

Enrolled
House Bill 2095

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Secretary of State Bill Bradbury)

CHAPTER

AN ACT

Relating to elections; creating new provisions; amending ORS 247.012, 247.125, 247.302, 247.307, 248.008, 249.056, 249.190, 254.085, 254.175, 254.426, 254.470, 254.476, 254.480, 254.529, 258.006, 258.016, 258.026, 258.036, 258.046, 258.055 and 260.993; and declaring an emergency.

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

SECTION 1. ORS 247.012, as amended by section 1, chapter 53, Oregon Laws 2008, is amended to read:

247.012. (1) A qualified person may register to vote or update a registration to vote by:

(a) Delivering by mail or otherwise a completed registration card to any county clerk, the Secretary of State, any office of the Department of Transportation or any designated voter registration agency as described in ORS 247.208;

(b) Personally delivering the card to an official designated by a county clerk under subsection (7) of this section; or

(c) Completing the voter registration portion of the application for issuance or renewal of a driver license, issuance of a state identification card under ORS 807.400 or a change of address at an office of the Department of Transportation under ORS 247.017.

(2) If a registration card is mailed or delivered to:

(a) Any person other than a county clerk or the Secretary of State, the person shall forward the card to a county clerk or the Secretary of State not later than the fifth day after receiving the card; or

(b) The Secretary of State or a county clerk for a county other than the county in which the person applying for registration resides, the Secretary of State or county clerk shall forward the card to the county clerk for the county in which the person resides not later than the fifth day after receiving the card.

(3) Registration of a qualified person occurs:

(a) When a legible, accurate and complete registration card is received in the office of any county clerk, the Office of the Secretary of State, an office of the Department of Transportation, a designated voter registration agency under ORS 247.208 or at a location designated by a county clerk under subsection (7) of this section;

(b) On the date a registration card is postmarked if the card is received after the 21st day immediately preceding an election but is postmarked not later than the 21st day immediately preceding the election and is addressed to an office of any county clerk, the Office of the Secretary of State, an office of the Department of Transportation or any designated voter registration agency as described in ORS 247.208; or

(c) In the case of a registration card missing a date of birth, containing an incomplete date of birth or containing an unintentional scrivener's error that is supplied or corrected as described in subsection (4) or (6) of this section, on the date that registration would have occurred if the registration card had not been missing the date of birth, contained an incomplete date of birth or contained the scrivener's error.

(4) **Except as provided in ORS 247.125**, if a registration card is legible, accurate and contains, at a minimum, the registrant's name, residence address, date of birth and signature, the county clerk shall register the person. If this information is missing from the registration card or the date of birth is incomplete, the county clerk shall attempt to contact the person to obtain the missing or incomplete information. The county clerk may supply the registrant's date of birth from any previous registration of the registrant.

(5) If a registration card meets the requirements of subsection (4) of this section but is missing an indication of political party affiliation, the registrant shall be considered not affiliated with any political party. This subsection does not apply if an elector is updating a registration within the same county.

(6) If a registration card contains an unintentional scrivener's error, the county clerk may attempt to contact the person to correct the error.

(7) A county clerk may appoint officials to accept registration of persons at designated locations. The appointments and locations shall be in writing and filed in the office of the county clerk. The county clerk shall be responsible for the performance of duties by those appointed.

(8) A registration card received and accepted under this section shall be considered an active registration.

(9) A registration may be updated at any time.

SECTION 2. ORS 247.125 is amended to read:

247.125. (1) *[No]* **A person *[shall]* may not** alter any information supplied on a registration card except:

[(1)] **(a)** An elections officer in the performance of official duties.

[(2)] **(b)** The person who *[fills out]* **supplies the information on** the registration card for the purpose of registering to vote.

(2) A county clerk may not register a person who alters any information printed on a registration card regarding:

(a) The indication that the person is a citizen of the United States; or

(b) The signature statement in which the person attests to the person's qualifications as an elector and the information supplied on the voter registration card.

SECTION 3. ORS 247.302 is amended to read:

247.302. (1) The effective date of a voter registration updated under ORS 247.292 *[or]* **is the date on which the county clerk receives written evidence of the change of residence or mailing address.**

(2) The effective date of a voter registration updated under ORS 247.296 is the date *[that]* **on which** the county clerk changes the address information on the voter registration file.

SECTION 4. ORS 248.008 is amended to read:

248.008. (1) An affiliation of electors becomes a minor political party in the state, a county or other electoral district, qualified to make nominations for public office in that electoral district and in any other electoral district wholly contained within the electoral district, when either of the following events occurs:

(a) When the affiliation of electors has filed with the Secretary of State a petition with the signatures of at least a number of electors equal to one and one-half percent of the total votes cast in the electoral district for all candidates for Governor at the most recent election at which a candidate for Governor was elected to a full term. The petition also *[shall]* **must** state the intention to form a new political party and give the designation of it. The *[filed]* petition *[shall]* **must** contain only original signatures. *The petition shall* **and must** be filed not later than two years following the date the prospective petition is filed. The circulator shall certify on each signature sheet that

the circulator witnessed the signing of the signature sheet by each individual whose signature appears on the signature sheet and that the circulator believes each individual is an elector registered in the electoral district. The Secretary of State shall verify whether the petition contains the required number of signatures of electors. *[The petition shall not be accepted]* **The Secretary of State may not accept a petition** for filing if it contains less than 100 percent of the required number of signatures. The Secretary of State by rule shall designate a statistical sampling technique to verify whether a petition contains the required number of signatures of electors. A petition *[shall]* **may** not be rejected for the reason that it contains less than the required number of signatures unless two separate sampling processes both establish that the petition lacks the required number of signatures. The second sampling must contain a larger number of signatures than the first sampling. The Secretary of State may employ professional assistance to determine the sampling technique. The statistical sampling technique may be the same as that adopted under ORS 250.105. Before circulating the petition, the chief sponsor of the petition *[shall]* **must** file with the Secretary of State a signed copy of the prospective petition. The chief sponsor *[shall]* **must** include with the prospective petition a statement declaring whether one or more persons will be paid money or other valuable consideration for obtaining signatures of electors on the petition. After the prospective petition is filed, the chief sponsor *[shall]* **must** notify the filing officer not later than the 10th day after the chief sponsor first has knowledge or should have had knowledge that:

(A) Any person is being paid for obtaining signatures, when the statement included with the prospective petition declared that no such person would be paid.

(B) No person is being paid for obtaining signatures, when the statement included with the prospective petition declared that one or more such persons would be paid.

(b) When the affiliation of electors has polled for any one of its candidates for any public office in the electoral district at least one percent of the total votes cast in the electoral district for all candidates for:

(A) Presidential elector at the last general election at which candidates for President and Vice President of the United States were listed on the ballot; or

(B) Any single state office to be voted upon in the state at large for which nominations by political parties are permitted by law at the most recent election at which a candidate for the office was elected to a full term.

(2) After satisfying either requirement of subsection (1) of this section, the minor political party may nominate candidates **for election** at the next general election *[if at any time during the period beginning on the date of the next primary election and ending on the 90th day before the next general election, a number of electors equal to at least one-tenth of one percent of the total votes cast in the state or electoral district for all candidates for Governor at the most recent election at which a candidate for Governor was elected to a full term are registered as members of the party]*.

(3) A filing officer *[shall]* **may** not accept a certificate of nomination of a candidate nominated by a minor political party **for a subsequent general election** unless the minor political party has satisfied the *[registration requirement]* **requirements** of subsection *[(2)]* **(4)(a) or (b)** of this section.

(4) After a minor political party qualifies to nominate candidates **for a general election under subsection (1) of this section**, in order to maintain status as a minor political party **for a subsequent general election**:

(a)(A) **Following each general election, at any time during the period beginning on the date of the next primary election and ending on the 90th day before the next general election, a number of electors equal to at least one-tenth of one percent of the total votes cast in the state or electoral district for all candidates for Governor at the most recent election at which a candidate for Governor was elected to a full term must be registered as members of the party; and**

(B) A candidate or candidates of the party must poll a number of votes described in subsection (1)(b) of this section at each subsequent general election *[and following each general election, the registration requirement of subsection (2) of this section must be satisfied]*; or

(b) Following each general election, at any time during the period beginning on the date of the next primary election and ending on the 90th day before the next general election, a number of electors equal to at least one-half of one percent of the total number of registered electors in this state must be registered as members of the party.

[(5) An affiliation of electors ceases to be a minor political party in the state or electoral district if:]

[(a) The registration requirement of subsection (2) or (4)(b) of this section is not satisfied. The affiliation of electors ceases to be a minor political party on the date of the deadline for satisfying the registration requirement; or]

[(b) Except as provided in subsection (4)(b) of this section, in the case of a minor political party qualified to nominate candidates, a candidate or candidates of the minor political party do not satisfy the one percent requirement specified in subsection (1)(b) of this section at the next general election. The affiliation of electors ceases to be a minor political party on the date of the election.]

(5) An affiliation of electors that fails to maintain its status as a minor political party, as described in subsection (4) of this section, ceases to be a minor political party on the 90th day before the date of the next general election.

(6) During the period beginning on the date of the primary election and ending on the 90th day before the date of the general election, the Secretary of State shall determine not less than once each month whether the registration [*requirement*] **requirements** of subsection [(2) or (4)(b)] **(4)** of this section [*has*] **have** been satisfied. If the **minor political** party changes its name, only those electors who register on or after the effective date of the name change as members of the party under the new party name shall be counted as members of the party under this subsection.

(7) An affiliation of electors or a minor political party may not satisfy the one percent requirement referred to in subsection (1)(b) of this section by nominating a candidate who is the nominee of another political party at the same election.

(8) For purposes of this section, “subsequent general election” means any general election that is held after the first general election following qualification as a minor political party under subsection (1) of this section.

SECTION 5. ORS 249.056 is amended to read:

249.056. (1) At the time of filing a declaration of candidacy a candidate for the following offices shall pay to the officer with whom the declaration is filed the following fee:

(a) United States Senator, \$150.

(b) Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction, Representative in Congress, judge of the Supreme Court, Court of Appeals or Oregon Tax Court, or executive officer or auditor of a metropolitan service district, \$100.

(c) County [*office*] **officer**, district attorney, **county judge who exercises judicial functions** or circuit court judge, \$50.

(d) State Senator or Representative or councilor of a metropolitan service district under ORS chapter 268, \$25.

(2) No filing fee shall be required of persons filing a declaration of candidacy for precinct committeeperson or justice of the peace.

SECTION 6. ORS 249.190 is amended to read:

249.190. (1) Except as provided in ORS 254.650, a vacancy in the nomination of a major political party candidate may be filled before the date of the general election by that political party in a manner prescribed by party rule.

(2) Immediately after selecting a new nominee, the party, by the most expeditious means practicable, shall notify the filing officer with whom a declaration of candidacy for the office is filed of the name of the nominee.

(3) If the filing officer with whom a declaration of candidacy for the office is filed determines that the candidate who has been nominated by a major political party is ineligible to be elected to the office, the officer shall declare the nomination vacant and the political party

shall select another candidate to fill the vacancy in the nomination as provided under this section.

[(3)] (4) The Secretary of State by rule may adopt a schedule specifying the period following a vacancy within which a major political party must notify the filing officer of the name of the new nominee.

SECTION 7. ORS 254.085 is amended to read:

254.085. (1) The Secretary of State, not later than the 61st day before the date of a primary or general election, shall file with each county clerk a statement of the **federal and** state [*and congressional district*] offices to be filled or for which candidates are to be nominated in the county at the election, information concerning all candidates for the offices, and the state measures to be voted on.

(2) The information concerning candidates for the Supreme Court, Court of Appeals, Oregon Tax Court and circuit court shall include a designation of incumbent for each candidate who is the regularly elected or appointed judge of the court to which the candidate seeks election. If a candidate was regularly elected or appointed to a specific position or department on the court, the candidate shall be designated as the incumbent only if the person is a candidate for that position or department.

(3) Included with each state measure shall be the measure number, the latest ballot title certified by the Attorney General under ORS 250.067 (2) or, if the Supreme Court has reviewed the title under ORS 250.085, the title certified by the court and the financial estimates under ORS 250.125. The Secretary of State shall keep a copy of the statement.

SECTION 8. ORS 254.175 is amended to read:

254.175. (1) In lieu of printing the complete ballot title of any measure, other than a state measure, the county clerk may print the caption and the question of the ballot title and the measure number on the ballot.

(2) In lieu of printing the complete ballot title and financial estimates of any state measure to be initiated or referred, the county clerk may print the caption of the ballot title, the statements described in ORS 250.035 (2)(b) and (c) and the measure number on the ballot.

(3) In the case of a recall election, **the following shall be printed on the ballot:**

(a) The statements described in section 18, Article II of the Oregon Constitution, and ORS 249.877 [*shall be printed on the ballot.*]; **and**

(b) **The question “Do you vote to recall _____ from the office of _____?”, with the name of the person against whom a recall petition has been filed printed in the first blank space and the public office held by the person printed in the second blank space.**

(4) The complete text of each ballot title and any financial estimates shall be included with each official ballot.

SECTION 9. ORS 254.426 is amended to read:

254.426. (1) Whenever any person votes a challenged ballot, the county clerk shall ensure that the ballot offered by the person includes the number of the written statement of challenge so that the ballot may be identified in any future contest of the election.

(2) The county clerk shall examine the challenge and determine if the person is validly registered to vote and if the vote was properly cast. The ballot shall be counted only if the county clerk determines the person is validly registered.

(3) The county clerk shall ensure that the information on the numbered written statement is treated as confidential so that in the event of a recount of votes it cannot be determined how any challenged person voted.

(4) The county clerk shall mail to each person voting under this section and ORS 254.415 a written statement that describes the nature of the challenge. If the person does not provide evidence sufficient to verify the person’s registration by the deadline described in subsection (5) of this section, the registration of the person shall be considered inactive until

the person updates or verifies the registration, the registration is canceled or the county clerk determines that the person is validly registered.

[(4)] (5) The registration of [any] each person voting under this section and ORS 254.415 shall be verified not later than the [last business day prior to the last day for the official certification of election results required by ORS 254.545 (3) and 255.295 (1)] **10th calendar day after the date of the election** in order for the vote of the person to be counted.

SECTION 10. ORS 254.476 is amended to read:

254.476. The county clerk may employ personnel as necessary to open envelopes, prepare ballots for counting and count ballots. [Such] **The** personnel [shall] **may** not all be members of the same political party. **A candidate on the ballot at an election, other than an incumbent candidate for county clerk, or** a person who is the spouse, child, son-in-law, daughter-in-law, parent, mother-in-law, father-in-law, sibling, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent or stepchild of [a] **any** candidate on the ballot [at an election shall] **may** not be employed and may not serve as a volunteer in the capacity described in this section.

SECTION 11. ORS 254.529 is amended to read:

254.529. (1) At each general election, the county clerk shall conduct a hand count of ballots as described in this section and compare the tally of votes for those ballots produced by a vote tally system with the tally of votes for those ballots produced by the hand count.

(2)(a) In the event that the unofficial tally of ballots produced by a vote tally system reveals that the margin of victory between the two candidates receiving the largest number of votes in the county is less than one percent of the total votes cast in that election in the county, the county clerk shall conduct a hand count of ballots in at least 10 percent of all precincts or of ballots in at least 10 percent of all batches of ballots collected by the county clerk.

(b) In the event that the unofficial tally of ballots reveals that the margin of victory between the two candidates receiving the largest number of votes in the county is greater than or equal to one percent but less than two percent of the total votes cast in the county, the county clerk shall conduct a hand count of ballots in at least five percent of all precincts or of ballots in at least five percent of all batches of ballots collected by the county clerk.

(c) In the event that the unofficial tally of ballots reveals that the margin of victory between the two candidates receiving the largest number of votes in the county is greater than or equal to two percent of the total votes cast in the county, the county clerk shall conduct a hand count of ballots in at least three percent of all precincts or of ballots in at least three percent of all batches of ballots collected by the county clerk.

(3) The Secretary of State shall select the precincts at random. At the general election, no fewer than 150 ballots must have been cast in at least one of the precincts selected. The county clerk shall conduct a hand count of ballots cast in the election contest between the two candidates receiving the largest number of votes in the county, an election contest for [a state office] **an office to be voted on in the state at large** and, if possible, an election contest for a state measure.

(4) Not later than **5 p.m. of the third business** day after the date of the general election, the Secretary of State shall advise county clerks in writing of:

(a) The election contests for which ballots are to be hand counted; and

(b) The precincts in which ballots are to be hand counted.

(5) A county clerk shall begin the hand counts prescribed by this section not later than the [20th] **21st** day after the election and complete the hand counts not later than the 30th day after the election. The results of the hand counts shall be provided to the Secretary of State, who shall make the results publicly available on the Secretary of State's website.

[(6) The county clerk shall conduct the hand counts required by this section in the manner provided in ORS 258.200 and 258.211.]

[(7)] (6) A comparison of the tally of votes produced by a vote tally system with the tally of votes produced by the hand count required by this section must show that the tally of votes produced by the vote tally system differs by no more than one-half of one percent from the tally of votes produced by the hand count.

~~[(8)(a)]~~ **(7)(a)** If a hand count conducted under this section results in a tally of votes for a candidate or measure that is different from the tally of votes produced by the vote tally system for that candidate or measure, and the difference for each race is equal to or less than one-half of one percent, the tally of votes produced by the vote tally system is the official tally of votes for that vote tally system.

(b) If a hand count conducted under this section results in a tally of votes for a candidate or measure that is different from the tally of votes produced by the vote tally system for that candidate or measure, and the difference in any race is greater than one-half of one percent, the county clerk shall conduct a second hand count of the same ballots.

(c) If the second hand count conducted under this subsection results in a tally of votes for a candidate or measure that is different from the tally of votes produced by the vote tally system for that candidate or measure, and the difference for each race is equal to or less than one-half of one percent, the tally of votes produced by the vote tally system is the official tally of votes for that vote tally system.

(d) If the second hand count conducted under this subsection results in a tally of votes for a candidate or measure that is different from the tally of votes produced by the vote tally system for that candidate or measure, and the difference in any race is greater than one-half of one percent, the county clerk shall conduct a hand count of all ballots counted by that vote tally system. The hand count is the official tally of votes for that vote tally system. If the hand count is the official tally of votes, not later than the 30th day after the election, the county clerk shall certify amended abstracts of votes to appropriate elections officials.

~~[(9)]~~ **(8)** For purposes of conducting the hand counts required under this section, the county clerk shall:

(a) Retain custody of the ballots; and

(b) Provide for security for the ballots and the information required to be collected under this subsection.

~~[(10)]~~ **(9)** *[Subsections (1) to (9) of]* This section *[do]* **does** not apply:

(a) To precincts that are subject to a recount under ORS 258.161, 258.280 or 258.290.

(b) If federal law requires a post-election hand count of ballots at the general election to verify election results and the Secretary of State determines that the requirements of federal law are at least as stringent as the requirements of subsections (1) to ~~[(9)]~~ **(8)** of this section.

SECTION 12. ORS 258.006 is amended to read:

258.006. As used in this chapter:

(1) "Candidate" means a candidate for nomination or election to any elective office.

(2) "Contestant" means any person who files a petition of contest under ORS 258.036.

(3) "Contestee" means:

(a) In a contest of the nomination of a person for an office or the election of a person to an office, all candidates for the nomination or office, other than a candidate who is a contestant.

(b) In a contest of the approval or rejection of a measure proposed by initiative petition, the chief petitioner of the petition, unless the chief petitioner is a contestant, and any other person involved in the cause of the contest.

(c) In a contest of the result of a recall election, the public officer subject to the recall.

~~[(c)]~~ **(d)** If the cause of the contest is ORS 258.016 (6) or (7), the county clerk.

(4) "County clerk" means the county clerk or the county official in charge of elections.

(5) "Elector" means an individual qualified to vote under section 2, Article II, Oregon Constitution.

(6) "Full recount" means a recount of all the precincts in which votes were cast for the nomination or office for which a candidate received a vote or on any measure that appeared on the ballot.

(7) "Measure" includes any of the following submitted to the people for their approval or rejection at an election:

(a) A proposed law.

- (b) An Act or part of an Act of the Legislative Assembly.
- (c) A revision of or amendment to the Oregon Constitution.
- (d) Local, special or municipal legislation.
- (e) A proposition or question.
- (8) "Partial recount" means a recount conducted in a number of precincts equal to the greater

of:

- (a) Five percent of the precincts in which votes were cast for the nomination or office for which a candidate received a vote or on any measure that appeared on the ballot; or
- (b) Three specified precincts in which votes were cast for the nomination or office for which a candidate received a vote or on any measure that appeared on the ballot.

SECTION 13. ORS 258.016 is amended to read:

258.016. The nomination or election of [*any person or the decision on any*] **a person, the result of a recall election or the approval or rejection of a** measure may be contested by any elector entitled to vote for the person, **recall** or measure, by any person who was a candidate at the election for the same nomination or office, **by the public officer subject to the recall**, by the Secretary of State if the contest involves a state measure, **the recall of a state officer** or a candidate for whom the Secretary of State is the filing officer, or by the county clerk who conducted the election, only for the following causes:

- (1) Deliberate and material violation of any provision of the election laws in connection with the nomination, election, **recall election or approval or rejection of a measure.**
- (2) Ineligibility of the person elected to the office to hold the office at the time of the election.
- (3) Illegal votes.
- (4) Mistake or fraud in the canvass of votes.
- (5) Fraud in the count of votes.
- (6) Nondeliberate and material error in the distribution of the official ballots by a local elections official, as that term is defined in ORS 246.012, or a county clerk.
- (7) A challenge to the determination of the number of electors who were eligible to participate in an election on a measure conducted under section 11 (8), Article XI of the Oregon Constitution.

SECTION 14. ORS 258.026 is amended to read:

258.026. (1) The nomination or election of a person [*shall*] **may** not be set aside for any cause listed in ORS 258.016 (3) to (5) unless:

(a) The person nominated or elected had knowledge of or connived in the cause of the contest; or

(b) The number of votes taken from the person nominated or elected by reason of the cause of the contest would reduce the legal votes of the person below the number of legal votes given to another person for the same nomination or office.

(2) The nomination or election of a person [*shall*] **may** not be set aside for the cause described in ORS 258.016 (6) unless [*it can be determined that*] the nomination or election would have been given to one of the candidates other than the candidate nominated or elected if all votes not cast or tallied due to the error had been cast or tallied for the other candidate.

(3) The approval or rejection of a measure [*shall*] **may** not be set aside unless [*it appears that*]:

(a) The number of votes taken from the approval or rejection by reason of the **cause of the** contest would reverse the outcome of the election; or

(b) The outcome of the election would have been reversed if all votes not cast or tallied due to an error under ORS 258.016 (6) had been cast or tallied [*for approval or rejection of the measure*] **in opposition to the contested outcome.**

(4) **The result of a recall election may not be set aside unless:**

(a) **The number of votes taken from the result of the recall election by reason of the cause of the contest would reverse the result; or**

(b) **The result of the recall election would have been reversed if all votes not cast or tallied due to an error under ORS 258.016 (6) had been cast or tallied in opposition to the contested result.**

SECTION 15. ORS 258.036 is amended to read:

258.036. (1) Not later than the 40th day after the election or the seventh day after completion of a recount of votes cast in connection with the [*nomination, office or measure*] **election**, any person authorized to contest a result of the election may file a petition of contest. The petition shall be filed with:

(a) The Circuit Court for Marion County if the petition involves a state measure, a candidate for election to the office of elector of President and Vice President of the United States or a candidate for nomination or election to the office of United States Senator, United States Representative in Congress, Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction or a position of judge on the Oregon Supreme Court, the Oregon Court of Appeals or the Oregon Tax Court.

(b) The circuit court for the county where a majority of the electors in the electoral district reside if the petition involves a candidate for nomination or election to the office of state Senator, state Representative, circuit court judge or district attorney.

(c) The circuit court for the county in which the filing officer is located if the petition involves a candidate for nomination or election to county, city or district office or a county, city or district measure. If a district is located in more than one county, the petition shall be filed with the circuit court for the county in which the administrative office of the district is located.

(d) The circuit court for the county in which the filing officer authorized to order the recall election is located if the petition involves the recall of a public officer.

(2) The petition shall be verified in the manner required for verification of complaints in civil cases and shall specify:

- (a) The cause of the contest; and
- (b) The names of all contestees.

SECTION 16. ORS 258.046 is amended to read:

258.046. (1) The prevailing party in the contest proceeding shall recover costs, disbursements and reasonable attorney fees at trial and on appeal against the losing party. However, if the cause of the contest is a mistake in the canvass of votes and the contestant prevails, the cost of any re-canvass of votes shall be paid by:

- (a) The county for a contest of a state or county nomination, office, **recall election** or measure;
- (b) The city for a contest of a city nomination, office, **recall election** or measure; or
- (c) Any other political subdivision or public corporation for a contest of such a subdivision or corporation nomination, office, **recall election** or measure.

(2) In a contest under ORS 258.016 (7), costs, disbursements and attorney fees [*shall*] **may** not be assessed against the county clerk unless the court makes a specific finding of fault against the county clerk.

SECTION 17. ORS 258.055 is amended to read:

258.055. (1) Except as provided in subsection (2) of this section, when a contestant files a petition of contest with the circuit court described under ORS 258.036 [*(1)*], the contestant shall, within three business days of filing the petition, publish a notice stating that the petition has been filed and identifying the date of the deadline described in this subsection for filing a motion to intervene. The notice [*shall*] **must** be published at least once in the next available issue of a newspaper of general circulation published in the county where the proceeding is pending. Jurisdiction over the election contest shall be complete within 10 days after the notice is published as provided in this [*section*] **subsection**. Any person interested may at any time before the expiration of the 10 days appear and contest the validity of the proceeding, or of any of the acts or things enumerated in the proceeding.

(2) Subsection (1) of this section does not apply if the contest involves:

(a) A state measure[.].

(b) The election of a candidate to the office of elector of President and Vice President of the United States [*or*].

(c) The nomination or election of a candidate to the office of United States Senator, United States Representative in Congress, Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction or a position of judge on the Oregon Supreme Court, the Oregon Court of Appeals or the Oregon Tax Court.

(d) The recall of a person from the office of Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction or a position of judge on the Oregon Supreme Court, the Oregon Court of Appeals or the Oregon Tax Court.

(3) Not later than two business days after **the contestant files** a petition of contest [*is filed*] with the circuit court, the contestant shall serve a copy of the petition by certified mail on each contestee. If the Secretary of State or county clerk is not a contestee, not later than one business day after **the contestant files** a petition of contest [*is filed*] with the circuit court, the contestant shall file a copy of the petition with:

(a) The Secretary of State if the petition involves a candidate for state office, **the recall of a person from state office** or a state measure; or

(b) The county clerk if the petition involves a candidate for county, city or district office, **the recall of a person from county, city or district office** or a county, city or district measure. As used in this paragraph, "county clerk" includes the county clerk of the county in which the administrative office of a city or district is located regarding a measure, **a recall** or a candidate for an office to be voted on in a city or district located in more than one county.

(4) The circuit court shall fix a time for the hearing by the circuit court of the contest proceeding, and not later than the fifth day before the hearing shall give written notice of the hearing to each party to the proceeding. In fixing the time for the hearing, the court shall consider the dates set in any notice published under subsection (1) of this section and the dates of service on the contestees. The contest proceeding shall take precedence over all other business on the circuit court docket.

(5) The circuit court shall hear and determine the proceeding without a jury and shall issue written findings of law and fact. The practice and procedure otherwise applicable to civil cases shall govern the proceeding, except that the contestant has the burden of proof by clear and convincing evidence.

SECTION 18. Section 19 of this 2009 Act is added to and made a part of ORS chapter 258.

SECTION 19. (1) After the contest hearing, the circuit court shall render a judgment affirming or setting aside the results of the recall election. If the court sets aside the results of the election, a special election on the recall shall be held not later than 35 days after the date the judgment was rendered.

(2) The county of the county clerk or the local elections official who committed the error in the distribution of the official ballots shall bear the cost of the special election.

SECTION 20. ORS 260.993 is amended to read:

260.993. (1) The penalty for violation of ORS 260.532 is limited to that provided in ORS 260.532 (6) and (8).

(2) Violation of ORS 247.125 (1), 247.171 (5), 247.420 (2), 253.710, 260.402, 260.555, 260.558, 260.575, 260.645 or 260.665 (2) or (3) involving any action described in ORS 260.665 (2)(d) to (f) or 260.715 is a Class C felony.

(3) Violation of ORS 260.695 (4) is a Class A misdemeanor.

(4) Violation of ORS 247.171 (6) is a Class C misdemeanor.

SECTION 21. Section 22 of this 2009 Act is added to and made a part of ORS chapter 249.

SECTION 22. (1) If a vacancy occurs in a state office before the 61st day before the first general election to be held during that term of office, the remaining two years of the term of the state office shall be filled by the electors at that general election.

(2) The remaining two years of the term of the state office shall commence on the second Monday in January following the general election. Any appointment made to fill the vacancy shall expire when a successor to the office is elected and qualified.

(3) Candidates for the remaining two years of the term of the state office under this section shall be nominated as provided in this chapter except as follows:

(a) A major political party or a minor political party, by party rule, or an assembly of electors or individual electors, may select a nominee; and

(b) The Secretary of State shall accept certificates of nomination and notifications of nominees filed with the secretary pursuant to a schedule for filing set by the secretary, but in any case not later than the 62nd day before the first general election.

(4) As used in this section, "state office" means the office of Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries and Superintendent of Public Instruction.

SECTION 22a. Notwithstanding section 22 of this 2009 Act and ORS 651.030, the term of office of the Commissioner of the Bureau of Labor and Industries elected at the general election held on the first Tuesday after the first Monday in November 2012 shall be two years.

SECTION 23. ORS 247.307, as amended by section 4, chapter 53, Oregon Laws 2008, is amended to read:

247.307. (1) Except as provided in subsection (2) of this section, if the county clerk receives information updating the registration of an elector after the deadline in ORS 247.025:

(a) The county clerk shall issue a ballot to the elector if the elector's registration was inactive prior to updating; or

(b) The county clerk shall issue a replacement ballot upon request from the elector if the elector's registration was active prior to updating.

(2) If the county clerk receives a registration card updating an elector's residence or mailing address after the deadline in ORS 247.025, the county clerk shall *[issue a replacement]* **reissue** a ballot to the elector if the elector's registration was active prior to updating.

(3)(a) *[Notwithstanding ORS 254.480,]* If the county clerk is required to *[issue a replacement]* **reissue** a ballot under subsection (2) of this section, the county clerk shall:

(A) Verify the registration of the elector and ensure that another ballot has not been returned by the elector;

(B) Mark the return identification envelope clearly so that it may be readily identified as a *[replacement]* **reissued** ballot; and

(C) *[Issue the replacement]* **Reissue the** ballot by mail or other means.

(b) A *[replacement]* ballot *[issued]* **reissued** under this section must be received at the office of the county clerk, a place of deposit designated by the county clerk or any location described in ORS 254.472 or 254.474 not later than the end of the period determined under ORS 254.470 (1) on the date of the election. Upon receiving a voted *[replacement]* ballot *[issued]* **reissued** under this section, the county clerk shall process the ballot.

(4) Ballots issued under this section need not be mailed to electors after the fifth day before the date of the election and may be obtained by the elector in person from the county clerk up until and including the date of the election.

SECTION 24. ORS 254.470, as amended by section 5, chapter 53, Oregon Laws 2008, is amended to read:

254.470. (1) The Secretary of State by rule shall establish requirements and criteria for the designation of places of deposit for the ballots cast in an election. The rules shall also specify the dates and times the places of deposit must be open and the security requirements for the places of deposit. At a minimum, the places designated under this section shall be open on the date of the election for a period of eight or more hours, but must be open until at least 8 p.m. At each place of deposit designated under this section, the county clerk shall prominently display a sign stating that the location is an official ballot drop site.

(2)(a) Except as provided in paragraphs (b) and (c) of this subsection, the county clerk shall mail by nonforwardable mail an official ballot with a return identification envelope and a secrecy envelope not sooner than the 18th day before the date of an election and not later than the 14th day before the date of the election, to each active elector of the electoral district as of the 21st day before the date of the election.

(b) If the county clerk determines that an active elector of the electoral district as of the 21st day before the date of the election does not receive daily mail service from the United States Postal Service, the county clerk shall mail by nonforwardable mail an official ballot with a return identification envelope and a secrecy envelope to the elector not sooner than the 20th day before the date of an election and not later than the 18th day before the date of the election.

(c) In the case of ballots to be mailed to addresses outside this state to electors who are not long-term absent electors, the county clerk may mail the ballots not sooner than the 29th day before the date of the election.

(3) For an election held on the date of a primary election:

(a) The county clerk shall mail the official ballot of a major political party to each elector who is registered as being affiliated with the major political party as of the 21st day before the date of the election.

(b) The county clerk shall mail the official ballot of a major political party to an elector not affiliated with any political party if the elector has applied for the ballot as provided in this subsection and that party has provided under ORS 254.365 for a primary election that admits electors not affiliated with any political party.

(c) An elector not affiliated with any political party who wishes to vote in the primary election of a major political party shall apply to the county clerk in writing. The application shall indicate which major political party ballot the elector wishes to receive. Except for electors described in subsection (4) of this section, and subject to ORS 247.203, the application must be received by the county clerk not later than 5 p.m. of the 21st day before the date of the election.

(d) If the primary election ballot includes city, county or nonpartisan offices or measures, the county clerk shall mail to each elector who is not eligible to vote for party candidates a ballot limited to those offices and measures for which the elector is eligible to vote.

(4) For each elector who updates a voter registration after the deadline in ORS 247.025, the county clerk shall make the official ballot, the return identification envelope and the secrecy envelope available either by mail or at the county clerk's office or at another place designated by the county clerk. An elector to whom this subsection applies must request a ballot from the county clerk.

(5) The ballot shall contain the following warning:

Any person who, by use of force or other means, unduly influences an elector to vote in any particular manner or to refrain from voting is subject to a fine.

(6) Upon receipt of any ballot described in this section, the elector shall mark the ballot, sign the return identification envelope supplied with the ballot and comply with the instructions provided with the ballot. The elector may return the marked ballot to the county clerk by United States mail or by depositing the ballot at the office of the county clerk, at any place of deposit designated by the county clerk or at any location described in ORS 254.472 or 254.474. The ballot must be returned in the return identification envelope. If the elector returns the ballot by mail, the elector must provide the postage. A ballot must be received at the office of the county clerk, at the designated place of deposit or at any location described in ORS 254.472 or 254.474 not later than the end of the period determined under subsection (1) of this section on the date of the election.

(7) An elector may obtain a replacement ballot if the ballot is destroyed, spoiled, lost or not received by the elector. Replacement ballots shall be issued and processed as described in this

section and ORS [247.307 and] 254.480. The county clerk shall keep a record of each replacement ballot provided under this subsection. Notwithstanding any deadline for mailing ballots in subsection (2) of this section, a replacement ballot may be mailed, made available in the office of the county clerk or made available at one central location in the electoral district in which the election is conducted. The county clerk shall designate the central location. A replacement ballot need not be mailed after the fifth day before the date of the election.

(8) A ballot shall be counted only if:

(a) It is returned in the return identification envelope;

(b) The envelope is signed by the elector to whom the ballot is issued; and

(c) The signature is verified as provided in subsection (9) of this section.

(9) The county clerk shall verify the signature of each elector on the return identification envelope with the signature on the elector's registration card, according to the procedure provided by rules adopted by the Secretary of State. If the county clerk determines that an elector to whom a replacement ballot has been issued has voted more than once, the county clerk shall count only one ballot cast by that elector.

(10) At 8 p.m. on election day, electors who are at the county clerk's office, a place of deposit designated under subsection (1) of this section or any location described in ORS 254.472 or 254.474 and who are in line waiting to vote or deposit a voted ballot shall be considered to have begun the act of voting.

SECTION 25. ORS 254.480, as amended by section 6, chapter 53, Oregon Laws 2008, is amended to read:

254.480. (1) An elector may obtain a replacement ballot described in ORS 254.470. [*Except as provided in ORS 247.307,*] To vote a replacement ballot, the elector must complete and sign a replacement ballot request form. The request for a replacement ballot may be made electronically, by telephone, in writing, in person or by other means designated by the Secretary of State by rule.

(2) The replacement ballot request form shall be mailed or made available to the elector along with the replacement ballot.

(3) Upon receiving a request for a replacement ballot, the county clerk shall:

(a) Verify the registration of the elector and ensure that another ballot has not been returned by the elector;

(b) Note in the list of electors that the elector has requested a replacement ballot;

(c) Mark the return identification envelope clearly so that it may be readily identified as a replacement ballot; and

(d) Issue the replacement ballot by mail or other means.

(4) The completed and signed replacement ballot request form and the voted replacement ballot must be received at the office of the county clerk, a place of deposit designated by the county clerk or any location described in ORS 254.472 or 254.474 not later than the end of the period determined under ORS 254.470 (1) on the date of the election.

(5) Upon receiving a voted replacement ballot, the county clerk shall verify that a completed and signed replacement ballot request form has been received by the county clerk or is included with the voted replacement ballot. If a request form has been completed and signed by the elector and received by the county clerk, the county clerk shall process the ballot. If the request form is not completed or signed by the elector or received by the county clerk, the county clerk may not process the ballot.

SECTION 26. (1) **The amendments to ORS 247.012 and 247.125 by sections 1 and 2 of this 2009 Act apply to registration cards received in the office of the Secretary of State or a county clerk, an office of the Department of Transportation or another designated location on or after the effective date of this 2009 Act.**

(2) **The amendments to ORS 247.302 by section 3 of this 2009 Act apply to voter registration updates received by a county clerk on or after the effective date of this 2009 Act.**

(3) **The amendments to ORS 248.008 by section 4 of this 2009 Act apply to minor political parties that:**

- (a) Qualify as a minor political party on or after the effective date of this 2009 Act.
- (b) Cease to be a minor political party on or after the effective date of this 2009 Act.
- (4) The amendments to ORS 249.056 by section 5 of this 2009 Act apply to declarations of candidacy filed on or after the effective date of this 2009 Act.
- (5) Section 22 of this 2009 Act and the amendments to ORS 249.190 by section 6 of this 2009 Act apply to vacancies that occur on or after the effective date of this 2009 Act.
- (6) The amendments to ORS 254.175 by section 8 of this 2009 Act apply to ballots printed on or after the effective date of this 2009 Act.
- (7) The amendments to ORS 254.085, 254.426, 254.476 and 254.529 by sections 7 and 9 to 11 of this 2009 Act apply to elections that are held on or after the effective date of this 2009 Act.
- (8) The amendments to ORS 247.307, 254.470 and 254.480 by sections 23, 24 and 25 of this 2009 Act apply to elector registration updates received by the county clerk on or after the effective date of this 2009 Act.

SECTION 27. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House April 16, 2009

Received by Governor:

Repassed by House May 28, 2009

.....M,....., 2009

Approved:

.....
Chief Clerk of House

.....M,....., 2009

.....
Speaker of House

.....
Governor

Passed by Senate May 22, 2009

Filed in Office of Secretary of State:

.....M,....., 2009

.....
President of Senate

.....
Secretary of State