

# D R A F T

## SUMMARY

Modifies provisions relating to special motions to strike.

### A BILL FOR AN ACT

Relating to special motions to strike; amending ORS 31.150 and 31.152.

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

**SECTION 1.** ORS 31.150 is amended to read:

31.150. (1) A defendant may make a special motion to strike against a claim in a civil action described in subsection (2) of this section. The court shall grant the motion unless the plaintiff establishes in the manner provided by subsection [(3)] (4) of this section that there is a probability that the plaintiff will prevail on the claim. The special motion to strike shall be treated as a motion to dismiss under ORCP 21 A but shall not be subject to ORCP 21 F. Upon granting the special motion to strike, the court shall enter a judgment of dismissal without prejudice. If the court denies a special motion to strike, the court shall enter a limited judgment denying the motion.

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

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive or judicial proceeding or other proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive or judicial body or other proceeding authorized by law;

**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 (c) Any oral statement made, or written statement or other document  
2 presented, in a place open to the public or a public forum in connection with  
3 an issue of public interest; or

4 (d) Any other conduct in furtherance of the exercise of the constitutional  
5 right of **assembly**, petition **or association** or the constitutional right of free  
6 speech **or freedom of the press** in connection with a public issue or an is-  
7 sue of public interest.

8 **(3) A special motion to strike may not be made against a claim**  
9 **under this section against a person primarily engaged in the business**  
10 **of selling or leasing goods or services if the claim arises out of a**  
11 **communication related to the person's sale or lease of the goods or**  
12 **services.**

13 [(3)] (4) A defendant making a special motion to strike under the pro-  
14 visions of this section has the initial burden of making a prima facie showing  
15 that the claim against which the motion is made arises out of a statement,  
16 document or conduct described in subsection (2) of this section. If the de-  
17 fendant meets this burden, the burden shifts to the plaintiff in the action to  
18 establish that there is a probability that the plaintiff will prevail on the  
19 claim by presenting substantial evidence to support a prima facie case. If the  
20 plaintiff meets this burden, the court shall deny the motion.

21 [(4)] (5) In making a determination under subsection (1) of this section,  
22 the court shall consider pleadings and supporting and opposing affidavits  
23 stating the facts upon which the liability or defense is based.

24 [(5)] (6) If the court determines that the plaintiff has established a prob-  
25 ability that the plaintiff will prevail on the claim:

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

29 (b) The determination does not affect the burden of proof or standard of  
30 proof that is applied in the proceeding.

31 **SECTION 2.** ORS 31.152 is amended to read:

1 31.152. (1) A special motion to strike under ORS 31.150 must be filed  
2 within 60 days after the service of the complaint or, in the court's discretion,  
3 at any later time. A hearing shall be held on the motion not more than 30  
4 days after the filing of the motion unless the docket conditions of the court  
5 require a later hearing.

6 (2)(a) All discovery in the proceeding shall be stayed upon the filing of  
7 a special motion to strike under ORS 31.150. The stay of discovery shall re-  
8 main in effect until entry of the judgment. The court, on motion and for good  
9 cause shown, may order that specified discovery be conducted notwithstand-  
10 ing the stay imposed by this subsection.

11 **(b) During a stay under this subsection, the court may hear and**  
12 **rule on a motion for reasonable attorney fees and costs under sub-**  
13 **section (3) of this section.**

14 **(c) A stay under this subsection does not affect a party's ability**  
15 **voluntarily to dismiss a claim or part of a claim or move to sever a**  
16 **claim.**

17 **(d) During a stay under this subsection, the court for good cause**  
18 **may hear and rule on:**

19 **(A) A motion unrelated to the special motion to strike under ORS**  
20 **31.150.**

21 **(B) A motion seeking a preliminary injunction to protect against**  
22 **an imminent threat to public health or safety.**

23 (3) A defendant who prevails on a special motion to strike made under  
24 ORS 31.150 shall be awarded reasonable attorney fees and costs. If the court  
25 finds that a special motion to strike is frivolous or is solely intended to  
26 cause unnecessary delay, the court shall award costs and reasonable attorney  
27 fees to a plaintiff who prevails on a special motion to strike.

28 **(4)(a) A voluntary dismissal without prejudice of a responding**  
29 **party's claim, or part of a claim, that is the subject of a special motion**  
30 **to strike under ORS 31.150 does not affect a moving party's right to**  
31 **obtain a ruling on the motion and seek attorney fees and costs under**

1 **subsection (3) of this section.**

2 **(b) A voluntary dismissal with prejudice of a responding party's**  
3 **claim, or part of a claim, that is the subject of a special motion to**  
4 **strike under ORS 31.150 establishes for the purpose of subsection (3)**  
5 **of this section that the moving party prevailed on the motion.**

6 **(5) A moving party may appeal as a matter of right from an order**  
7 **denying, in whole or in part, a special motion to strike under ORS**  
8 **31.150. The appeal must be filed in accordance with ORS 19.205.**

9 [(4)] **(6)** The purpose of the procedure established by this section and ORS  
10 31.150 and 31.155 is to provide a defendant with the right to not proceed to  
11 trial in cases in which the plaintiff does not meet the burden specified in  
12 ORS 31.150 [(3)] (4). This section and ORS 31.150 and 31.155 are to be liber-  
13 ally construed in favor of the exercise of the rights [*of expression*] described  
14 in ORS 31.150 (2).

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