

Stricken language would be deleted from and underlined language would be added to present law.
Act 194 of the Regular Session

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: H2/6/23 H2/13/23
A Bill

HOUSE BILL 1320

By: Representative Ray
By: Senator J. Payton

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING INITIATIVE
PETITIONS AND REFERENDUM PETITIONS; TO REQUIRE THE
ATTORNEY GENERAL TO REVIEW AN INITIATIVE PETITION OR
*REFERENDUM PETITION BEFORE CIRCULATION; TO DECLARE AN
EMERGENCY; AND FOR OTHER PURPOSES.*

Subtitle

*TO AMEND THE LAW CONCERNING INITIATIVE
PETITIONS AND REFERENDUM PETITIONS; TO
REQUIRE THE ATTORNEY GENERAL TO REVIEW AN
INITIATIVE PETITION OR REFERENDUM
PETITION BEFORE CIRCULATION; AND TO
DECLARE AN EMERGENCY.*

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

SECTION 1. Arkansas Code § 7-4-101(f)(12), concerning the authority of the State Board of Election Commissioners, is repealed:

~~(12) Consider the certification of the ballot title and popular name submitted on a statewide initiative petition or statewide referendum petition under § 7-9-111;~~

SECTION 2. Arkansas Code § 7-9-107 is amended to read as follows:

7-9-107. Filing of original draft before circulation.

(a) Before any initiative petition or referendum petition ordering a vote upon any amendment or act shall be circulated for obtaining signatures



of petitioners, the sponsors shall ~~file~~ submit the original draft with the ~~Secretary of State~~ Attorney General.

(b) The original draft shall include:

- (1) The full text of the proposed measure;
- (2) A ballot title for the proposed measure; and
- (3) A popular name for the proposed measure.

(c) The ~~Secretary of State~~ Attorney General shall return to the sponsor a file-marked copy of the original draft that shall serve as evidence that the original draft was filed in compliance with this section.

~~(d)(1) The sponsor may begin circulating an initiative petition or referendum petition upon receipt of the file-marked copy under subsection (c) of this section~~ Within ten (10) business days, the Attorney General shall approve and certify or shall substitute and certify a more suitable and correct ballot title and popular name for each amendment or act.

(2) The ballot title so submitted or supplied by the Attorney General shall briefly and concisely state the purpose of the proposed measure.

(e) If, as a result of his or her review of the ballot title and popular name of a proposed initiated act or a proposed amendment to the Arkansas Constitution, the Attorney General determines that the ballot title or the nature of the issue, is presented in such manner that the ballot title would be misleading or designed in such manner that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself casting a vote for, or, conversely, that a vote "AGAINST" the issue would be a vote for a viewpoint that the voter is against, the Attorney General may reject the entire ballot title, popular name, and petition and state his or her reasons therefor and instruct the petitioners to redesign the proposed measure and the ballot title and popular name in a manner that would not be misleading.

(f) If the Attorney General refuses to act or if the sponsors feel aggrieved at the Attorney General's acts in such premises, the sponsors may, by petition, apply to the Supreme Court for proper relief.

SECTION 3. Arkansas Code § 7-9-111(i), concerning the determination of the sufficiency of a statewide initiative petition or statewide referendum petition is repealed.

~~(i)(1) When a statewide initiative petition or statewide referendum petition is submitted to the Secretary of State for determination of the sufficiency of the signatures, the Secretary of State shall submit the ballot title and popular name of the proposed measure to the board for certification as required by Arkansas Constitution, Article 5, § 1.~~

~~(2) The board shall determine whether to certify the ballot title and popular name submitted for a proposed measure within thirty (30) days after the ballot title and popular name are submitted by the Secretary of State under subdivision (i)(1) of this section.~~

~~(3) If the board determines that the ballot title and popular name, and the nature of the issue, is presented in a manner that is not misleading and not designed in such manner that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself to be casting a vote for, or, conversely, that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against, the ballot title and popular name of the statewide initiative petition or statewide referendum petition shall be certified to the Secretary of State to be placed upon the ballot if the signatures on the statewide initiative petition or statewide referendum petition are determined to be sufficient.~~

~~(4)(A) If the board determines that the ballot title or popular name, or the nature of the issue, is presented in such a manner that the ballot title or popular name would be misleading or designed in such manner that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself to be casting a vote for, or, conversely, that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against, the board shall:~~

~~(i) Not certify the ballot title and popular name;~~

~~(ii)(a) Notify the sponsors in writing, through their designated agent, that the ballot title and popular name were not certified and set forth its reasons for so finding.~~

~~(b) If the ballot title and popular name are not certified, the sponsor shall not submit a redesigned ballot title or popular name to the board; and~~

~~(iii) Notify the Secretary of State that the ballot title and popular name were not certified.~~

~~(B) If the ballot title and popular name are not certified~~

~~under subdivision (i)(4)(A) of this section, the Secretary of State shall declare the proposed measure insufficient for inclusion on the ballot for the election at which the statewide initiative petition or statewide referendum petition would be considered.~~

SECTION 4. Arkansas Code § 7-9-112 is amended to read as follows:

(a) ~~If the Secretary of State determines that the signatures submitted on a statewide initiative petition or statewide referendum petition are insufficient or the State Board of Election Commissioners does not certify the ballot title or popular name of a proposed measure resulting in the Secretary of State's finding the proposed measure insufficient, the following persons may challenge that determination by petition petitioning the Supreme Court to determine if the signatures submitted on the statewide initiative petition or statewide referendum petition are sufficient or if the ballot title or popular name of the proposed measure should be certified:~~

(1) ~~The sponsor of the statewide initiative petition or statewide referendum petition; or~~

(2) ~~A registered voter.~~

(b) ~~The Supreme Court shall act expeditiously to review the sufficiency of the signatures or the certification of the ballot title or popular name in a timely manner and shall make every effort to reach a decision in advance of the election at which the proposed measure would be considered.~~

(c)(1)(A) ~~If the Supreme Court decides that the signatures submitted on a statewide initiative petition or statewide referendum petition are sufficient, the Supreme Court shall order the Secretary of State to certify the sufficiency for placing the proposed measure on the election ballot if the ballot title and popular name are sufficient.~~

~~(B) If the Supreme Court decides that the ballot title and popular name should be certified, the Supreme Court shall order the board to certify the ballot title and popular name to the Secretary of State, who shall declare the proposed measure sufficient to be placed upon the ballot if the signatures on the statewide initiative petition or statewide referendum petition are sufficient.~~

(2) ~~On a proper showing that the signatures are not sufficient or the ballot title or popular name should not be certified, the Supreme~~

Court may enjoin the Secretary of State from certifying the proposed measure for inclusion on the ballot for the election at which the proposed measure would be considered or, in the event that the proposed measure will appear on the election ballot, from canvassing and certifying the vote on the proposed measure.

SECTION 5. Arkansas Code § 7-9-126(b)(2), concerning the count of signatures for an initiative petition or referendum petition, is amended to read as follows:

(2) *The petition does not conform to the ~~original draft filed~~ version of the measure approved and certified under § 7-9-107;*

SECTION 6. Arkansas Code § 7-9-126(c)(6), concerning the count of signatures for an initiative petition or referendum petition, is amended to read as follows:

(6) A signature obtained before the ~~filing of the original draft for circulation~~ submission and approval of the ballot title under § 7-9-107;

SECTION 7. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that, at this time, no state entity certifies the legal sufficiency of the popular name and ballot title for statewide initiative and referendum petitions before they are circulated to Arkansans; that the lack of such a review and certification process makes it far more likely that Arkansans will be asked to sign a petition that bears a legally insufficient popular name or ballot title; that the Attorney General has historically been the state entity to review and certify the legal sufficiency of popular names and ballot titles for statewide initiative and referendum petitions; that the Arkansas Supreme Court has held that the process under which the Attorney General provides such a review and certification is in furtherance of Arkansans' rights under Arkansas Constitution, Amendment 7; that the process will preserve the public peace, health, and safety by protecting Arkansans from signing a legally insufficient petition; and that this act is immediately necessary to help protect Arkansans' rights under Arkansas Constitution, Amendment 7 by providing for a process of review and certification before sponsors collect signatures. Therefore, an emergency is declared to exist, and this act being

immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Ray

APPROVED: 3/6/23