

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
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As Engrossed: S2/20/19
A Bill

SENATE BILL 346

By: Senator M. Pitsch
By: Representative Vaught

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS LAW CONCERNING THE
PROCEDURES FOR PETITIONS AND REFERRED CONSTITUTIONAL
AMENDMENTS; TO DECLARE AN EMERGENCY; AND FOR OTHER
PURPOSES.

Subtitle

TO AMEND ARKANSAS LAW CONCERNING THE
PROCEDURES FOR PETITIONS AND REFERRED
CONSTITUTIONAL AMENDMENTS; AND TO DECLARE
AN EMERGENCY.

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

SECTION 1. Arkansas Code § 5-55-601(c), concerning the penalty for petition fraud, is amended to read as follows:

(c) Petition fraud is a ~~Class A misdemeanor~~ Class D felony.

SECTION 2. Arkansas Code § 7-4-101(f), concerning the authority of the State Board of Election Commissioners, is amended to add an additional subdivision to read as follows:

(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 3. Arkansas Code § 7-9-103(b), concerning the signing of petitions, is amended to read as follows:



(b) A person commits a Class A misdemeanor if the person knowingly:

- (1) Signs a name other than his or her own name to a petition;
- (2) Signs his or her name more than one (1) time to a petition;

~~or~~

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

(4) Prints a name, address, or birth date other than his or her own on a petition unless the signer requires assistance due to disability and the person complies with this section; or

(5) Prints the date of signing for another person unless the signer requires assistance due to disability and the person complies with this section.

SECTION 4. Arkansas Code § 7-9-103(d), concerning the signing of petitions, is amended to read as follows:

(d) When the official charged with verifying the signatures has reasonable grounds to believe that one (1) or more signatures on a petition is forged, ~~excluding signatures apparently signed by one (1) spouse for another,~~ the official shall report the suspected forgery and basis for suspecting forgery to:

- (1) The Department of Arkansas State Police, in the case of a statewide petition; or
- (2) The prosecuting attorney of the county, in the case of a local petition.

SECTION 5. Arkansas Code § 7-9-104(b)-(d), concerning the form of initiative petitions, are amended to read as follows:

~~(b) The information provided by the person on the petition may be used as evidence of the validity or invalidity of the signature. However, if a signature of a registered voter on the petition is sufficient to verify the voter's name, then it shall not be adjudged invalid for failure to sign the name or write the residence and city or town of residence exactly as it appears on voter registration records, for failure to print the name in the space provided, for failure to provide the correct date of birth, nor for failure to provide the correct date of signing the petition, all the information being an aid to verification rather than a mandatory requirement~~

~~to perfect the validity of the signature.~~

~~(e)(b)~~ No additional sheets of voter signatures shall be attached to any petition unless the sheets contain the full language of the petition.

~~(d)(c)(1)~~ The signature section of the petition shall be formatted and shall contain the number of signature lines prescribed by the Secretary of State.

(2) Before the circulation of a statewide petition for signatures, the sponsor shall file a printed petition part with the Secretary of State in the exact form that will be used for obtaining signatures.

SECTION 6. Arkansas Code § 7-9-107 is amended to read as follows:

~~7-9-107. Approval of ballot titles and popular names of petitions prior to circulation—~~ Publication 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 ~~submit~~ file the original draft ~~to the Attorney General, with a proposed legislative or ballot title and popular name~~ with the Secretary of State.

(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 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) The sponsor may begin circulating an initiative petition or referendum petition upon receipt of the file-marked copy under subsection (c) of this section.

~~(b) Within ten (10) 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. The ballot title so submitted or supplied by the Attorney General shall briefly and concisely state the purpose of the proposed measure.~~

~~(c) 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" an 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.~~

~~(d) 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 7. Arkansas Code § 7-9-109(a), concerning the verification of petitions containing signatures, is amended to read as follows:

(a) Each petition containing signatures shall be verified in substantially the following form by the canvasser's affidavit thereon as a part thereof:

"State of Arkansas

County of _____

I, (print name of canvasser), being duly sworn, state that each of the foregoing persons signed his or her own name to this sheet of the petition in my presence. To the best of my knowledge and belief, each signature is genuine and each signer is a registered voter of the State of Arkansas, _____ County, or City or Incorporated Town

of _____. At all times during the circulation of this signature sheet, an exact copy of the popular name, ballot title, and text was attached to the signature sheet. My current residence address is correctly stated below.

Signature _____

Residence Current residence _____

Indicate one: ___ Paid Canvasser ___ Volunteer/Unpaid Canvasser

Subscribed and sworn to before me this ___ day of _____, 20__

Signature _____

Clerk, Notary, Judge, or J.P.

Seal _____”.

SECTION 8. Arkansas Code § 7-9-110(a), concerning the designation of the popular name, is amended to read as follows:

(a) The popular name of each state measure shall be ~~designated as provided in the popular name provided by the sponsor under~~ § 7-9-107, and the number of the measure on the ballot shall be designated as provided in § 7-9-116.

SECTION 9. Arkansas Code § 7-9-111 is amended to read as follows:

7-9-111. Determination of sufficiency of petition – Corrections.

(a)~~(1)~~ The Secretary of State shall ascertain and declare the sufficiency or insufficiency of the signatures submitted on each statewide initiative petition and each statewide referendum petition within thirty (30) days after it is filed.

~~(2)~~(b) The Secretary of State may contract with the various county clerks for their assistance in verifying the signatures on petitions. The county clerk shall return the petitions to the Secretary of State within ten (10) days.

~~(b) In considering the sufficiency of the initiative and referendum petitions, if it is made to appear beyond a reasonable doubt that twenty percent (20%) or more of the signatures on any one (1) part thereof are fictitious, forged, or otherwise clouded or that the challenged petitioners were ineligible to sign the petition, which fact was known or could have been ascertained by the exercise of reasonable diligence on the part of the canvasser, then the Secretary of State shall require the sponsors to assume the burden of proving that all other signatures appearing on the part are genuine and that the signers are qualified electors and are in all other respects entitled to sign the petition. If the sponsors refuse or fail to assume and meet the burden, then the Secretary of State shall reject the part and shall not count as petitioners any of the names appearing thereon.~~

(c) If the statewide initiative petition or statewide referendum petition is found to be sufficient, the Secretary of State shall certify and record the finding ~~and do~~ and perform such other duties relating thereto as are required by law.

(d)(1) If the ~~petition is~~ signatures submitted on a statewide

initiative petition or statewide referendum petition are found to be insufficient, the Secretary of State shall forthwith notify the sponsors in writing, through their designated agent, and shall set forth his or her reasons for so finding. When the notice is delivered, the sponsors shall have thirty (30) days in which to do any or all of the following:

(A) Solicit and obtain additional signatures; or

(B) Submit proof to show that the rejected signatures or some of them are good and should be counted; ~~or~~

~~(C) Make the petition more definite and certain.~~

(2) Any amendments and corrections shall not materially change the purpose and effect of the statewide initiative petition or statewide referendum petition. No change shall be made in the measure, ~~except to correct apparent typographical errors or omissions.~~

(3) The Secretary of State shall ascertain and declare the sufficiency or insufficiency of additional signatures submitted by the sponsors under this subsection within thirty (30) days of the filing of the supplemental petitions.

(e)(1) To assist the Secretary of State in ascertaining the sufficiency or insufficiency of each statewide initiative petition and each statewide referendum petition, all county clerks shall furnish at cost to the Secretary of State a single alphabetical list of all registered voters in their respective counties. The list shall be provided at least four (4) months before the election, and an updated list shall be provided at cost by September 1 in the year of the election. The list shall include the date of birth of each registered voter.

(2) The State Board of Election Commissioners, upon the request of the county clerk, may grant a waiver from this provision if the state board determines that the county clerk is unable to provide the list within the time required.

(f)(1) A person filing statewide initiative petitions or statewide referendum petitions with the Secretary of State shall bundle the petitions by county and shall file an affidavit stating the number of petitions and the total number of signatures being filed.

(2) If signatures were obtained by paid canvassers, the person filing the petitions under this subsection shall also submit the following:

(A) A statement identifying the paid canvassers by name;

and

(B) A statement signed by the sponsor indicating that the sponsor:

(i) Provided a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook to each paid canvasser before the paid canvasser solicited signatures; and

(ii) Explained the requirements under Arkansas law for obtaining signatures on an initiative or referendum petition to each paid canvasser before the paid canvasser solicited signatures.

(g) All county initiative and referendum elections shall be held in accordance with the provisions of § 14-14-917.

(h) Municipal referendum petition measures shall be submitted to the electors at a regular general election unless the petition expressly calls for a special election. If the date set by the petition does not allow sufficient time to comply with election procedures, then the city or town council shall fix the date for any special election on the referendum measure. The date of any special election shall be set in accordance with § 7-11-201 et seq. but in no event more than one hundred twenty (120) calendar days after the date of certification of sufficiency by the municipal clerk.

(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 State Board of Election Commissioners for certification as required by Arkansas Constitution, Article 5, § 1.

(2) The State Board of Election Commissioners 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 State Board of Election Commissioners 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 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 State Board of Election Commissioners 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 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 State Board of Election Commissioners 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 State Board of Election Commissioners; 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 10. Arkansas Code § 7-9-112 is amended to read as follows:

~~7-9-112. Failure to act on petition—Mandamus—Injunction~~ Right of review.

~~(a) If the Secretary of State does not examine and certify an initiative or referendum petition within the time prescribed in § 7-9-111, the sponsors may apply to the Supreme Court for appropriate relief~~ 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 tile or

popular name of a proposed measure resulting in the Secretary of State finding the proposed measure insufficient, the following persons may petition 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) If the Supreme Court decides that the petition is legally sufficient, it shall order the Secretary of State to certify the sufficiency for placing the initiated or referred measure on the election ballot.~~ 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 State Board of Election Commissioners 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 ~~any petition is not sufficient~~ 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 its sufficiency and may also enjoin the various election boards from allowing the ballot title thereof to be printed on the ballots and certifying votes cast on the proposal 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 11. Arkansas Code § 7-9-126 is amended to read as follows:
7-9-126. Count of signatures.

(a) Upon the initial filing of an initiative petition or referendum petition, the official charged with verifying the signatures shall:

(1) Perform an initial count of the signatures; and

(2) Determine whether the petition contains, on its face and before verification of the signatures of registered voters, the designated number of signatures required by the Arkansas Constitution and statutory law in order to certify the measure for the election ballot.

(b) A petition part and all signatures appearing on the petition part shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures, if one (1) or more of the following is true:

(1) The petition is not an original petition, including without limitation a petition that is photocopied or is a facsimile transmission;

(2) The petition does not conform to the original draft filed under § 7-9-107;

~~(2)(3)~~ (3) The petition lacks the signature, printed name, and residence address of the canvasser or is signed by more than one (1) canvasser;

~~(3)(A)(4)(A)~~ (4)(A) The canvasser is a paid canvasser whose name and the information required under § 7-9-601 were not submitted or updated by the sponsor to the Secretary of State before the petitioner signed the petition.

(B) A canvasser is a paid canvasser if he or she is paid money or anything of value for soliciting signatures before or after the signatures are obtained;

~~(4)(5)~~ (5) The canvasser verification ~~is~~:

(A) ~~not~~ Is not notarized;

(B) ~~is notarized~~ Is notarized by more than one (1)

notary;

(C) ~~or lacks~~ Lacks a notary signature or a notary seal; or

(D) Lacks a legible notary signature or a legible notary seal;

~~(5)(6)~~ (6) The canvasser verification is dated earlier than the date on which a petitioner signed the petition;

~~(6)(7)~~ (7) The petition fails to comply with § 7-9-104 or § 7-9-105,

including the lack of the exact popular name or ballot title ~~approved by the Attorney General~~ for a statewide initiative, a discrepancy in the text of the initiated or referred measure, or the lack of an enacting clause in a statewide petition for an initiated act; or

~~(7)~~(8) The petition part has a material defect that, on its face, renders the petition part invalid.

(c) The following signatures shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures:

(1) A signature that is not an original signature;

(2) A signature that is obviously not that of the purported petitioner;

(3) A signature that is illegible; ~~and~~

(4) A signature that is not accompanied by ~~no~~ personally identifying information;

~~(4)~~(5) A signature for which the corresponding printed name, address, ~~or~~ birth date, or date of signing is written by someone other than the signer except under circumstances of disability of the signer; ~~and~~

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

~~(5)~~(7) A signature that has any other material defect that, on its face, renders the signature invalid.

(d) If the initial count of signatures under this section is less than the designated number of signatures required by the Arkansas Constitution and statutory law in order to certify the measure for the ballot and the deadline for filing petitions has passed, the official charged with verifying the signatures shall declare the petition insufficient and shall not accept and file any additional signatures to cure the insufficiency of the petition on its face.

SECTION 12. Arkansas Code Title 7, Chapter 9, Subchapter 2, is amended to add an additional section to read as follows:

7-9-205. Challenges to constitutional amendments proposed by the General Assembly.

If the General Assembly passes a joint resolution proposing an amendment to the Arkansas Constitution, a qualified elector may file an

action in a court of competent jurisdiction at any time after the passage of the joint resolution challenging the sufficiency of the joint resolution, including without limitation the:

- (1) Text of the proposed amendment;
- (2) Ballot title of the proposed amendment; and
- (3) Popular name of the proposed amendment.

SECTION 13. Arkansas Code § 7-9-601 is amended to read as follows:

7-9-601. Hiring and training of paid canvassers – Definition.

(a)(1) A person shall not provide money or anything of value to another person for obtaining signatures on a statewide initiative petition or statewide referendum 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 an initiative or referendum 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; and

(D) Submit to the Secretary of State a copy of the signed statement provided by the paid canvasser under subdivision (d)(3) of this section.

(3) Upon filing the petition with the Secretary of State, the sponsor shall submit to the Secretary of State a:

(A) Final list of the names and current residential addresses of each paid canvasser; and

(B) Signature card for each paid canvasser.

(b)(1) To verify that there are no criminal offenses on record, a sponsor shall obtain, at its cost, from the Department of Arkansas State

Police, a current state and federal criminal record search on every paid canvasser to be registered with the Secretary of State.

(2) The criminal record search shall be obtained within thirty (30) days before the date that the paid canvasser begins collecting signatures.

(3) Upon submission of its list of paid canvassers to the Secretary of State, the sponsor shall certify to the Secretary of State that each paid canvasser in its employ has passed a criminal background check in accordance with this section.

(4) A willful violation of this section by a sponsor or paid canvasser constitutes a Class A misdemeanor.

~~(5) Signatures incorrectly obtained or submitted under this section shall not be counted by the Secretary of State.~~

(c) As used in this section, "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 an initiative or referendum petition is solicited in exchange for soliciting or obtaining a signature on a petition.

(d) Before obtaining a signature on an initiative or referendum petition as a paid canvasser, the prospective canvasser 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 stating that the person has not pleaded guilty or nolo contendere to or been found guilty of a criminal felony offense or a violation of the election laws, fraud, forgery, or identification theft in any state of the United States, the District of Columbia, Puerto Rico, Guam, or any other United States protectorate;

(4) A signed statement that the person has read and understands the Arkansas law applicable to obtaining signatures on an initiative or referendum petition; and

(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.

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

(f) Signatures incorrectly obtained or submitted under this section shall not be counted by the Secretary of State for any purpose.

SECTION 14. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that this act amends the process for circulating initiative petitions and referendum petitions; and that the provisions of this act should become effective immediately so that its provisions apply to all petitions circulated after the passage of the act to avoid confusion in petition circulation. 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/M. Pitsch