

Requested by Representative FAHEY

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2323**

1 On page 1 of the printed bill, line 3, after “260.345” insert “and 260.532”.

2 Delete line 28.

3 Delete pages 2 and 3 and insert:

4 “(4) The Secretary of State may institute proceedings to enjoin any vio-  
5 lation of this section, except that in the case of a violation by the Secretary  
6 of State or a candidate for the office of the Secretary of State, the Attorney  
7 General may institute proceedings to enjoin any violation of this section. In  
8 any action brought under this section, the circuit court may at any time  
9 enter such injunctions, prohibitions or restraining orders, or take any other  
10 actions as the court may deem proper. A restraining order, prohibition or  
11 injunction may be issued under this section without proof of injury or dam-  
12 age to any person. The circuit court shall give priority to the hearing and  
13 determination under this section. The court shall award the prevailing party  
14 reasonable attorney fees at trial and on appeal.

15 “(5) Upon proof of any violation of this section, the court shall impose a  
16 civil penalty of not more than \$10,000. All penalties recovered under this  
17 section shall be paid into the State Treasury and credited to the General  
18 Fund.

19 “(6) The remedy provided by this section is the exclusive remedy for a  
20 violation of this section.

21 **“SECTION 3.** ORS 260.345 is amended to read:

1 “260.345. (1) Any elector may file with any filing officer a written com-  
2 plaint alleging that a violation of an election law or rule adopted by the  
3 Secretary of State under ORS chapters 246 to 260 has occurred and stating  
4 the reason for believing that the violation occurred and any evidence relat-  
5 ing to it. A complaint and any evidence relating to it may be filed electron-  
6 ically. A complaint alleging a violation involving the Secretary of State, a  
7 candidate for the office of Secretary of State, or any political committee or  
8 person supporting the Secretary of State or a candidate for the office of  
9 Secretary of State may be filed with the Attorney General. The Secretary of  
10 State or Attorney General shall not accept an anonymous complaint.

11 “(2) The Secretary of State by rule shall prescribe the procedure for pro-  
12 cessing a complaint filed with any person other than the Secretary of State.  
13 If the complaint concerns the Secretary of State, any candidate for the office  
14 of the Secretary of State, or any political committee or person supporting the  
15 candidacy of the Secretary of State or of another person for the office of  
16 Secretary of State, the complaint and any additional information relating to  
17 the complaint shall be sent to the Attorney General.

18 “(3) Upon receipt of a complaint under subsection (1) or (2) of this section  
19 the Secretary of State or Attorney General immediately shall examine the  
20 complaint to determine whether a violation of an election law or rule has  
21 occurred and shall make any investigation the Secretary of State or Attorney  
22 General considers necessary. Except as provided in this subsection, within  
23 48 hours of receiving a complaint under subsection (1) or (2) of this section,  
24 the Secretary of State or Attorney General shall notify the person who is the  
25 subject of the complaint that a complaint has been received. If the Secretary  
26 of State or Attorney General receives a complaint or complaints involving  
27 25 or more individuals, political committees or petition committees in any  
28 24-hour period, the Secretary of State or Attorney General need not notify  
29 the persons who are the subjects of those complaints within 48 hours of re-  
30 ceiving the complaints but shall notify those persons not later than 10 busi-

1 ness days after receiving the complaint or complaints.

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

5 “(a) In the case of a violation that is subject to a penalty under ORS  
6 260.993, immediately shall report the findings to the Attorney General and  
7 request prosecution. If the violation involves the Attorney General, a candi-  
8 date for that office or a political committee or person supporting or opposing  
9 the Attorney General or a candidate for that office, the Secretary of State  
10 shall appoint another prosecutor for that purpose; [*or*]

11 “(b) In the case of a violation not subject to a penalty under ORS 260.993  
12 **or section 2 of this 2021 Act**, may impose a civil penalty under ORS  
13 260.995; **or**

14 “(c) **In the case of a violation under section 2 of this 2021 Act, may**  
15 **institute civil proceedings in the manner described in section 2 of this**  
16 **2021 Act.**

17 “(5) Upon receipt of a complaint or report under subsection (1), (2) or (4)  
18 of this section involving an alleged violation subject to a penalty under ORS  
19 260.993 **or an alleged violation of section 2 of this 2021 Act**, the Attorney  
20 General or other prosecutor immediately shall examine the complaint or re-  
21 port to determine whether a violation of an election law has occurred. If the  
22 Attorney General or prosecutor determines that a violation has occurred, the  
23 Attorney General or prosecutor immediately shall begin prosecution **or civil**  
24 **proceedings** in the name of the state. The Attorney General or other  
25 prosecutor shall have the same powers in any county of this state as the  
26 district attorney for the county.

27 “(6) Upon receipt of a complaint under subsection (1) or (2) of this section  
28 involving an alleged violation of an election law or rule not subject to a  
29 penalty under ORS 260.993 **or section 2 of this 2021 Act**, the Attorney  
30 General shall examine the complaint to determine whether a violation of an

1 election law or rule has occurred and shall make any investigation the At-  
2 torney General considers necessary. If the Attorney General believes after  
3 an investigation that a violation of an election law or rule has occurred, the  
4 Attorney General may impose a civil penalty under ORS 260.995.

5 “(7) In the case of an alleged violation subject to a civil penalty under  
6 **ORS 260.995 or an alleged violation of section 2 of this 2021 Act**, a com-  
7 plaint shall be filed by an elector under this section no later than 90 days  
8 following the election at which a violation of an election law or rule is al-  
9 leged to have occurred, or 90 days following the date the violation of an  
10 election law or rule is alleged to have occurred, whichever is later.

11 “(8) A filing officer having reason to believe that a violation of an  
12 election law or rule has occurred shall proceed promptly as though the offi-  
13 cer had received a complaint. Except as provided in ORS 260.234, a filing  
14 officer shall proceed under this subsection no later than two years following  
15 the election at which a violation of an election law or rule is alleged to have  
16 occurred, or two years following the date the violation of an election law  
17 or rule is alleged to have occurred, whichever is later. If a filing officer has  
18 not proceeded within two years because of fraud, deceit, misleading repre-  
19 sentation or the filing officer could not have reasonably discovered the al-  
20 leged violation, the filing officer shall proceed no later than five years  
21 following the election at which a violation of an election law or rule is al-  
22 leged to have occurred, or five years following the date the violation of an  
23 election law or rule is alleged to have occurred, whichever is later.

24 “**SECTION 4.** ORS 260.532 is amended to read:

25 “260.532. (1) No person shall cause to be written, printed, published,  
26 posted, communicated or circulated, **including by electronic or telephonic**  
27 **means**, any letter, circular, bill, placard, poster, photograph or other publi-  
28 cation, or cause any advertisement to be placed in a publication, or singly  
29 or with others pay for any advertisement, **or circulate an advertisement**  
30 **by electronic or telephonic means**, with knowledge or with reckless dis-

1 regard that the letter, circular, bill, placard, poster, photograph, publication  
2 or advertisement contains a false statement of material fact relating to any  
3 candidate, political committee or measure.

4 “(2) As used in subsection (1) of this section, ‘cause’ does not include the  
5 broadcast of an advertisement by a radio or television station or cable tele-  
6 vision company unless the advertisement is for:

7 “(a) The candidacy of the owner, licensee or operator of the station or  
8 company; or

9 “(b) A ballot measure of which a chief petitioner is the owner, licensee  
10 or operator of the station or company.

11 “(3) A candidate who knows of and consents to a publication or adver-  
12 tisement prohibited by this section with knowledge or with reckless disre-  
13 gard that it contains a false statement of material fact, violates this section  
14 regardless of whether the candidate has participated directly in the publica-  
15 tion or advertisement.

16 “(4) There is a rebuttable presumption that a candidate knows of and  
17 consents to any publication or advertisement prohibited by this section  
18 caused by a political committee over which the candidate exercises any di-  
19 rection and control.

20 “(5) Any candidate or political committee aggrieved by a violation of this  
21 section shall have a right of action against the person alleged to have com-  
22 mitted the violation. The aggrieved party may file the action in the circuit  
23 court for any county in this state in which a defendant resides or can be  
24 found or, if the defendant is a nonresident of this state, in the circuit court  
25 for any county in which the publication occurred. To prevail in such an  
26 action, the plaintiff must show by clear and convincing evidence that the  
27 defendant violated subsection (1) of this section.

28 “(6) A plaintiff who prevails in an action provided by subsection (5) of  
29 this section may recover economic and noneconomic damages, as defined in  
30 ORS 31.710, or \$2,500, whichever is greater. The court may award such ad-

1 ditional equitable relief as it considers necessary or proper. The equitable  
2 relief may include, but is not limited to, a requirement that a retraction of  
3 the false statement be disseminated in the manner directed by the court.  
4 Proof of entitlement to economic and noneconomic damages must be by a  
5 preponderance of evidence. The court shall award the prevailing party rea-  
6 sonable attorney fees at trial and on appeal.

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

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

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

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

1 election; and

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

4 “(10) The remedy provided by this section is the exclusive remedy for a  
5 violation of this section.”.

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