

House Bill 2323

Sponsored by Representative FAHEY (Pre-session filed.)

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 knowingly communicating materially false statement with intent to mislead electors about date of election, deadline for delivering ballot, voter registration deadline, method of registering to vote, locations at which elector may deposit ballot, qualifications of electors or voter registration status within 30 days of primary election or special election or within 60 days of general election.

Authorizes Attorney General to prosecute violation and establishes civil penalty of up to \$10,000 for violation.

A BILL FOR AN ACT

1
2 Relating to communicating false information about an election; creating new provisions; and
3 amending ORS 260.345.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 260.**

6 **SECTION 2. (1) A person may not cause to be written, printed, published, posted, com-**
7 **municated or circulated, any letter, circular, bill, placard, poster, photograph or other pub-**
8 **lication, or cause any advertisement to be placed in a publication, or singly or with others**
9 **pay for any advertisement, with knowledge or with reckless disregard that the letter, circu-**
10 **lar, bill, placard, poster, photograph, publication or advertisement contains a false statement**
11 **of material fact that is intended to mislead electors regarding:**

12 (a) **The date of the election;**

13 (b) **The deadline for depositing a ballot in order for the ballot to be tallied;**

14 (c) **The voter registration deadline;**

15 (d) **The methods by which an elector may register to vote;**

16 (e) **The locations at which an elector may deposit a ballot in order for the ballot to be**
17 **tallied;**

18 (f) **The qualifications an individual must meet to be eligible to vote in an election; or**

19 (g) **An elector's voter registration status.**

20 (2) **As used in subsection (1) of this section, "cause" does not include the broadcast of**
21 **an advertisement by a radio or television station or cable television company unless the ad-**
22 **vertisement is created by the owner, licensee or operator of the station or company.**

23 (3) **This section applies only to a letter, circular, bill, placard, poster, photograph, publi-**
24 **cation or advertisement that is written, printed, published, posted, communicated or circu-**
25 **lated within:**

26 (a) **30 calendar days before a primary election or special election; or**

27 (b) **60 calendar days before a general election.**

28 (4) **The Attorney General may institute civil proceedings under this section. In any action**

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 **brought under this section, the circuit court shall give priority to the hearing and determi-**
 2 **nation. Pending final determination, the circuit court may at any time enter such injunc-**
 3 **tions, prohibitions or restraining orders, or take any other actions as the court may deem**
 4 **proper. The court shall award the prevailing party reasonable attorney fees at trial and on**
 5 **appeal.**

6 (5) **Upon proof of any violation of this section, the court shall impose a civil penalty of**
 7 **not more than \$10,000.**

8 (6) **The remedy provided by this section is the exclusive remedy for a violation of this**
 9 **section.**

10 **SECTION 3.** ORS 260.345 is amended to read:

11 260.345. (1) Any elector may file with any filing officer a written complaint alleging that a vio-
 12 lation of an election law or rule adopted by the Secretary of State under ORS chapters 246 to 260
 13 has occurred and stating the reason for believing that the violation occurred and any evidence re-
 14 lating to it. A complaint and any evidence relating to it may be filed electronically. A complaint
 15 alleging a violation involving the Secretary of State, a candidate for the office of Secretary of State,
 16 [or] any political committee or person supporting the Secretary of State or a candidate for the office
 17 of Secretary of State, **or a violation of section 2 of this 2021 Act**, may be filed with the Attorney
 18 General. The Secretary of State or Attorney General shall not accept an anonymous complaint.

19 (2) The Secretary of State by rule shall prescribe the procedure for processing a complaint filed
 20 with any person other than the Secretary of State. If the complaint concerns the Secretary of State,
 21 any candidate for the office of the Secretary of State, [or] any political committee or person sup-
 22 porting the candidacy of the Secretary of State or of another person for the office of Secretary of
 23 State, **or a violation of section 2 of this 2021 Act**, the complaint and any additional information
 24 relating to the complaint shall be sent to the Attorney General.

25 (3) Upon receipt of a complaint under subsection (1) or (2) of this section the Secretary of State
 26 or Attorney General immediately shall examine the complaint to determine whether a violation of
 27 an election law or rule has occurred and shall make any investigation the Secretary of State or
 28 Attorney General considers necessary. Except as provided in this subsection, within 48 hours of
 29 receiving a complaint under subsection (1) or (2) of this section, the Secretary of State or Attorney
 30 General shall notify the person who is the subject of the complaint that a complaint has been re-
 31 ceived. If the Secretary of State or Attorney General receives a complaint or complaints involving
 32 25 or more individuals, political committees or petition committees in any 24-hour period, the Sec-
 33 retary of State or Attorney General need not notify the persons who are the subjects of those
 34 complaints within 48 hours of receiving the complaints but shall notify those persons not later than
 35 10 business days after receiving the complaint or complaints.

36 (4) If the Secretary of State believes after an investigation under subsection (3) of this section
 37 that a violation of an election law or rule has occurred, the secretary:

38 (a) In the case of a violation that is subject to a penalty under ORS 260.993, immediately shall
 39 report the findings to the Attorney General and request prosecution. If the violation involves the
 40 Attorney General, a candidate for that office or a political committee or person supporting or op-
 41 posing the Attorney General or a candidate for that office, the Secretary of State shall appoint an-
 42 other prosecutor for that purpose; or

43 (b) In the case of a violation not subject to a penalty under ORS 260.993, may impose a civil
 44 penalty under ORS 260.995.

45 (5) Upon receipt of a complaint or report under subsection (1), (2) or (4) of this section involving

1 an alleged violation subject to a penalty under ORS 260.993 **or an alleged violation of section 2**
 2 **of this 2021 Act**, the Attorney General or other prosecutor immediately shall examine the complaint
 3 or report to determine whether a violation of an election law has occurred. If the Attorney General
 4 or prosecutor determines that a violation has occurred, the Attorney General or prosecutor imme-
 5 diately shall begin prosecution in the name of the state. The Attorney General or other prosecutor
 6 shall have the same powers in any county of this state as the district attorney for the county.

7 (6) Upon receipt of a complaint under subsection (1) or (2) of this section involving an alleged
 8 violation of an election law or rule not subject to a penalty under ORS 260.993 **or an alleged vio-**
 9 **lation of section 2 of this 2021 Act**, the Attorney General shall examine the complaint to deter-
 10 mine whether a violation of an election law or rule has occurred and shall make any investigation
 11 the Attorney General considers necessary. If the Attorney General believes after an investigation
 12 that a violation of an election law or rule has occurred, the Attorney General may impose a civil
 13 penalty under ORS 260.995.

14 (7) In the case of an alleged violation subject to a civil penalty under ORS 260.995 **or an alleged**
 15 **violation of section 2 of this 2021 Act**, a complaint shall be filed by an elector under this section
 16 no later than 90 days following the election at which a violation of an election law or rule is alleged
 17 to have occurred, or 90 days following the date the violation of an election law or rule is alleged
 18 to have occurred, whichever is later.

19 (8) A filing officer having reason to believe that a violation of an election law or rule has oc-
 20 curred shall proceed promptly as though the officer had received a complaint. Except as provided
 21 in ORS 260.234, a filing officer shall proceed under this subsection no later than two years following
 22 the election at which a violation of an election law or rule is alleged to have occurred, or two years
 23 following the date the violation of an election law or rule is alleged to have occurred, whichever is
 24 later. If a filing officer has not proceeded within two years because of fraud, deceit, misleading
 25 representation or the filing officer could not have reasonably discovered the alleged violation, the
 26 filing officer shall proceed no later than five years following the election at which a violation of an
 27 election law or rule is alleged to have occurred, or five years following the date the violation of an
 28 election law or rule is alleged to have occurred, whichever is later.

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