

Stricken language would be deleted from and underlined language would be added to present law.
Act 1432 of the Regular Session

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S4/18/13
A Bill

SENATE BILL 1118

By: Senator K. Ingram

For An Act To Be Entitled

AN ACT TO AMEND AND CREATE SECTIONS RELATING TO
INITIATED ACT NO. 1 OF 1942 CONCERNING LOCAL OPTION
ELECTION PETITION PROCEDURES; TO ENACT A LOCAL OPTION
ELECTION PETITION FRAUD OFFENSE; AND FOR OTHER
PURPOSES.

Subtitle

TO AMEND AND CREATE SECTIONS RELATING TO
INITIATED ACT NO. 1 OF 1942 CONCERNING
LOCAL OPTION ELECTION PETITION
PROCEDURES; AND TO ENACT A LOCAL OPTION
ELECTION PETITION FRAUD OFFENSE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 3-8-204 is repealed.

~~3-8-204. Petition procedure.~~

~~(a) Every petition for a local option election shall be prepared in accordance with Initiated Act No. 1 of 1942, §§ 3-8-201—3-8-203 and 3-8-205—3-8-209, and it shall be filed and the subsequent proceedings thereupon shall be had and conducted in the manner provided for county initiated measures by Arkansas Constitution, Amendment 7, and enabling acts pertaining thereto.~~

~~(b) Every petition for a local option election under Initiated Act No. 1 of 1942, §§ 3-8-201—3-8-203 and 3-8-205—3-8-209, shall be prepared substantially in the form provided for initiative petitions in § 7-9-104, except that the petitions shall be directed to the county clerk instead of to~~



~~the Secretary of State.~~

~~(c) All petitions shall have attached thereto the form of verification and shall be signed by the person circulating the petitions in the same form or manner as is provided in § 7-9-109.~~

~~(d) In all other respects, the petitions shall be circulated and sufficiency thereof shall be determined, and may be reviewed in the same manner and procedure, insofar as are applicable thereto, as provided in Acts 1935, No. 4 [repealed], for initiated county measures.~~

~~(e) Any person who is a qualified elector of the State of Arkansas and who is a resident and registered voter of the county, municipality, ward, precinct, or other defined area in which a local option election is being requested by petitions under Initiated Act No. 1 of 1942, §§ 3-8-201—3-8-203 and 3-8-205—3-8-209, may sign the local option petition in his or her own proper handwriting and not otherwise.~~

~~(f) A person shall be guilty of a Class A misdemeanor if that person:~~

~~(1) Signs any name other than his or her own to any petition;~~

~~(2) Knowingly signs his or her name more than once to any petition;~~

~~(3) Knowingly signs a petition when he or she is not legally entitled to sign a petition;~~

~~(4) Knowingly and falsely misrepresents the purpose and effect of the petition for the purpose of causing anyone to sign the petition.~~

~~(5) Acting in the capacity of canvasser, knowingly makes a false statement on a petition verification form; or~~

~~(6) Acting in the capacity of a notary, knowingly fails to witness a canvasser's affidavit either by witnessing the signing of the instrument and personally knowing the signer or being presented with proof of identity of the signer.~~

~~(g)(1) The provisions of this section are intended to be supplemental to Initiated Act No. 1 of 1942, §§ 3-8-201—3-8-203 and 3-8-205—3-8-209, and to establish reasonable and necessary provisions for providing safeguards in the form of petitions and the circulation thereof and to prohibit unauthorized persons from signing the petitions.~~

~~(2) Therefore, the provisions of this section shall be deemed to repeal only such parts of the Initiated Act No. 1 of 1942, §§ 3-8-201—3-8-203 and 3-8-205—3-8-209 as may be specifically inconsistent herewith.~~

SECTION 2. Arkansas Code § 3-8-205, concerning sufficiency of petitions in local option elections, is amended to add an additional subdivision to read as follows:

(f) Except as provided in this section, a petition for local option election shall be governed by § 7-9-101 et seq. and § 3-8-701 et seq.

SECTION 3. Arkansas Code § 3-8-302 is repealed.

~~3-8-302. Petition and order for election.~~

~~(a) Upon application by written petition, signed by a number of legal voters in any county, city, town, district, or precinct to be affected equal to thirty-five percent (35%) of the qualified voters, it shall be the duty of the judge of the county court in the county at the next regular term thereof, after receiving the petitions, to make an order on his or her order book directing an election to be held in the county, city, town, district, or precinct to be affected thereby, on some day named in the petition no earlier than sixty (60) days after the application is lodged with the judge of the court. However, in counties having two (2) judicial districts, the legal voters in either district may petition for an election and the election can only affect the judicial district where the election may be held.~~

~~(b) The order shall direct the sheriff or other officer of the county, who may be appointed to hold the election, to open a poll at each and all of the voting places in the county, city, town, district, or precinct on the appointed date, for the purpose of taking the sense of the legal voters of the county, city, town, district, or precinct, who are qualified to vote at elections for county officers, upon the proposition whether or not spirituous, vinous, or malt liquors shall be sold, bartered, or loaned therein.~~

SECTION 4. Arkansas Code § 3-8-304 is repealed.

~~3-8-304. Notice and conduct of election.~~

~~(a) It shall be the duty of the county clerk to give the sheriff of the county, or the officer as may be appointed to hold the election, a certified copy of the order of the county court as it appears on the order book within five (5) days after the order is made.~~

~~(b) It shall be the duty of the sheriff or other officer to have the~~

~~order published in some weekly or daily paper published in the county for at least two (2) weeks before the election and also to advertise the order by printed or written handbills posted at some conspicuous place in each precinct in the county, for the same length of time, and when the election is held for the entire town, district, or precinct of any county, then at five (5) conspicuous places therein for the same length of time. In any case, if there is no weekly or daily newspaper published in the county or if the proprietor of the newspaper refuses to publish the notice, the printed or written handbills, posted as before provided for, shall be sufficient notice.~~

~~(c) The sheriff or other officer shall have the advertisement and notices herein provided for published and posted as herein required within seven (7) days after he or she receives the order of the county court.~~

~~(d) All elections provided for in this act shall be held by the officers who would be qualified to hold elections for county officers, and they shall be selected in the same way, and all elections provided for herein shall be held in accordance with the provisions of the general election laws of the state.~~

SECTION 5. Arkansas Code § 3-8-502(a)(2), concerning petitions for certain local option elections, is amended to read as follows:

(2) The petition requesting a local option election shall be prepared in the manner provided by § ~~3-8-204~~ 3-8-205.

SECTION 6. Arkansas Code § 3-8-502, concerning certain local option elections in certain annexed areas, is amended to add an additional subdivision as follows:

(c) Except as provided in this section, a petition for local option election shall be governed by § 7-9-101 et seq. and § 3-8-701 et seq.

SECTION 7. Arkansas Code Title 3, Chapter 8, is amended to add an additional subchapter to read as follows:

Subchapter 6 – Disclosure Act for Initiative Proceedings

3-8-601. Title.

This subchapter shall be known and may be cited as the “Disclosure Act for Initiative Proceedings”.

3-8-602. Definitions.As used in this subchapter:

(1)(A) "Contribution" means, whether direct or indirect, advances, deposits, transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payments for services, dues, advancements, forbearance, loans, pledges, or promises of money or anything of value, whether or not legally enforceable, to a person for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question.

(B) "Contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events and the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all persons for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question.

(C) "Contribution" does not include:

(i) Noncompensated, nonreimbursed volunteer personal services or travel;

(ii) Activities designed solely to encourage individuals to vote or to register to vote; or

(iii) Any communication by a bona fide church or religious denomination to its own members or adherents for the sole purpose of protecting the right to practice the religious tenets of the church or religious denomination;

(2) "Disqualification of a local-option ballot question" means any action or process, legal or otherwise, that seeks to prevent a local-option ballot question from being on the ballot at an election;

(3)(A) "Expenditure" means a purchase, payment, distribution, gift, loan, or advance of money or anything of value, and a contract, promise, or agreement to make an expenditure for goods, services, materials, or facilities for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question.

(B) "Expenditure" does not include an expenditure made for communication by a person strictly with the person's paid members or shareholders;

(4) “Local-option ballot question” means a question in the form of a local-option initiative that is submitted or intended to be submitted to a popular vote at an election, whether or not it qualifies for the ballot;

(5)(A) “Local-option ballot question committee” means any person, located within or outside Arkansas, that receives contributions for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question or any person, other than a public servant, a governmental body expending public funds, or an individual, located within or outside Arkansas, that makes expenditures for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question.

(B) A person other than an individual or an approved political action committee as defined in § 7-6-201, located within or outside Arkansas, also qualifies as a local-option ballot question committee if two percent (2%) or more of the committee’s annual revenues, operating expenses, or funds are used to make a contribution or contributions to another ballot question committee and if the contribution or contributions exceed ten thousand dollars (\$10,000) in value;

(6)(A) “Person” means any individual, business, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting in concert.

(B) “Person” includes a public servant or governmental body using public funds to expressly advocate the qualification, disqualification, passage, or defeat of a local-option ballot question; and

(7) “Qualification of a local-option ballot question” means any action or process, legal or otherwise, through which a local-option ballot question obtains certification to be on the ballot at an election.

3-8-603. Filing deadlines.

(a)(1)(A) A local-option ballot question committee shall file a Ballot Question Committee Statement of Organization with the Arkansas Ethics Commission within five (5) days of receiving contributions or making expenditures in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, passage, or defeat of a local-option ballot question.

(B) The commission shall maintain the statement of organization until notified of the committee's dissolution.

(2) A local-option ballot question committee failing to file a statement of organization required by this section shall be subject to a late filing fee not to exceed fifty dollars (\$50.00) for each day the statement remains not filed.

(b) The statement of organization shall include the information required by the statement of organization form prescribed by the director of the commission, and any further information the director may by regulation require.

(c) Rules regarding dissolution shall be governed by the rule of the commission.

3-8-604. Contributions and expenditures limited.

(a) No local-option ballot question committee shall accept any contribution in cash, meaning currency or coin, that exceeds one hundred dollars (\$100).

(b) No local-option ballot question committee shall accept any contribution from a prohibited political action committee as defined in § 7-6-201.

(c) No local-option ballot question committee or individual shall make an expenditure in cash that exceeds fifty dollars (\$50.00) to influence the qualification, disqualification, passage, or defeat of a local-option ballot question.

(d) No contributions shall be made, directly or indirectly, by any person in a name other than the name by which the person is identified for legal purposes.

(e)(1) No person shall make an anonymous contribution totaling fifty dollars (\$50.00) or more to a local-option ballot question committee.

(2) Any anonymous contribution actually received by a local-option ballot question committee shall be promptly paid by the recipient to the Secretary of State for deposit into the State Treasury as general revenues.

3-8-605. Financial reports – Requirement.

(a) A local-option ballot question committee that either receives

contributions or makes expenditures in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question shall file with the Arkansas Ethics Commission a Ballot Question Committee Financial Report as required by §§ 7-9-407 – 7-9-409.

(b) A public servant or governmental body expending public funds in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question shall file with the commission financial reports as required by §§ 7-9-407 – 7-9-409.

(c) Except as provided in subsection (f) of this section, a report required by this subchapter shall be deemed timely filed if it is:

(1) Hand-delivered to the commission on or before the date due;

(2) Mailed to the commission, properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date due;

(3) Received via facsimile by the commission on or before the date due, provided that the original is received by the commission within ten (10) days of the transmission; or

(4) Received by the commission in a readable electronic format that is approved by the commission.

(d) Whenever a report under this subchapter becomes due on a day that is a Saturday, Sunday, or legal holiday, the report shall be due the next day that is not a Saturday, Sunday, or legal holiday.

(e) A preelection report is timely filed if it is received by the commission no later than seven (7) days prior to the election for which it is filed.

3-8-606. Financial report – Information.

In addition to the information required under § 7-9-407 – 7-9-409, a financial report of a local-option ballot question committee shall contain the following information:

(1) The name, address, and telephone number of the committee filing the report;

(2) For a local-option ballot question committee:

(A) The total amount of contributions received during the

period covered by the financial report;

(B) The total amount of expenditures made by the committee or on behalf of the committee by an advertising agency, public relations firm, or political consultant during the period covered by the financial report;

(C) The cumulative amount of contributions and expenditures reported under subdivision (2)(A) of this section for each local-option ballot question committee;

(D) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the financial report;

(E) The total amount of contributions received during the period covered by the financial report from persons who contributed less than fifty dollars (\$50.00) and the cumulative amount of that total for each local-option ballot question committee;

(F) The total amount of contributions received during the period covered by the financial report from persons who contributed fifty dollars (\$50.00) or more and the cumulative amount of that total for each local-option ballot question committee;

(G) The name and street address of each person who contributed fifty dollars (\$50.00) or more during the period covered by the financial report, together with the amount contributed, the date of receipt, and the cumulative amount contributed by that person for each local-option ballot question committee;

(H) For each person listed under subdivision (2)(A) of this section, the contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the local-option ballot question committee, and the cumulative amount contributed for each local-option ballot question;

(I) The name and address of each person who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(J) A list of all paid canvassers, officers, and directors and the amount each person was paid;

(K) A list of all expenditures by category, including without limitation the following:

(i) Advertising;

- (ii) Direct mail;
- (iii) Office supplies;
- (iv) Travel;
- (v) Expenses; and
- (vi) Telephone; and

(L) The total amount of nonitemized expenditures made during the period covered by the financial report; and

(3) The name and street address of each person to whom reimbursement for expenditures totaling one hundred dollars (\$100) or more was made, together with the date and amount of each separate reimbursement to each person during the period covered by the financial report and the purpose of each expenditure.

3-8-607. Financial reports – Verification.

The financial reports identified in § 3-8-606 shall be verified by affidavit by the person filing them to the effect that to the best of his or her knowledge and belief the information disclosed is a complete, true, and accurate financial statement of contributions or expenditures.

3-8-608. Financial reports – Time to file – Late fee.

(a)(1) The first financial reports shall be filed no later than fifteen (15) days following the month in which the threshold of five hundred dollars (\$500) under § 3-8-606 is met and thereafter no later than fifteen (15) days after the end of each month until the election is held. However, for any month in which certain days of that month are included in a preelection financial report required under subdivision (a)(2) of this section, no monthly report for that month shall be due, but those days of that month shall be carried forward and included in the final financial report.

(2) Additionally, a preelection financial report shall be filed no less than seven (7) days prior to any election on the ballot question or legislative question, such statement to have a closing date of ten (10) days prior to the election.

(3) Furthermore, a final financial report shall be filed no later than thirty (30) days after the election.

(b) A local-option ballot question committee or individual person who

files a late financial report shall be subject to a late filing fee not to exceed fifty dollars (\$50.00) for each day the report remains unfiled.

3-8-609. Public inspection – Record retention.

(a) All statements of organization and financial reports required by this subchapter shall be open to public inspection at the office of the Arkansas Ethics Commission during regular office hours.

(b) All records supporting the reports filed under this subchapter shall be:

(1) Made available to the commission; and

(2) Retained by the filer for a period of four (4) years after the date of filing the report.

3-8-610. Enforcement.

The Arkansas Ethics Commission shall have the same power and authority to enforce the provisions of this subchapter as are provided the commission under §§ 7-6-217 and 7-6-218 for the enforcement of campaign finance laws.

3-8-611. Reporting the use of state funds to oppose or support a ballot measure.

Any funds appropriated to any state agency, board, or commission that are expended, as prescribed in § 7-9-413, for the purpose of opposing or supporting a local-option ballot question that is submitted or intended to be submitted to a popular vote at an election, whether or not it qualifies for the ballot, shall be reported to the Legislative Council if the amount exceeds one hundred dollars (\$100).

3-8-612. Use of state funds to oppose or support a local-option ballot measure.

The use of state funds under this subchapter includes expenditures for:

(1) Newspaper, television, radio, and other forms of communication;

(2) Publication materials;

(3) Travel expenses relative to reimbursement;

(4) Surveys;

(5) Private contracts; and

(6) Postage.

3-8-613. Applicability of §§ 3-8-611 and 3-8-612.

This act does not apply to state funds appropriated to any elected officials.

3-8-614. Scope.

Nothing in this subchapter may limit, waive, or abrogate the scope of any statutory or common law privilege, including, but not limited to, the work product doctrine and the attorney-client privilege.

3-8-615. Penalty.

Upon conviction, any person who knowingly fails to comply with this subchapter shall be fined an amount not to exceed one thousand dollars (\$1,000) or be imprisoned for not more than one (1) year, or both.

SECTION 8. Arkansas Code Title 3, Chapter 8, is amended to add an additional subchapter to read as follows:

Subchapter 7 – Paid Canvassers

3-8-701. Definitions.

As used in this subchapter:

(1) "Canvasser" means a person who circulates a local option election petition or a part or parts of a local option election petition to obtain the signatures of petitioners thereto;

(2) "Paid canvasser" means a person who is paid or with whom there is an agreement to pay money or anything of value before or after a signature on a local option election petition is solicited in exchange for soliciting or obtaining a signature on a petition;

(3) "Petitioner" means a person who signs a petition requesting a local option election; and

(4) "Sponsor" means a person who arranges for the circulation of a local option election petition or who files a local option election petition with the official charged with verifying the signatures.

3-8-702. Hiring and training of paid canvassers.

(a)(1) A person shall not provide money or anything of value to another person for obtaining signatures on a local option election petition unless the person receiving the money or item of value meets the requirements of this section.

(2) Before a signature is solicited by a paid canvasser the sponsor shall:

(A) Provide the paid canvasser with a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook;

(B) Explain the Arkansas law applicable to obtaining signatures on a local option election petition to the canvasser; and

(C)(i) Provide a complete list of all paid canvassers' names and current residential addresses to the Secretary of State.

(ii) If additional paid canvassers agree to solicit signatures on behalf of a sponsor after the complete list is provided, the sponsor shall provide an updated list of all paid canvassers' names and current residential addresses to the Secretary of State.

(b) Before obtaining a signature on a local option election petition as a paid canvasser, a person shall submit in person or by mail to the sponsor:

(1) The full name and any assumed name of the person;

(2) The current residence address of the person and the person's permanent domicile address if the person's permanent domicile address is different from the person's current residence address;

(3) A signed statement taken under oath or solemn affirmation that states that the person has not pleaded guilty or nolo contendere to or been found guilty of a criminal offense involving a violation of the election laws, fraud, forgery, or identification theft in any state;

(4) A signed statement that the person has read and understands the Arkansas law applicable to obtaining signatures on a local option election petition;

(5) A signed statement that the person has been provided a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook by the sponsor; and

(6) A photograph of the person taken within ninety (90) days of the submission of the information required under this section.

(c) A sponsor shall maintain the information required under this section for each paid canvasser for three (3) years after the general election.

SECTION 9. Arkansas Code Title 5, Chapter 55, is amended to create a new subchapter to read as follows:

Subchapter 6 – Election, Petition, and Ballot Fraud

5-55-601. Petition fraud.

(a) As used in this section, "petition" means a petition under § 3-8-201 et seq., § 3-8-701 et seq., or § 7-9-101 et seq.

(b) A person commits the offense of petition fraud:

(1) If the person knowingly:

(A) Signs a name other than his or her name to a petition;

(B) Signs his or her name more than one (1) time to a petition; or

(C) Signs a petition when he or she is not legally entitled to sign the petition;

(2) If the person acting as a canvasser, notary, sponsor as defined under § 7-9-101, or agent of a sponsor:

(A) Signs a name other than his or her own to a petition;

(B) Prints a name, address, or birth date other than his or her own to a petition unless the signor requires assistance due to disability and the person complies with § 7-9-103;

(C) Solicits or obtains a signature to a petition knowing that the person signing is not qualified to sign the petition;

(D) Knowingly pays a person any form of compensation in exchange for signing a petition as a petitioner;

(E) Accepts or pays money or anything of value for obtaining signatures on a petition when the person acting as a canvasser, sponsor, or agent of a sponsor knows that the person acting as a canvasser's name or address is not included on the sponsor's list filed with the Secretary of State under § 7-9-601; or

(F) Knowingly misrepresents the purpose and effect of the petition or the measure affected for the purpose of causing a person to sign a petition;

(3) If the person acting as a canvasser, knowingly makes a false statement on a petition verification form;

(4) If the person acting as a notary, knowingly fails to witness a canvasser's affidavit by witnessing the signing of the instrument in person and either personally knowing the signor or by being presented with proof of the identity of the signer; or

(5) If the person acting as a sponsor, files a petition or a part of a petition with the official charged with verifying the signatures knowing that the petition or part of the petition contains one (1) or more false or fraudulent signatures unless each false or fraudulent signature is clearly stricken by the sponsor before filing.

(c) Petition fraud is a Class A misdemeanor.

SECTION 10. Arkansas Code § 7-9-103(b), concerning certain criminal offenses regarding petitions, is repealed.

~~(b) A person shall be deemed guilty of a Class A misdemeanor if the person:~~

~~(1) Signs any name other than his or her own to any petition;~~

~~(2) Knowingly signs his or her name more than once to any petition;~~

~~(3) Knowingly signs a petition when he or she is not legally entitled to sign it;~~

~~(4) Knowingly and falsely misrepresents the purpose and effect of the petition or the measure affected for the purpose of causing anyone to sign a petition;~~

~~(5) Acting in the capacity of canvasser, knowingly makes a false statement on a petition verification form; or~~

~~(6) Acting in the capacity of a notary, knowingly fails to witness a canvasser's affidavit either by witnessing the signing of the instrument and personally knowing the signer or by being presented with proof of identity of the signer.~~

/s/K. Ingram

APPROVED: 04/22/2013