

# House Bill 2549

Sponsored by Representative KRUMMEL

## 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**.

Prohibits making statement of material fact about individual in voters' pamphlet argument with knowledge or reckless disregard that statement is false. Creates cause of action. Directs person filing voters' pamphlet arguments to sign statement indicating that argument does not contain false statement of material fact.

## A BILL FOR AN ACT

1  
2 Relating to elections; amending ORS 251.255, 251.355, 260.532 and 260.715.

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

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

5 260.532. (1) [No] **A person [shall] may not** cause to be written, printed, published, posted, com-  
6 municated or circulated, any letter, circular, bill, placard, poster, photograph or other publication,  
7 or cause any advertisement to be placed in a publication, or singly or with others pay for any ad-  
8 vertisement, with knowledge or with reckless disregard that the letter, circular, bill, placard, poster,  
9 photograph, publication or advertisement contains a false statement of material fact relating to any  
10 **measure or any** candidate, political committee or [*measure*] **individual described in subsection**  
11 **(5) of this section.**

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)(a) Any candidate or political committee aggrieved by a violation of this section shall have  
26 a right of action against the person alleged to have committed the violation.

27 **(b) Any individual named in an argument included in a voters' pamphlet and aggrieved**  
28 **by a violation of this section with regard to the argument shall have a right of action against**  
29 **the person who filed the argument for inclusion in the voters' pamphlet.**

30 (c) The aggrieved party may file the action in the circuit court for any county in this state 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 a defendant resides or can be found or, if the defendant is a nonresident of this state, in the  
 2 circuit court for any county in which the publication occurred. To prevail in such an action, the  
 3 plaintiff must show by clear and convincing evidence that the defendant violated subsection (1) of  
 4 this section.

5 (6) A plaintiff who prevails in an action provided by subsection (5) of this section may recover  
 6 economic and noneconomic damages, as defined in ORS 31.710, or \$2,500, whichever is greater. The  
 7 court may award such additional equitable relief as it considers necessary or proper. The equitable  
 8 relief may include, but is not limited to, a requirement that a retraction of the false statement be  
 9 disseminated in the manner directed by the court. Proof of entitlement to economic and noneconomic  
 10 damages must be by a preponderance of evidence. The court shall award the prevailing party rea-  
 11 sonable attorney fees at trial and on appeal.

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

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

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

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

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

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

34 **SECTION 2.** ORS 251.255 is amended to read:

35 251.255. (1) Not later than the 70th day before a general election or the 68th day before a special  
 36 election held on the date of any primary election at which a state measure is to be voted upon, any  
 37 person may file with the Secretary of State a printed or typewritten argument supporting or oppos-  
 38 ing the measure.

39 (2) A person filing an argument under this section shall pay a fee of \$500 to the Secretary of  
 40 State when the argument is filed or may submit a petition in a form prescribed by the Secretary of  
 41 State containing the signatures of 1,000 electors eligible to vote on the measure. Each person sign-  
 42 ing the petition shall subscribe to a statement that the person has read and agrees with the argu-  
 43 ment. The signatures on each petition shall be certified by the county clerk in the manner provided  
 44 in ORS 249.008. The petition shall be filed with the Secretary of State.

45 (3) The Secretary of State by rule shall establish the size and length of arguments permitted

1 under ORS 251.245 and this section. The size and length of an argument may not exceed 30 square  
 2 inches or 325 words. The size and length limitations shall be the same for arguments submitted un-  
 3 der ORS 251.245 or this section.

4 **(4) A person filing an argument under this section shall include with the argument a**  
 5 **signed written statement indicating that the person believes the argument does not contain**  
 6 **any false statement of material fact.**

7 **SECTION 3.** ORS 251.355 is amended to read:

8 251.355. (1) Not later than the date specified by the Secretary of State by rule, in a county that  
 9 prepares a county voters' pamphlet, any person may file with the county clerk a typewritten argu-  
 10 ment supporting or opposing any measure to be submitted to the voters on the ballot.

11 **(2)** The county clerk *[shall]* **may** not accept any arguments *[which]* **that** are not accompanied  
 12 by the fee established by the Secretary of State or a petition in a form prescribed by the Secretary  
 13 of State. A petition shall contain the signatures of at least four percent of the electors in the county  
 14 eligible to vote on the measure to which the argument refers, or the signatures of 1,000 electors in  
 15 the county eligible to vote on the measure to which the argument refers, whichever is less. The  
 16 number of registered electors in an electoral district, for the purposes of this section, shall be cal-  
 17 culated on January 1 of each year. Each person signing the petition shall subscribe to a statement  
 18 that the person has read and agrees with the argument. The signatures on each petition shall be  
 19 certified by the county clerk in the manner provided in ORS 249.008. The petition shall be filed with  
 20 the county clerk.

21 ~~[(2)]~~ **(3)** The county clerk shall include in the county voters' pamphlet, on the page of the printed  
 22 argument, the name of the person who submitted the argument, the name of the organization the  
 23 person represents, if any, whether the argument supports or opposes the measure and a disclaimer  
 24 that the argument does not constitute an *[indorsement]* **endorsement** by the county and that the  
 25 county does not warrant the accuracy or truth of any statement made in the argument.

26 **(4) A person filing an argument under this section shall include with the argument a**  
 27 **signed written statement indicating that the person believes the argument does not contain**  
 28 **any false statement of material fact.**

29 **SECTION 4.** ORS 260.715 is amended to read:

30 260.715. (1) A person may not knowingly make a false statement, oath or affidavit when a  
 31 statement, oath or affidavit is required under the election laws.

32 (2) A person may not request a ballot in a name other than the person's own name.

33 (3) A person may not vote or attempt to vote more than once at any election held on the same  
 34 date.

35 (4) A person, except an elections official in performance of duties, may not willfully alter or  
 36 destroy a ballot cast at an election or the returns of an election.

37 (5) A person may not willfully place a fraudulent ballot among the genuine ballots.

38 (6) A person may not falsely write anything purporting to be written by an election board  
 39 member on the ballot or ballot stub.

40 (7) A person may not commit theft of a ballot or tally or return sheet, or willfully hinder or  
 41 delay the delivery of the tally or return sheet to the county clerk, or fraudulently break open a  
 42 sealed tally or return sheet of the election.

43 (8) A person may not manufacture or knowingly use a fraudulent ballot return identification  
 44 envelope or secrecy envelope or sell, offer to sell, purchase or offer to purchase, for money or other  
 45 valuable consideration, any official ballot, replacement ballot, ballot return identification envelope

1 or secrecy envelope. As used in this subsection, “ballot return identification envelope” and “secrecy  
2 envelope” mean those envelopes used to return ballots to the county clerk by absent electors or in  
3 elections conducted by mail.

4 **(9) Subsection (1) of this section does not apply to signed statements submitted with**  
5 **voters’ pamphlet arguments under ORS 251.255 or 251.355.**

6

---