 will prevail on the claim:

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

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

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