

# House Bill 2896

Sponsored by Representative KENNEMER (Presession filed.)

## 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 **as introduced**.

Directs court to award certain damages in action involving false statement of material fact relating to candidate, political committee or measure.

## A BILL FOR AN ACT

1  
2 Relating to actions involving false statements of fact; creating new provisions; and amending ORS  
3 260.532.

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

5 **SECTION 1.** ORS 260.532 is amended to read:

6 260.532. (1) No person shall cause to be written, printed, published, posted, communicated or  
7 circulated, any letter, circular, bill, placard, poster, photograph or other publication, or cause any  
8 advertisement to be placed in a publication, or singly or with others pay for any advertisement, with  
9 knowledge or with reckless disregard that the letter, circular, bill, placard, poster, photograph,  
10 publication or advertisement contains a false statement of material fact relating to any candidate,  
11 political committee or measure.

12 (2) As used in subsection (1) of this section, "cause" does not include the broadcast of an ad-  
13 vertisement by a radio or television station or cable television company unless the advertisement  
14 is for:

15 (a) The candidacy of the owner, licensee or operator of the station or company; or

16 (b) A ballot measure of which a chief petitioner is the owner, licensee or operator of the station  
17 or company.

18 (3) A candidate who knows of and consents to a publication or advertisement prohibited by this  
19 section with knowledge or with reckless disregard that it contains a false statement of material fact,  
20 violates this section regardless of whether the candidate has participated directly in the publication  
21 or advertisement.

22 (4) There is a rebuttable presumption that a candidate knows of and consents to any publication  
23 or advertisement prohibited by this section caused by a political committee over which the candi-  
24 date exercises any direction and control.

25 (5) Any candidate or political committee aggrieved by a violation of this section shall have a  
26 right of action against the person alleged to have committed the violation. The aggrieved party may  
27 file the action in the circuit court for any county in this state in which a defendant resides or can  
28 be found or, if the defendant is a nonresident of this state, in the circuit court for any county in  
29 which the publication occurred. To prevail in such an action, the plaintiff must show by clear and  
30 convincing evidence that the defendant violated subsection (1) of this section.

31 (6)(a) *[A plaintiff who prevails in an action provided by subsection (5) of this section may recover*

**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.

1 *economic and noneconomic damages, as defined in ORS 31.710, or \$2,500, whichever is greater. The*  
 2 *court may award such additional equitable relief as it considers necessary or proper.]* **The court shall**  
 3 **award the following to a plaintiff who prevails in an action under this section:**

4 (A) **An amount equal to three times all economic damages, as defined in ORS 31.710, or**  
 5 **\$2,500, whichever is greater.**

6 (B) **An amount equal to three times all noneconomic damages, as defined in ORS 31.710**  
 7 **and as determined by the trier of fact.**

8 (C) **Reasonable attorney fees incurred by the plaintiff at trial and on appeal.**

9 (D) **Any additional equitable relief the court considers necessary or proper, which** [*The*  
 10 *equitable relief*] *may include, but is not limited to, a requirement that a retraction of the false*  
 11 *statement be disseminated in the manner directed by the court.*

12 (b) Proof of entitlement to economic and noneconomic damages **under this section** must be by  
 13 a preponderance of evidence. [*The court shall award the prevailing party reasonable attorney fees at*  
 14 *trial and on appeal.*]

15 (7) A political committee has standing to bring an action provided by subsection (5) of this sec-  
 16 tion as plaintiff in its own name, if its purpose as evidenced by its preelection activities, solicitations  
 17 and publications has been injured by the violation and if it has fully complied with the provisions  
 18 of this chapter. In an action brought by a political committee as provided by subsection (5) of this  
 19 section, the plaintiff may recover economic and noneconomic damages for all injury to the purpose  
 20 of the committee as provided in subsection (6) of this section.

21 (8) If a judgment is rendered in an action under this section against a defendant who has been  
 22 nominated to public office or elected to a public office other than state Senator or state Represent-  
 23 ative, and it is established by clear and convincing evidence that the false statement was delib-  
 24 erately made or caused to be made by the defendant, the finder of fact shall determine whether the  
 25 false statement reversed the outcome of the election. If the finder of fact finds by clear and con-  
 26 vincing evidence that the false statement reversed the outcome of the election, the defendant shall  
 27 be deprived of the nomination or election and the nomination or office shall be declared vacant.

28 (9) An action under this section must be filed not later than the 30th day after the election re-  
 29 lating to which a publication or advertisement in violation of this section was made. Proceedings  
 30 on a complaint filed under this section shall have precedence over all other business on the docket.  
 31 The courts shall proceed in a manner which will ensure that:

32 (a) Final judgment on a complaint which relates to a primary election or nominating election is  
 33 rendered before the 30th day before the general election; and

34 (b) Final judgment on a complaint which relates to an election to an office is rendered before  
 35 the term of that office begins.

36 (10) The remedy provided by this section is the exclusive remedy for a violation of this section.

37 **SECTION 2. The amendments to ORS 260.532 by section 1 of this 2011 Act apply only to**  
 38 **causes of action arising on or after the effective date of this 2011 Act.**