

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

HOUSE BILL 2404

AN ACT

AMENDING SECTIONS 19-111.01 AND 19-118, ARIZONA REVISED STATUTES; AMENDING TITLE 19, CHAPTER 1, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 19-118.01; AMENDING SECTION 19-122, ARIZONA REVISED STATUTES; RELATING TO INITIATIVES AND REFERENDA.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 19-111.01, Arizona Revised Statutes, is amended
3 to read:

4 19-111.01. Text review; legislative council; recommendations

5 A. At any time ~~before filing an application for initiative petition~~
6 ~~or referendum petition and after filing a statement of organization~~
7 ~~pursuant to section 16-906, a political committee that intends to submit~~
8 AFTER A PERSON OR ORGANIZATION SUBMITS an application for initiative
9 petition or referendum petition for a proposed law or constitutional
10 amendment, A POLITICAL COMMITTEE THAT INTENDS TO SUPPORT THE MEASURE OR A
11 POLITICAL COMMITTEE THAT INTENDS TO OPPOSE THE MEASURE may submit a copy
12 of the text of the proposed law, referral or constitutional amendment to
13 the director of the legislative council.

14 B. No later than thirty days after receipt of the text of the
15 measure, the legislative council staff shall review the proposed measure.
16 The legislative council staff shall limit its consideration to errors in
17 the drafting of the measure, confusing, conflicting or inconsistent
18 provisions within the measure and conflicts with other state laws and
19 federal law and shall consider and may prepare recommendations to improve
20 the text of the proposed measure.

21 C. The person or organization proposing the law or constitutional
22 amendment may accept, modify or reject any recommendations made by the
23 legislative council staff regarding the text of the measure solely in its
24 discretion.

25 Sec. 2. Section 19-118, Arizona Revised Statutes, is amended to
26 read:

27 19-118. Registered circulators; requirements; definition

28 A. All circulators who are not residents of this state and, for
29 statewide ballot measures only, all paid circulators must register as
30 circulators with the secretary of state before circulating petitions
31 pursuant to this title. The political committee that is circulating the
32 petition shall collect and submit the registrations to the secretary of
33 state. The secretary of state shall establish in the instructions and
34 procedures manual issued pursuant to section 16-452 a procedure for
35 registering circulators and shall publish on a website maintained by the
36 secretary of state all information regarding circulators that is required
37 pursuant to this section. The secretary of state shall disqualify all
38 signatures collected by a circulator who fails to register pursuant to
39 this subsection as provided for in section 19-121.01, subsection A.

40 B. The registration required by subsection A of this section shall
41 include the following provisions:

42 1. The circulator consents to the jurisdiction of the courts of
43 this state in resolving any disputes concerning the circulation of
44 petitions by that circulator.

1 2. The circulator shall designate an address in this state at which
2 the circulator will accept service of process related to disputes
3 concerning circulation of that circulator's petitions. Service of process
4 is effected under this section by delivering a copy of the subpoena to
5 that person individually or by leaving a copy of the subpoena at the
6 address designated by the circulator with a person of suitable age.

7 C. If a registered circulator is properly served with a subpoena to
8 provide evidence in an action regarding circulation of petitions and fails
9 to appear or produce documents as provided for in the subpoena, all
10 signatures collected by that circulator are deemed invalid. The party
11 serving the subpoena may request an order from the court directing the
12 secretary of state to remove any signatures collected by the circulator as
13 provided for in section 19-121.01, subsection A.

14 D. Any person may challenge the lawful registration of circulators
15 in the superior court of the county in which the circulator is registered.
16 A challenge may not be commenced more than ~~five~~ TEN BUSINESS days after
17 the date on which the petitions for which the circulator is required to be
18 registered are filed with the secretary of state. The person challenging
19 signatures may amend that complaint after the secretary of state has
20 removed signatures and signature sheets as prescribed in section
21 19-121.01. An action pursuant to this section shall be advanced on the
22 calendar and decided by the court as soon as possible. Either party may
23 appeal to the supreme court within five calendar days after entry of
24 judgment. The prevailing party in an action to challenge the registration
25 of a circulator under this section is entitled to reasonable attorney
26 fees.

27 E. The removal or disqualification of any one or more circulators
28 does not invalidate the random sample of signatures made pursuant to
29 section 19-121.01, and the secretary of state shall not be required to
30 conduct any additional random sampling of signatures.

31 F. For the purposes of this title, "paid circulator":

32 1. Means a natural person who receives monetary or other
33 compensation that is based on the number of signatures obtained on a
34 petition or on the number of petitions circulated that contain signatures.

35 2. Does not include a paid employee of any political committee
36 organized pursuant to title 16, chapter 6, unless that employee's primary
37 responsibility is circulating petitions to obtain signatures.

38 Sec. 3. Title 19, chapter 1, article 2, Arizona Revised Statutes,
39 is amended by adding section 19-118.01, to read:

40 19-118.01. Signature collection; prohibited payments;
41 violation; classification

42 A. A PERSON SHALL NOT PAY OR RECEIVE MONEY OR ANY OTHER THING OF
43 VALUE BASED ON THE NUMBER OF SIGNATURES COLLECTED ON A STATEWIDE
44 INITIATIVE OR REFERENDUM PETITION. SIGNATURES THAT ARE OBTAINED BY A PAID

1 CIRCULATOR WHO VIOLATES THIS SECTION ARE VOID AND SHALL NOT BE COUNTED IN
2 DETERMINING THE LEGAL SUFFICIENCY OF THE PETITION.

3 B. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR.

4 Sec. 4. Section 19-122, Arizona Revised Statutes, is amended to
5 read:

6 19-122. Refusal of secretary of state to file petition or
7 transmit facsimiles of signature sheets or
8 affidavits of circulators; writ of mandamus; venue

9 A. If the secretary of state refuses to accept and file a petition
10 for the initiative or referendum, or proposal for a constitutional
11 amendment that has been presented within the time prescribed, or if the
12 secretary of state refuses to transmit the facsimiles of a signature sheet
13 or sheets or affidavits of circulators to the county recorders for
14 certification under section 19-121.01, the secretary of state shall
15 provide the person who submitted the petition, proposal, signature sheet
16 or affidavit with a written statement of the reason for the refusal.
17 Within five calendar days after the refusal any citizen may apply to the
18 superior court for a writ of mandamus to compel the secretary of state to
19 file the petition or proposal or transmit the facsimiles, or for matters
20 involving statewide initiatives or referenda or proposed constitutional
21 amendments, the citizen may file a complaint with the county attorney or
22 attorney general. The county attorney or attorney general may apply,
23 within five calendar days after the complaint is made, to the superior
24 court for a writ of mandamus to compel the secretary of state to file the
25 petition or proposal or transmit the facsimiles. The action shall be
26 advanced on the calendar and heard and decided by the court as soon as
27 possible. Either party may appeal to the supreme court within five
28 calendar days after entry of judgment by the superior court. The decision
29 of the superior court may be stayed as prescribed by rules adopted by the
30 supreme court. If the court finds that the petition is legally
31 sufficient, the secretary of state shall then file it, with a certified
32 copy of the judgment attached as of the date on which it was originally
33 offered for filing in the secretary of state's office.

34 B. The most current version of the general county register
35 statewide voter registration database at the time of filing a court action
36 challenging an initiative or referendum petition shall constitute the
37 official record to be used to determine on a prima facie basis by the
38 challenger that the signer of a petition was not registered to vote at the
39 address given on the date of signing the petition. If the address of the
40 signer given on the date of signing the petition is different from that on
41 the most current version of the general county register, the county
42 recorder shall examine the version of the general county register that was
43 current on the date the signer signed the petition to determine the
44 validity of the signature and to determine whether the person was eligible
45 to sign the petition at the time of signing. This subsection does not

1 preclude introducing into evidence a certified copy of the affidavit of
2 registration of any signer dated before the signing of the petition if the
3 affidavit is in the possession of the county recorder but has not yet been
4 filed in the general county register.

5 C. An action that contests the validity of an initiative or
6 referendum measure based on the actions of the secretary of state OR
7 COMPLIANCE WITH THIS CHAPTER BY ANY PERSON may not be maintained in any
8 court in this state except as prescribed by this section. ~~ANY person~~
9 ~~may not maintain a separate action seeking~~ MAY CONTEST THE VALIDITY OF AN
10 INITIATIVE OR REFERENDUM. IF MULTIPLE ACTIONS ARE FILED THAT CONTEST THE
11 VALIDITY OF AN INITIATIVE OR REFERENDUM, INCLUDING ACTIONS FILED PURSUANT
12 TO SUBSECTION A OF THIS SECTION, THE SEPARATE ACTIONS SHALL BE
13 CONSOLIDATED BEFORE THE APPROPRIATE VENUE PURSUANT TO SUBSECTION D OF THIS
14 SECTION. IN ADDITION TO CONTESTING THE VALIDITY OF AN INITIATIVE OR
15 REFERENDUM, ANY PERSON MAY SEEK to enjoin the secretary of state or other
16 officer from certifying or printing the official ballot for the election
17 that will include the proposed initiative or referendum measure and ~~any~~
18 ~~request~~ to enjoin the certification or printing of the ballot ~~shall be~~
19 ~~made as a part of an action filed pursuant to subsection A of this~~
20 ~~section.~~

21 D. The superior court in Maricopa county shall have jurisdiction of
22 actions relating to measures and amendments to be submitted to the
23 electors of the state at large. With respect to actions relating to local
24 and special measures for a county, special district or school district,
25 the superior court in the county in which the district is located shall
26 have jurisdiction. With respect to actions relating to local or special
27 measures for a city or town, the superior court in the county in which the
28 majority of the population of that city or town resides shall have
29 jurisdiction.

30 Sec. 5. Legislative findings; purpose

31 A. The legislature finds that:

32 1. Statewide initiative measures enact broad and sweeping changes
33 to the laws of this state.

34 2. Protecting the integrity of the initiative process through the
35 prevention of fraud is a significant state interest.

36 3. Arizona currently permits the practice of paying signature
37 gatherers based on the number of signatures collected.

38 4. "There is some consensus among scholars, practitioners, and even
39 some courts that the practice of paying canvassers based on the number of
40 signatures they collect is directly linked to high levels of fraud in the
41 signature-gathering process." Jocelyn Friedrichs Benson, *Election Fraud*
42 *and the Initiative Process: A Study of the 2006 Michigan Civil Rights*
43 *Initiative*, 34 FORDHAM URB. L.J. 889, 923 (2007).

44 5. To reduce fraud in the signature collecting process, states have
45 enacted prohibitions on payment per signature.

1 6. "[A]vailable evidence - though limited - suggests that
2 circulators paid by the hour [] have a higher validity rate than those
3 paid by the signature." Affidavit of Richard J. Ellis, Ph.D. at ¶ 5, Prete
4 v. Bradbury, No. 03-6357-AA, 2004 U.S. Dist. LEXIS 28738 (D. Or. Feb. 18,
5 2004), aff'd, 438 F.3d 949 (9th Cir. 2006).

6 B. Based on the findings provided in subsection A of this section,
7 the legislature's purpose in adopting this act includes the following:

8 1. Prohibiting the specific practice of paying signature gatherers
9 based on the number of collected signatures.

10 2. Clarifying who may bring an action to challenge the validity of
11 an initiative or referendum and the time frame in which a challenge may be
12 made.

13 Sec. 6. Severability

14 If a provision of this act or its application to any person or
15 circumstance is held invalid, the invalidity does not affect other
16 provisions or applications of the act that can be given effect without the
17 invalid provision or application, and to this end the provisions of this
18 act are severable.