

HB 2323 A STAFF MEASURE SUMMARY**Carrier:** Rep. Fahey, Rep. Zika**House Committee On Rules****Action Date:** 04/29/21**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 7-0-0-0**Yeas:** 7 - Bonham, Drazan, Fahey, Holvey, Salinas, Smith Warner, Zika**Fiscal:** Fiscal impact issued**Revenue:** No revenue impact, statement issued (Indeterminate Impact)**Prepared By:** Melissa Leoni, LPRO Analyst**Meeting Dates:** 3/4, 3/23, 4/13, 4/29**WHAT THE MEASURE DOES:**

Prohibits person from knowingly communicating materially false statement, including by electronic or telephonic means, with the intent to mislead electors about election date, ballot deadline, voter registration deadline, voter registration method, ballot deposit locations, elector qualifications, or voter registration status within 30 days of primary election or special election or within 60 days of general election. Excludes broadcast of advertisement by a radio or television station or cable television company unless the advertisement is created by the owner, licensee, or operator of the station or company. Authorizes Secretary of State (SOS), except in the case of a violation by SOS or a candidate for SOS, to institute civil proceedings and establishes civil penalty of up to \$10,000 for violations. Adds circulation by electronic or telephonic means to existing prohibition of knowingly communicating a false statement of material fact relating to any candidate, political committee, or measure. Requires imitation voters' pamphlets printed or circulated, including by electronic means, to be clearly marked as not official and establishes civil penalty of \$10,000 for each violation.

ISSUES DISCUSSED:

- Process and manner of voter disinformation
- Clarification needed for internet and social media communication
- Legal definition and judicial threshold for false statement of material fact

EFFECT OF AMENDMENT:

Clarifies that prohibition applies to statements circulated by electronic or telephonic means. Changes enforcement from Attorney General to Secretary of State (SOS), except in the case of a violation by SOS or a candidate for SOS, and clarifies location for deposit of penalties. Adds circulation by electronic or telephonic means to the existing prohibition of knowingly communicating a false statement of material fact relating to any candidate, political committee, or measure. Requires imitation voters' pamphlets printed or circulated, including by electronic means, to be clearly marked as not official and establishes civil penalty of \$10,000 for each violation. Prohibits person from registering as paid petition circulator if person has had a civil penalty imposed for a violation.

BACKGROUND:

ORS 260.532 prohibits a person from knowingly communicating a false statement of material fact about a candidate, political committee, or measure. Candidates are liable if they know of and consent to false statements made by others. This law is enforced by private lawsuit between the parties involved and complaints must be filed with the appropriate circuit court, either in the county in which the defendant resides or in the county where the material was published. A "candidate or political committee aggrieved by a violation" of this statute may file an action in an appropriate circuit court to recover damages and secure equitable relief. An action under this statute must be filed not later than the 30th day after the election to which the material relates. Violations may result in

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economic and noneconomic damages, or \$2,500, whichever is greater. Additionally, the court may grant other relief, such as ordering a retraction of the false statement (Secretary of State, *Election Law Summary*, December 2020).

The Secretary of State investigates complaints alleging possible false statements in documents required by election law, such as the required portion of a candidate's filing form or voters' pamphlet statement. In these cases, the candidate signs an affidavit or oath as to the veracity of the information on an election form (ORS 260.715(1)).

House Bill 2323 A prohibits a person from knowingly communicating a materially false statement, including by electronic or telephonic means, with the intent to mislead electors about certain election, ballot deposit, or voter registration information within 30 days of a primary election or special election or within 60 days of the general election. The measure adds circulation by electronic or telephonic statements to ORS 260.532, and requires imitation voters' pamphlets printed or circulated, including by electronic means, to be clearly marked as not official.