DRAFT

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Position on Bills at 2025 Session of Oregon Legislature:

HB 3564: Neutral (but with significant problems)

The Consolidated Oregon Indivisible Network (COIN) is a coalition of over 50 local Indivisible groups throughout Oregon that cooperate and amplify their joint efforts to advance important federal and state legislation and engage with elected officials to promote causes for the benefit of all Oregonians.

COIN does not support HB 3564, which would change Oregon's statute about retractions of potentially libelous statements to account for the growth of the internet. It would:

- Clarify that a civil action for defamation can be filed in response to either a printed or electronic publication.
- Expand the time in which an individual can demand a retraction or correction from 20 to 40 days after receiving actual knowledge of the statement.
- Require a demand for retraction to be issued personally or via certified or registered mail.
- Direct the publisher to investigate a demand within two weeks and, if it agrees that the statement merits retraction or correction, to proceed as follows:
    - for print media, publish a correction or retraction in the first issue published thereafter;
    - for electronic media, immediately place a link to the correction or retraction on any webpage containing the defamatory statement or remove the defamatory statement altogether.
    - for a radio or TV broadcast, publish the retraction on the next broadcast; and
    - for a movie theater, publish the retraction or correction at the next showing.

The law on retractions is important. A plaintiff in a defamation action is not allowed to seek "general damages," unless the plaintiff has unsuccessfully demanded a retraction or proves that the defendant "actually intended to defame the plaintiff." ORS 31.210(1)(a).

We see two serious problems with this bill. First, under current law, the defamation defendant cannot avail itself of the liability protection accorded by publishing a retraction, unless the defendant actually publishes a "retraction," which is defined as:

> (3) The correction or retraction shall consist of a statement by the publisher substantially to the effect that the defamatory statements previously made are not factually supported and that the publisher regrets the original publication thereof.

But under HB 3564, an "electronic media" defendant receives the liability protection, even if the defendant does not publish a retraction. All that is required is that the defendant "remov[e] the defamatory statement from the electronic newspaper, magazine or other periodical." HB 3564 Section 3 amends ORS 31.215(2) to read:

> "(b) An electronic newspaper, magazine or other periodical, the publisher shall immediately place a link to the correction or retraction on any page containing the defamatory statement or retract the defamatory statement by removing the defamatory statement from the electronic newspaper, magazine or other periodical.

Note I have underlined the disjunction "or". The publisher can simply remove the statement from the electronic media and not state "that the defamatory statements previously made are not factually supported and that the publisher regrets the original publication thereof."

Merely removing the allegedly defamatory statement is not a sufficient retraction. The defamatory statement will have already been disseminated by means of the electronic media and will be lodged in the minds of some readers. It may well also have been redistributed by means of "likes" and "reposts" and web-based copies and emailed copies. HB 3564 does not require the electronic media publisher to notify readers that it had published the erroneous statement. Further, websites are regularly indexed by many search engines. The allegedly defamatory statement will live on in those indexes and also at websites such as the Wayback Machine, which currently has archived over 946 billion frozen versions of websites and makes them freely available to the public.

This bill should be amended to require the publisher of electronic media to actually publish a retraction, not merely remove the allegedly defamatory statement from the electronic newspaper, magazine or other periodical.

The second problem is that the bill specifies no deadline for an electronic media publisher to publish the retraction or to remove the erroneous statement from its website. Under current law, if the publisher agrees to a retraction, it must be printed in:

> (a) The first issue thereafter published, in the case of newspapers, magazines or other printed periodicals.
> (b) The first broadcast or telecast thereafter made, in the case of radio or television stations.
> (c) The first public exhibition thereafter made, in the case of motion picture theaters.

HB 3564 maintains those deadlines for non-electronic media but sets no deadline for publishers of electronic media to accomplish the retraction by "by removing the defamatory statement from the electronic newspaper, magazine or other periodical." The publisher could leave the defamatory material on its website for an indefinite period of time before removing it and still benefit from the liability protection of having "retracted" the statement.

This bill should be amended to require the publisher of electronic media that achieves a retraction by removing the allegedly defamatory statement from the electronic newspaper, magazine or other periodical, to do so within 2 weeks of receiving the retraction demand.

Consolidated Oregon Indivisible Network (COIN)

Daniel Meek
authorized testifier
dan@meek.net
503-293-9021