

Enrolled
Senate Bill 148

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CHAPTER

AN ACT

Relating to election petitions; creating new provisions; amending ORS 250.048, 250.105, 250.175, 250.275, 260.262 and 659A.885; and declaring an emergency.

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

SECTION 1. ORS 250.048 is amended to read:

250.048. (1) A person may not pay money or other valuable consideration to another person for obtaining signatures of electors on a state initiative, referendum or recall petition or a prospective petition for a state measure to be initiated, and a person may not receive money or other valuable consideration for obtaining signatures of electors on a state initiative, referendum or recall petition or a prospective petition for a state measure to be initiated, unless the person obtaining the signatures:

(a) Registers with the Secretary of State in the manner prescribed by this section and by rule of the secretary; and

(b) Completes the training program prescribed by rule of the secretary.

(2) A person may apply to the secretary for a registration required under subsection (1) of this section. The application shall include:

(a) The full name and any assumed name of the applicant;

(b) The residential street address of the applicant;

(c) An example of the signature of the applicant;

(d) A list of the prospective petitions on which the applicant will gather signatures;

(e) A list of the initiative, referendum and recall petitions on which the applicant will gather signatures;

(f) If the applicant has been convicted for a criminal offense involving fraud, forgery or identification theft, information relating to the circumstances of the conviction as required by the secretary;

(g) A statement signed by the applicant acknowledging that the applicant has read and understands Oregon law applicable to the gathering of signatures on state initiative, referendum and recall petitions and prospective petitions for state measures to be initiated, as the law is summarized in the training program established by the Secretary of State;

(h) Evidence indicating that the applicant has completed the training required by the secretary by rule;

(i) A photograph of the applicant; *[and]*

(j) A statement signed by a chief petitioner of each petition or prospective petition, or a person designated by a chief petitioner under this paragraph, upon which the applicant will gather signatures acknowledging that the chief petitioner is liable for violations of law or rule committed by the person obtaining signatures as provided in ORS 260.561. A chief petitioner may designate a person to sign a statement described in this paragraph on behalf of the chief petitioner[.]; **and**

(k) A copy of the applicant's criminal records check.

(3)(a) If an applicant complies with subsection (2) of this section, not later than five business days after the applicant applies, the secretary shall register the applicant and assign the applicant a registration number.

(b) A person who is registered to obtain signatures on a prospective petition for a state measure to be initiated need not reapply for a registration under this section in order to obtain signatures on a state initiative, referendum or recall petition, except that the person shall submit a list of the initiative, referendum and recall petitions on which the person will gather signatures.

(c) A registration to obtain signatures on a state initiative petition or a prospective petition for a state measure to be initiated is valid until the date that is four months before the next general election.

(d) A registration to obtain signatures on a referendum or recall petition is valid until the date the petition is filed for signature verification.

(4) A person may not apply for registration under this section if, during the five-year period prior to the date of application, the person:

(a) Has been convicted for a criminal offense involving fraud, forgery or identification theft in any state;

(b) Has had a civil penalty imposed under ORS 260.995 for a violation of this section or ORS 260.262; or

(c) Has had a civil or criminal penalty imposed for violation of a statute subject to a criminal penalty under ORS 260.993.

(5)(a) *[To assist in determining the identity of an applicant or whether an applicant has been convicted for a criminal offense described in subsection (4) of this section, upon consent of the applicant and]* Upon request of the secretary, the Department of State Police shall furnish to the secretary any information that the department may have in its possession **regarding an applicant**, including but not limited to the Law Enforcement Data System established in ORS 181.730, other computerized information and any other information to which the department may have access. **Information obtained under this paragraph may be used to assist in determining the identity of an applicant or whether an applicant has been convicted of a criminal offense described in subsection (4) of this section.**

(b) For purposes of receiving the information described in **paragraph (a)** of this subsection, the office of the Secretary of State is a "criminal justice agency" under ORS 181.010 to 181.560 and 181.715 to 181.730 and the rules adopted under ORS 181.555.

(c) Upon submitting an application for registration described in subsection (2) of this section, an applicant is deemed to have given the consent necessary for purposes of this subsection.

(6)(a) A chief petitioner shall ensure that a criminal records check is conducted for each applicant seeking registration under this section to determine whether the applicant has been convicted of any of the crimes described in subsection (4)(a) of this section, or was subject to any of the penalties described in subsection (4)(b) and (c) of this section.

(b) The secretary by rule shall prescribe the scope of the criminal records check to be performed pursuant to this subsection. The applicant's criminal records check may be conducted by either the chief petitioner or the applicant.

(c) An applicant seeking registration under this section is required to have only one criminal records check conducted for each period beginning the day after a biennial general election and ending on the day of the next biennial general election.

~~(6)~~ (7) If a person receives money or other valuable consideration for obtaining signatures of electors on a state initiative, referendum or recall petition or a prospective petition for a state

measure to be initiated and the person was not registered as required under this section at the time the signatures were obtained, the secretary may not include any signatures obtained by the person in a count under ORS 250.045 (3) or 250.105 or ORS chapter 249 for purposes of determining whether the petition or prospective petition contains the required number of signatures of electors.

[7] (8) A person registered under this section shall carry evidence of registration with the person while the person is obtaining signatures on a state initiative, referendum or recall petition or a prospective petition for a state measure to be initiated. The evidence of registration shall contain the photograph and registration number of the person. The secretary by rule shall designate the form of the evidence of registration.

[8] (9) A photograph of an applicant submitted under subsection (2) of this section shall:

- (a) Be a conventional photograph with a plain background;
- (b) Show the face or the face, neck and shoulders of the applicant; and
- (c) Be prepared and processed for printing as prescribed by the secretary.

[9] (10) A person registered under this section may not obtain signatures on a petition or prospective petition for which the person is being paid and, at the same time, obtain signatures on a petition or prospective petition for which the person is not being paid. The secretary may not include any signatures obtained in violation of this subsection in a count under ORS 250.045 (3) or 250.105 or ORS chapter 249 for purposes of determining whether a state initiative, referendum or recall petition or a prospective petition for a state measure to be initiated contains the required number of signatures of electors.

[10] (11) The secretary shall adopt rules necessary to implement this section, including rules:

(a) Establishing procedures for registering persons who may be paid money or other valuable consideration for obtaining signatures of electors on state initiative, referendum or recall petitions or prospective petitions for state measures to be initiated; and

(b) Establishing a training program for persons who may be paid money or other valuable consideration for obtaining signatures of electors on state initiative, referendum or recall petitions or prospective petitions for state measures to be initiated.

SECTION 2. ORS 250.105 is amended to read:

250.105. (1)(a) An initiative or referendum petition relating to a state measure must be filed with the Secretary of State for the purpose of verifying whether the petition contains the required number of signatures of electors.

(b) Signatures previously verified on a prospective petition for a state measure to be initiated shall be included in the calculation under this section for the purpose of verifying whether the initiative petition contains the required number of signatures of electors.

(c) When filing an initiative or referendum petition, the *[chief petitioner shall sort the]* signature sheets **must be sorted** on the basis of the name of the person who obtained the signatures on the sheet.

(d) The secretary shall adopt rules establishing procedures for verifying signatures on an initiative or referendum petition.

(e) A filed initiative or referendum petition must contain only original signatures. The secretary or county clerk shall verify each petition in the order in which the petitions are filed with the secretary.

(2)(a) Once every month, the chief petitioner, **or agent on behalf of the chief petitioner**, of an initiative petition relating to a state measure shall file with the secretary all signature sheets containing signatures of electors obtained by a person being paid to obtain signatures on the petition since the previous monthly filing. The secretary shall hold all signature sheets filed under this subsection unless the chief petitioner withdraws the petition.

(b) The secretary shall adopt rules prescribing the dates by which signature sheets must be filed each month. The secretary may not accept signature sheets containing signatures of electors obtained by a person being paid to obtain signatures on the petition before the previous monthly filing deadline prescribed under this paragraph for purposes of determining whether an initiative petition

relating to a state measure contains the required number of signatures of electors under this section.

(3) The secretary may not accept a referendum petition relating to a state measure for filing if the petition contains less than 100 percent of the required number of signatures. The secretary may not determine whether an initiative petition contains the required number of signatures of electors unless at least 100 percent of the required number of signatures have been filed with the secretary.

(4) If the total number of signatures required on an initiative petition or referendum petition is submitted not less than 165 days before the election at which the proposed measure is to be voted upon and if the secretary determines that insufficient signatures have been submitted but the deadline for filing signatures on the petition has not passed, the petitioners may submit additional signatures.

(5) The secretary by rule shall designate a statistical sampling technique to verify whether a petition contains the required number of signatures of electors. A petition 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. If two samplings are required under this subsection, the total number of signatures verified on the petition shall be not less than five percent of the total number of signatures on the petition.

(6) For purposes of estimating the number of duplicate signatures contained in a petition, the secretary shall apply at least an eight percent duplication rate in the first sampling of signatures on all petitions. If a second sampling of signatures is required under subsection (5) of this section, the secretary shall calculate an estimated signature duplication rate for each petition for which a second sampling is required. The calculation shall be based on the number of electors the secretary determines have signed a specific petition more than once.

(7) When verifying signatures for a state initiative or referendum petition, the secretary or county clerk shall identify on an elector's voter registration record or other database that the elector signed the specific initiative or referendum petition.

(8) The Secretary of State may employ professional assistance to determine the sampling technique to be designated under subsection (5) of this section.

(9) The Secretary of State and the county clerk, if requested, shall permit authorized persons to be at the office of the secretary or county clerk to watch the verification of signatures on a state initiative petition or prospective petition for a state measure to be initiated under this section. The authorization shall be in writing and shall be filed with the secretary or county clerk. The secretary or county clerk shall permit only as many persons as watchers under this subsection as will not interfere with an orderly procedure at the office of the secretary or county clerk.

SECTION 3. ORS 250.175 is amended to read:

250.175. (1) When a prospective petition for a county measure to be referred is filed with the county clerk, the clerk shall authorize the circulation of the petition containing the title of the measure as enacted by the county governing body or, if there is no title, the title supplied by the petitioner filing the prospective petition. The county clerk immediately shall send two copies of the prospective petition to the district attorney.

(2) Not later than the sixth business day after a prospective petition for a county measure to be initiated is filed with the county clerk, the clerk shall send two copies of it to the district attorney if the measure to be initiated has been determined to be in compliance with section 1 (2)(d), Article IV, and section 10, Article VI of the Oregon Constitution, as provided in ORS 250.168.

(3)(a) Not later than the fifth business day after receiving the copies of the prospective petition, and notwithstanding ORS 203.145 (3), the district attorney shall prepare a ballot title for the county measure to be initiated or referred and return one copy of the prospective petition and **certify** the ballot title to the county clerk. [*Unless the circuit court certifies a different title, this ballot title shall be the title printed on the ballot.*]

(b) **If the district attorney determines that a ballot title certified under this subsection contains a clerical error, the district attorney may correct the error and certify to the**

county clerk a corrected ballot title not later than the 10th business day after the date the ballot title was certified.

[4] (c) A copy of the ballot title shall be furnished to the chief petitioner.

(4) Unless the circuit court certifies a different ballot title, the latest ballot title certified by the district attorney under subsection (3) of this section is the title to be printed on the ballot.

(5)(a) The county clerk, upon receiving a ballot title for a county measure to be referred or initiated from the district attorney or the county governing body, shall publish in the next available edition of a newspaper of general circulation in the county a notice of receipt of the ballot title including notice that an elector may file a petition for review of the ballot title not later than the date referred to in ORS 250.195.

(b) In addition to publishing a notice as described in paragraph (a) of this subsection, the county clerk may publish a notice on the county's website for a minimum of seven days.

(6) As used in this section, "clerical error" means a typographical, arithmetical or grammatical error or omission that is evident from the text of the certified ballot title or by comparison of the text of the ballot title with a written explanation that was provided by the district attorney and issued concurrently with the certified ballot title.

SECTION 4. ORS 250.275 is amended to read:

250.275. (1) When a prospective petition for a city measure to be referred is filed with the city elections officer, the officer shall authorize the circulation of the petition containing the title of the measure as enacted by the city governing body or, if there is no title, the title supplied by the petitioner filing the prospective petition. The city elections officer immediately shall send two copies of the prospective petition to the city attorney.

(2) Not later than the sixth business day after a prospective petition for a city measure to be initiated is filed with the city elections officer, the officer shall send two copies of it to the city attorney if the measure to be initiated has been determined to be in compliance with section 1 (2)(d) and (5), Article IV of the Oregon Constitution, as provided in ORS 250.270.

(3)(a) Not later than the fifth business day after receiving the copies of the prospective petition, the city attorney shall provide a ballot title for the city measure to be initiated or referred and return one copy of the prospective petition and **certify** the ballot title to the city elections officer. [*Unless the circuit court certifies a different title, this ballot title shall be the title printed on the ballot.*]

(b) If the city attorney determines that a ballot title certified under this subsection contains a clerical error, the city attorney may correct the error and certify to the city elections officer a corrected ballot title not later than the 10th business day after the date the ballot title was certified.

[4] (c) A copy of the ballot title shall be furnished to the chief petitioner.

(4) Unless the circuit court certifies a different ballot title, the latest ballot title certified by the city attorney under subsection (3) of this section is the title to be printed on the ballot.

(5)(a) The city elections officer, upon receiving a ballot title for a city measure to be referred or initiated from the city attorney or city governing body, shall publish in the next available edition of a newspaper of general distribution in the city a notice of receipt of the ballot title including notice that an elector may file a petition for review of the ballot title not later than the date referred to in ORS 250.296.

(b) In addition to publishing a notice as described in paragraph (a) of this subsection, the city elections officer may publish a notice on the city's website for a minimum of seven days.

(6) As used in this section, "clerical error" means a typographical, arithmetical or grammatical error or omission that is evident from the text of the certified ballot title or by comparison of the text of the ballot title with a written explanation that was provided by the city attorney and issued concurrently with the certified ballot title.

SECTION 5. ORS 260.262 is amended to read:

260.262. (1) As used in this section, "accounts" means:

(a) Any contract entered into by a chief petitioner of an initiative or referendum petition **relating to a state measure** and any person for purposes of obtaining signatures on the initiative or referendum petition or on a prospective petition for a state measure to be initiated;

(b) Any employment manual or training materials provided to persons who obtain signatures on the petition or prospective petition;

(c) Payroll records for each employee obtaining signatures on the petition or prospective petition showing hours worked, number of signatures collected and amounts paid;

(d) Records identifying the amount and purpose of each payment made by the chief petitioner or any contractor, as defined in ORS 260.563, to any subcontractor, as defined in ORS 260.563, obtaining signatures on the petition or prospective petition; and

(e) Copies of signature sheets circulated by persons who are being paid to obtain signatures on the petition or prospective petition.

(2) For purposes of enforcing section 1b, Article IV of the Oregon Constitution, a chief petitioner of an initiative or referendum petition **relating to a state measure** who pays any person money or other valuable consideration to obtain signatures on the petition or prospective petition shall keep detailed accounts. The accounts shall be current as of not later than the seventh calendar day after the date a payment is made to a person for obtaining signatures on the petition or prospective petition.

(3) The Secretary of State shall review the accounts of each chief petitioner described in subsection (2) of this section in the manner and according to a regular schedule adopted by the secretary by rule.

(4) In addition to the review conducted under subsection (3) of this section, the secretary, Attorney General or Commissioner of the Bureau of Labor and Industries may inspect the accounts of a chief petitioner described in subsection (2) of this section under reasonable circumstances at any time before the deadline for filing signatures on the petition or during the period specified for retention of the accounts under subsection (5) of this section. The right of inspection may be enforced by writ of mandamus issued by any court of competent jurisdiction.

(5) A chief petitioner must preserve the accounts pertaining to an initiative or referendum petition **relating to a state measure**, or to a prospective petition for a state measure to be initiated, for at least two years after the deadline for filing the petition for verification of signatures or at least two years after the date the last statement is filed under ORS 260.118, whichever is later.

(6) If a chief petitioner does not produce accounts under subsection (3) or (4) of this section:

(a) There is a rebuttable presumption that a violation of section 1b, Article IV of the Oregon Constitution, has occurred; and

(b) The chief petitioner may not obtain additional signatures on the petition or prospective petition until the chief petitioner is able to supply the accounts to the secretary, Attorney General or commissioner.

(7) Accounts are not subject to disclosure under ORS 192.410 to 192.505.

SECTION 6. Section 7 of this 2013 Act is added to and made a part of ORS chapter 659A.

SECTION 7. (1) In addition to the conduct prohibited in ORS 659A.199, it is an unlawful employment practice for a person to discriminate or retaliate against another person with respect to hire or tenure, compensation or other terms, conditions or privileges of employment for the reason that the person has in good faith reported information that the person believes is evidence of a violation of a state or federal election law, rule or regulation.

(2) This section applies only to a person who pays money or offers other valuable consideration for obtaining signatures of electors on a state initiative, referendum or recall petition or on a prospective petition for a state measure to be initiated.

SECTION 8. ORS 659A.885 is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, in-

cluding but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320 or 659A.421 **or section 7 of this 2013 Act.**

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421 **or section 7 of this 2013 Act:**

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and

(d) Any attorney fee agreement shall be subject to approval by the court.

(4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater.

(5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574, 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.

(6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section, a civil penalty in the amount of \$720.

(7) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages;

(b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action;

(c) At the request of any party, the action shall be tried to a jury;

(d) The court shall award reasonable attorney fees to a prevailing plaintiff;

(e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable

basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and

(f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1).

(8) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty:

(a) In an amount not exceeding \$50,000 for a first violation; and

(b) In an amount not exceeding \$100,000 for any subsequent violation.

(9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action. The court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails in the action if the court determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

(10) In an action under subsection (1) or (8) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) "Aggrieved person" includes a person who believes that the person:

(A) Has been injured by an unlawful practice or discriminatory housing practice; or

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.

SECTION 9. (1) The amendments to ORS 250.048 by section 1 of this 2013 Act apply to persons who apply for registration with the Secretary of State on or after the effective date of this 2013 Act.

(2) The amendments to ORS 250.175 and 250.275 by sections 3 and 4 of this 2013 Act apply to ballot titles certified on or after the effective date of this 2013 Act.

(3) Section 7 of this 2013 Act and the amendments to ORS 659A.885 by section 8 of this 2013 Act apply to actions commenced on or after the effective date of this 2013 Act.

SECTION 10. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate May 15, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 20, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State