SB 1035

Introduced by
Senator Quezada; Representative Andrade

AN ACT

AMENDING SECTIONS 19-101, 19-112, 19-121.01, 19-121.02, 19-122, 19-127, 19-205 AND 19-208.02, ARIZONA REVISED STATUTES; RELATING TO INITIATIVE, REFERENDUM AND RECALL.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 19-101, Arizona Revised Statutes, is amended to read:

19-101. Referendum petition; circulators; violation; classification

A. The following shall be the form for referring to the people by referendum petition a measure or item, section or part of a measure enacted by the legislature, or by the legislative body of an incorporated city, town or county:

Referendum Description

(Insert a description of no more than one hundred words of the principal provisions of the measure sought to be referred.)

Notice: This is only a description of the measure sought to be referred prepared by the sponsor of the measure. It may not include every provision contained in the measure. Before signing, make sure the title and text of the measure are attached. You have the right to read or examine the title and text before signing.

Petition for Referendum

To the secretary of state (or to the corresponding officer for or on local, county, city or town measures):

We, the undersigned citizens and qualified electors of the state of Arizona, respectfully order that the senate (or house) bill No. ___ (or other local, county, city or town measure) entitled (title of act or ordinance, and if the petition is against less than the whole act or ordinance then set forth here the item, section, or part, of any measure on which the referendum is used), passed by the ____________ session of the legislature of the state of Arizona, at the general (or special, as the case may be) session of said legislature, (or by a county, city or town legislative body) shall be referred to a vote of the qualified electors of the state, (county, city or town) for their approval or rejection at the next regular general election (or county, city or town election) and each for himself says:

I have personally signed this petition with my first and last names. I have not signed any other petition for the same measure. I am a qualified elector of the state of Arizona, county of (or city or town and county of, as the case may be) ____________.

"Warning

It is a class 1 misdemeanor for any person to knowingly sign an initiative or referendum petition with a name other than his own, except in a circumstance where he signs for a person, in the presence of and at the specific request of such person, who is incapable of signing his own name because of physical
infirmity, or to knowingly sign his name more than once for the
same measure, or to knowingly sign such petition when he is not
a qualified elector."

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(Fifteen lines for signatures which shall be numbered)

The validity of signatures on this sheet must be sworn to
by the circulator before a notary public on the form appearing
on the back of the sheet.

Number ________________

B. Each petition sheet shall have printed on the top of each sheet the
following:

"It is unlawful to sign this petition before it has a
serial number."

C. Each petition sheet shall have printed in capital letters in no
less than twelve point bold-faced type in the upper right-hand corner of the
face of the petition sheet and below the statement prescribed in subsection B
of this section the following:

"_________ paid circulator"  "____________ volunteer".

D. A circulator of a referendum petition shall state whether he is a
paid circulator or volunteer by checking the appropriate line on the petition
form before circulating the petition for signatures.

E. Signatures obtained on referendum petitions in violation of
subsection D of this section are void and shall not be counted in determining
the legal sufficiency of the petition. The presence of signatures that are
invalidated under this subsection on a petition does not invalidate other
signatures on the petition that were obtained as prescribed by this section.

Sec. 2. Section 19-112, Arizona Revised Statutes, is amended to read:

19-112. Signatures and verification; attachment; circulator
statement

A. Every qualified elector signing a petition shall do so in the
presence of the person who is circulating the petition and who is to execute
the affidavit STATEMENT of verification. At the time of signing, the
qualified elector shall sign his first and last names in the spaces provided
and the elector so signing shall print his first and last names and write, in
the appropriate spaces following the signature, the signer's residence
address, giving street name and number, and if he has no street address, a
description of his residence location. The elector so signing shall write,
in the appropriate spaces following the elector’s address, the date on which
the elector signed the petition.

B. The signature sheets shall be attached at all times during
circulation to a full and correct copy of the title and text of the measure
or constitutional amendment proposed or referred by the petition. The title
and text shall be in at least eight-point type and shall include both the
original and the amended text. The text shall indicate material deleted, if
any, by printing the material with a line drawn through the center of the
letters of the material and shall indicate material added or new material by
printing the letters of the material in capital letters. For the purposes of
a referendum, the secretary of state’s time–and-date-marked copy of the
measure with its proposed text set out in full or for any local matter, the
copy of the measure signed or enacted into law by the mayor, or chairman of
the board of supervisors, as appropriate, with its proposed text set out in
full and including the original and any amended text constitutes the full and
correct copy of the title and text of the measure for circulation for
signatures. For any local matter enacted without an ordinance or resolution,
the official minutes approved by the governing body and signed by the clerk
of the governing body constitute the full and correct copy of the title and
text of the measure. Referendum signatures that are collected with any copy
of the measure that is not a facsimile of the time–and-date–marked copy for
statewide measures or the full and correct copy of a local measure as
prescribed by this subsection are invalid.

C. The person before whom the signatures, names and addresses were
written on the signature sheet, on the affidavit STATEMENT OF VERIFICATION
form pursuant to this section, shall subscribe and swear before a notary
public that each of the names on the sheet was signed and the name and
address were printed by the elector and the circulator on the date indicated,
that in his belief each signer was a qualified elector of a certain county of
the state, or, in the case of a city, town or county measure, of the city,
town or county affected by the measure on the date indicated, and that at all
times during circulation of the signature sheet a copy of the title and text
was attached to the signature sheet. All signatures of petitioners on a
signature sheet shall be those of qualified electors who are registered to
vote in the same county. However, if signatures from more than one county
appear on the same signature sheet, only the valid signatures from the same
county that are most numerous on the signature sheet shall be counted.

D. The affidavit STATEMENT OF VERIFICATION shall be in the following
form printed on the reverse side of each signature sheet:

Affidavit STATEMENT OF VERIFICATION of Circulator

State of Arizona

__________________________
(Where notarized)
I, ____[(print name)]____, a person who is not required to be a resident of this state but who is otherwise qualified to register to vote in the county of ________, in the state of Arizona at all times during my circulation of this petition sheet, and under the penalty of a class 1 misdemeanor, depose and say that subject to section 19-115, Arizona Revised Statutes, each individual printed the individual's own name and address and signed this sheet of the foregoing petition in my presence on the date indicated and I believe that each signer's name and residence address or post office address are correctly stated and that each signer is a qualified elector of the state of Arizona (or in the case of a city, town or county measure, of the city, town or county affected by the measure proposed to be initiated or referred to the people) and that at all times during circulation of this signature sheet a copy of the title and text was attached to the signature sheet.

(Signature of affiant CIRCULATOR) ____________________

(Residence address, street and number of affiant, or if no street address, a description of residence location) ______________________________________

Subscribed and sworn to before me on _________________.

(date)

__________________________________

Notary Public

{Form shall include a designated location for notary stamp}

E. The eight-point type required by subsection B of this section does not apply to maps, charts or other graphics.

F. The form of the affidavit shall not be modified. Any petition that contains a partially completed affidavit or an affidavit that has been modified is invalid.

Sec. 3. Section 19-121.01, Arizona Revised Statutes, is amended to read:

19-121.01. Secretary of state; removal of petition and ineligible signatures; facsimile sheets; random sample; presumption

A. Within twenty days, excluding Saturdays, Sundays and other legal holidays, of the date of filing of an initiative or referendum petition and issuance of the receipt, the secretary of state shall:

1. Remove the following:

   (a) Those sheets not attached to a copy of the complete title and text of the measure as prescribed in this chapter.

   (b) The copy of the title and text from the remaining petition sheets.
(c) Those sheets not bearing the correct petition serial number in the lower right-hand corner of each side.

(d) Those sheets containing a circulator's affidavit STATEMENT OF VERIFICATION that is not completed or signed or that has been modified.

(e) Those sheets on which the affidavit of the circulator is not notarized, the notary's signature is missing, the notary's commission has expired or the notary's seal is not affixed.

(f) Those sheets on which the signatures of the circulator or the notary are dated earlier than the dates on which the electors signed the face of the petition sheet.

(g) Those sheets that are circulated by a circulator who is prohibited from participating in any election, initiative, referendum or recall campaign pursuant to section 19-119.01.

(h) Those sheets on which the circulator is required to be registered with the secretary of state pursuant to section 19-118 and the circulator is not properly registered at the time the petitions were circulated.

2. After completing the steps in paragraph 1 of this subsection, review each sheet to determine the county of the majority of the signers and shall:

(a) Place a three or four letter abbreviation designating that county in the upper right-hand corner of the face of the petition.

(b) Remove all signatures of those not in the county of the majority on each sheet by marking an "SS" in red ink in the margin to the right of the signature line.

(c) Cause all signature sheets to be grouped together by county of registration of the majority of those signing and attach them to one or more copies of the title and text of the measure. If the sheets are too bulky for convenient grouping by the secretary of state in one volume by county, they may be bound in two or more volumes with those in each volume attached to a single printed copy of the measure. The remaining detached copies of the title and text of the measure shall be delivered to the applicant.

3. After completing the steps in paragraph 2 of this subsection, remove the following signatures that are not eligible for verification by marking an "SS" in red ink in the margin to the right of the signature line:

(a) If the signature of the qualified elector is missing.

(b) If the residence address or the description of residence location is missing.

(c) If the date on which the petitioner signed is missing, if the date on which the petitioner signed the petition is before the date that the statement of organization was filed for the political committee that is filing the petition or if the date on which the petitioner signed the petition is after the date on which the affidavit STATEMENT OF VERIFICATION was completed by the circulator and notarized.
(d) Signatures in excess of the fifteen signatures permitted per petition.

(e) Signatures withdrawn pursuant to section 19-113.

(f) Signatures for which the secretary of state determines that the petition circulator has printed the elector's first and last names or other information in violation of section 19-112.

4. After the removal of petition sheets and signatures, count the number of signatures for verification on the remaining petition sheets and note that number in the upper right-hand corner of the face of each petition sheet immediately above the county designation.

5. Number the remaining petition sheets that were not previously removed and that contain signatures eligible for verification in consecutive order on the front side of each petition sheet in the upper left-hand corner.

6. Count all remaining petition sheets and signatures not previously removed and issue a receipt to the applicant of this total number eligible for verification.

B. If the total number of signatures for verification as determined pursuant to subsection A, paragraph 6 of this section equals or exceeds the constitutional minimum, the secretary of state, during the same twenty day period provided in subsection A of this section, shall select, at random, five percent of the total signatures eligible for verification by the county recorders of the counties in which the persons signing the petition claim to be qualified electors. The random sample of signatures to be verified shall be drawn in such a manner that every signature eligible for verification has an equal chance of being included in the sample. The random sample produced shall identify each signature selected by petition page and line number. The signatures selected shall be marked according to the following procedure:

1. Using red ink, mark the selected signature by circling the line number and drawing a line from the base of the circle extending into the left margin.

2. If a signature line selected for the random sample is found to be blank or was removed from the verification process pursuant to subsection A of this section and is marked with an "SS", then the next line down, even if that requires going to the next petition sheet in sequence, on which an eligible signature appears shall be selected as a substitute if that line has not already been selected for the random sample. If the next eligible line is already being used in the random sample, the secretary of state shall proceed back up the page from the signature line originally selected for the random sample to the next previous signature line eligible for verification. If that line is already being used in the random sample, the secretary of state shall continue moving down the page or to the next page from the line originally selected for the random sample and shall select the next eligible signature as its substitute for the random sample. The secretary of state shall use this process of alternately moving forward and backward until a
signature eligible for verification and not already included in the random
sample can be selected and substituted.

C. After the selection of the random sample and the marking of the
signatures selected on the original petition sheets pursuant to subsection B
of this section, the secretary of state shall reproduce a facsimile of the
front of each signature sheet on which a signature included in the random
sample appears. The secretary of state shall clearly identify those
signatures marked for verification by color highlighting or other similar
method and shall transmit by personal delivery or certified mail to each
county recorder a facsimile sheet of each signature sheet on which a
signature appears of any individual who claims to be a qualified elector of
that county and whose signature was selected for verification as part of the
random sample.

D. The secretary of state shall presume that the date noted on the
petition for a petitioner's signature is the date on which the petitioner
signed the petition, and any person seeking to establish a different date for
the signature bears the burden of proof in overcoming the presumption.

E. The secretary of state shall retain in custody all signature sheets
removed pursuant to this section except as otherwise prescribed in this
title.

Sec. 4. Section 19-121.02, Arizona Revised Statutes, is amended to
read:

19-121.02. Certification by county recorder
A. Within fifteen days, excluding Saturdays, Sundays and other legal
holidays, after receiving the facsimile signature sheets from the secretary
of state pursuant to section 19-121.01, the county recorder shall determine
which signatures of individuals whose names were transmitted shall be
disqualified for any of the following reasons:

1. No residence address or description of residence location is
provided.

2. No date of signing is provided.

3. The signature is illegible and the signer is otherwise
unidentifiable.

4. The address provided is illegible or nonexistent.

5. The individual was not a qualified elector on the date of signing
the petition.

6. The individual was a registered voter but was not at least eighteen
years of age on the date of signing the petition or affidavit STATEMENT OF
VERIFICATION.

7. The signature was disqualified after comparison with the signature
on the affidavit of registration STATEMENT OF VERIFICATION.

8. If a petitioner signed more than once, all but one otherwise valid
signature shall be disqualified.
9. If a petition signer's signature is determined to be invalid after a comparison is made between the signature and handwriting on the petition and the petition signer's voter registration file.

10. The person circulating the petition was a justice of the peace or a county recorder at the time the person circulated the petition.

11. For the same reasons any signatures or entire petition sheets could have been removed by the secretary of state pursuant to section 19-121.01, subsection A, paragraph 1 or 3.

B. Within the same time period provided in subsection A of this section, the county recorder shall certify to the secretary of state the following:

1. The name of any individual whose signature was included in the random sample and disqualified by the county recorder together with the petition page and line number of the disqualified signature.

2. The total number of signatures selected for the random sample and transmitted to the county recorder for verification and the total number of random sample signatures disqualified.

C. The secretary of state shall prescribe the form of the county recorder's certification.

D. At the time of the certification, the county recorder shall:

1. Return the facsimile signature sheets to the secretary of state.

2. Send notice of the results of the certification by mail to the person or organization that submitted the initiative or referendum petitions and to the secretary of state.

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

19-122. **Refusal of secretary of state to file petition or transmit facsimiles of signature sheets or circulator statements; writ of mandamus; venue**

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

B. The most current version of the general county register statewide voter registration database at the time of filing a court action challenging an initiative or referendum petition shall constitute the official record to be used to determine on a prima facie basis by the challenger that the signer of a petition was not registered to vote at the address given on the date of signing the petition. If the address of the signer given on the date of signing the petition is different from that on the most current version of the general county register, the county recorder shall examine the version of the general county register that was current on the date the signer signed the petition to determine the validity of the signature and to determine whether the person was eligible to sign the petition at the time of signing. This subsection does not preclude introducing into evidence a certified copy of the affidavit of registration of any signer dated before the signing of the petition if the affidavit is in the possession of the county recorder but has not yet been filed in the general county register.

C. An action that contests the validity of an initiative or referendum measure based on the actions of the secretary of state may not be maintained in any court in this state except as prescribed by this section. A person may not maintain a separate action seeking to enjoin the secretary of state or other officer from certifying or printing the official ballot for the election that will include the proposed initiative or referendum measure and any request to enjoin the certification or printing of the ballot shall be made as a part of an action filed pursuant to subsection a of this section.

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

Sec. 6. Section 19-127, Arizona Revised Statutes, is amended to read:

19-127. Preservation and publication of approved measures

A. If a measure or proposed constitutional amendment, at the ensuing election, is approved by the people, the preserved copies with the sheets, signatures and affidavits STATEMENTS OF VERIFICATION, and a certified copy of the governor's proclamation declaring them to have been approved by the
people, shall be bound together in such form that they may be conveniently
identified and preserved.

B. The secretary of state shall cause every measure or constitutional
amendment submitted under the initiative and approved by the people to be
printed with the general laws enacted by the next ensuing session of the
legislature, with the date of the governor's proclamation declaring them to
have been approved by the people.

Sec. 7. Section 19-205, Arizona Revised Statutes, is amended to read:

19-205. Signatures and verification

A. Every qualified elector signing a petition for a recall election
shall do so in the presence of the person who is circulating the petition and
who is to execute the affidavit of verification on the reverse side
of the signature sheet. At the time of signing, the qualified elector shall
sign and print his first and last name and the elector so signing shall
write, in the appropriate spaces following the signature, his residence
address, giving street and number or, if the elector has no street address, a
description of his residence location, and the date on which he signed the
petition.

B. The person before whom the signatures were written on the signature
sheet shall, in an affidavit subscribed and sworn to by him before a notary public, SHALL verify that each of the names on the
sheet was signed in his presence on the date indicated, and that in his
belief each signer was a qualified elector of the election district on the
date indicated in which such recall election will be conducted. All
signatures of petitioners on a signature sheet shall be those of qualified
electors who are registered to vote in the same county. However, If
signatures from more than one county appear on the same signature sheet, only
the valid signatures from the same county which are most numerous on the
signature sheet shall be counted. In the absence of a legible signature, the
name as it is printed shall be the name used to determine the validity of the
signature.

C. The affidavit of verification shall be in the form
prescribed for initiative and referendum. In addition it shall also require
a statement by the circulator that the circulator believes that the
circulator is qualified to register to vote and all signers thereof are
qualified to vote in the recall election.

Sec. 8. Section 19-208.02, Arizona Revised Statutes, is amended to
read:

19-208.02. Certification by county recorder

A. Within sixty days after receipt of the signature sheets from the
receiving officer, the county recorder shall determine the number of
signatures or affidavits of individuals whose names were transmitted that
must be disqualified for any of the reasons set forth in section 19-121.02,
subsection A, and the county recorder shall certify such number to the
receiving officer in the form prescribed by the secretary of state.
B. At the time of such certification, the county recorder shall:

1. Return the original signature sheets to the receiving officer, obtaining a dated, signed receipt therefor.

2. Send notice of the results of certification by mail to the person or organization that submitted the recall petitions and to the secretary of state.