

Senate Bill 305

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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**.

Modifies provisions relating to special motions to strike.

A BILL FOR AN ACT

1
2 Relating to special motions to strike; amending ORS 31.150 and 31.152.

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

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

5 31.150. (1) A defendant may make a special motion to strike against a claim in a civil action
6 described in subsection (2) of this section. The court shall grant the motion unless the plaintiff es-
7 tablishes in the manner provided by subsection [(3)] (4) of this section that there is a probability
8 that the plaintiff will prevail on the claim. The special motion to strike shall be treated as a motion
9 to dismiss under ORCP 21 A but shall not be subject to ORCP 21 F. Upon granting the special mo-
10 tion to strike, the court shall enter a judgment of dismissal without prejudice. If the court denies
11 a special motion to strike, the court shall enter a limited judgment denying the motion.

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

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

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

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

21 (d) Any other conduct in furtherance of the exercise of the constitutional right of **assembly**,
22 petition **or association** or the constitutional right of free speech **or freedom of the press** in con-
23 nection with a public issue or an issue of public interest.

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

27 [(3)] (4) A defendant making a special motion to strike under the provisions of this section has
28 the initial burden of making a prima facie showing that the claim against which the motion is made
29 arises out of a statement, document or conduct described in subsection (2) of this section. If the
30 defendant meets this burden, the burden shifts to the plaintiff in the action to establish that there
31 is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to

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 support a prima facie case. If the plaintiff meets this burden, the court shall deny the motion.

2 [(4)] (5) In making a determination under subsection (1) of this section, the court shall consider
3 pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense
4 is based.

5 [(5)] (6) If the court determines that the plaintiff has established a probability that the plaintiff
6 will prevail on the claim:

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

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

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

12 31.152. (1) A special motion to strike under ORS 31.150 must be filed within 60 days after the
13 service of the complaint or, in the court's discretion, at any later time. A hearing shall be held on
14 the motion not more than 30 days after the filing of the motion unless the docket conditions of the
15 court require a later hearing.

16 (2)(a) All discovery in the proceeding shall be stayed upon the filing of a special motion to
17 strike under ORS 31.150. The stay of discovery shall remain in effect until entry of the judgment.
18 The court, on motion and for good cause shown, may order that specified discovery be conducted
19 notwithstanding the stay imposed by this subsection.

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

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

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

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

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

28 (3) A defendant who prevails on a special motion to strike made under ORS 31.150 shall be
29 awarded reasonable attorney fees and costs. If the court finds that a special motion to strike is
30 frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reason-
31 able attorney fees to a plaintiff who prevails on a special motion to strike.

32 **(4)(a) A voluntary dismissal without prejudice of a responding party's claim, or part of**
33 **a claim, that is the subject of a special motion to strike under ORS 31.150 does not affect a**
34 **moving party's right to obtain a ruling on the motion and seek attorney fees and costs under**
35 **subsection (3) of this section.**

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

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

42 [(4)] (6) The purpose of the procedure established by this section and ORS 31.150 and 31.155 is
43 to provide a defendant with the right to not proceed to trial in cases in which the plaintiff does not
44 meet the burden specified in ORS 31.150 [(3)] (4). This section and ORS 31.150 and 31.155 are to be
45 liberally construed in favor of the exercise of the rights [of expression] described in ORS 31.150 (2).

