

Senate Bill 1

Sponsored by Senators COURTNEY, STARR

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**.

Adjusts amount of damages that may be awarded in action involving false statement of material fact relating to candidate, political committee or measure. Alters deadline for filing action with court and deadline by which court must render final judgment.

A BILL FOR AN ACT

1
2 Relating to actions involving false statements of material fact; creating new provisions; and amend-
3 ing ORS 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 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~~] **\$10,000**, whichever is
2 greater. The court may award such additional equitable relief as it considers necessary or proper.
3 The equitable relief may include, but is not limited to, a requirement that a retraction of the false
4 statement be disseminated in the manner directed by the court. Proof of entitlement to economic and
5 noneconomic damages must be by a preponderance of evidence. The court shall award the prevailing
6 party reasonable attorney fees at trial and on appeal.

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

13 (8) If a judgment is rendered in an action under this section against a defendant who has been
14 nominated to public office or elected to a public office other than state Senator or state Represen-
15 tative, and it is established by clear and convincing evidence that the false statement was delib-
16 erately made or caused to be made by the defendant, the finder of fact shall determine whether the
17 false statement reversed the outcome of the election. If the finder of fact finds by clear and con-
18 vincing evidence that the false statement reversed the outcome of the election, the defendant shall
19 be deprived of the nomination or election and the nomination or office shall be declared vacant.

20 (9) An action under this section must be filed not later than the [~~30th~~] **10th** day after the
21 election relating to which a publication or advertisement in violation of this section was made.
22 Proceedings on a complaint filed under this section shall have precedence over all other business
23 on the docket. The courts shall proceed in a manner which will ensure that:

24 (a) Final judgment on a complaint which relates to a primary election or nominating election is
25 rendered before the [~~30th~~] **60th** day before the general election; and

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

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

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