

House Bill 2788

Sponsored by Representative PARRISH (Pre-session 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 of \$10,000 for each violation in action involving false statement of material fact relating to candidate, political committee or measure.

Authorizes court to further fine defendant up to \$10,000 for each violation, with proceeds of fine paid to Legal Aid Supplementary Account. Directs Oregon Department of Administrative Services to make quarterly distributions of moneys earned by account to Oregon State Bar for funding Legal Services Program.

Establishes Legal Aid Supplementary Account in State Treasury.

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

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 which the publication occurred. To prevail in such an action, the plaintiff must show by clear and
 2 convincing evidence that the defendant violated subsection (1) of this section.

3 (6)(a) A plaintiff who prevails in an action provided by subsection (5) of this section [may] shall
 4 recover:

5 (A) *[Economic and noneconomic]* Damages of \$10,000 for each violation of this section; and

6 (B) Reasonable attorney fees incurred by the plaintiff at trial and on appeal, as defined
 7 in ORS 31.710, or \$2,500, whichever is greater].

8 (b) In addition to any award provided to a plaintiff under paragraph (a) of this subsection,
 9 if a plaintiff prevails in an action provided by subsection (5) of this section, the judge may
 10 further fine the defendant up to \$10,000 for each violation of this section, with the proceeds
 11 of any fine being deposited in the Legal Aid Supplementary Account established under section
 12 2 of this 2015 Act.

13 (c) In addition to any monetary award or fine established in paragraphs (a) and (b) of this
 14 subsection, the court may award such additional equitable relief as it considers necessary or
 15 proper. The equitable relief may include, but is not limited to, a requirement that a retraction of the
 16 false statement be disseminated in the manner directed by the court. *[Proof of entitlement to economic
 17 and noneconomic damages must be by a preponderance of evidence. The court shall award the pre-
 18 vailing party reasonable attorney fees at trial and on appeal.]*

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

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

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

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

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

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

41 **SECTION 2. (1) The Legal Aid Supplementary Account is established in the State Treas-**
 42 **ury, separate and distinct from the General Fund. All moneys in the account are contin-**
 43 **uously appropriated to the Oregon Department of Administrative Services for the purpose**
 44 **of the distributions required by this section. Interest earned by the account shall be credited**
 45 **to the account.**

1 **(2) At the end of each calendar quarter, the department shall distribute the moneys**
2 **earned by the account in the previous calendar quarter to the Oregon State Bar. Amounts**
3 **distributed to the Oregon State Bar under this subsection may be used only for funding of**
4 **the Legal Services Program established under ORS 9.572.**

5 **SECTION 3.** **Section 2 of this 2015 Act and the amendments to ORS 260.532 by section 1**
6 **of this 2015 Act apply only to causes of action arising on or after the effective date of this**
7 **2015 Act.**

8
