Senate Engrossed House Bill

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

CHAPTER 52

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

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

19-111.01. Text review; legislative council; recommendations
   A. At any time before filing an application for initiative petition or referendum petition and after filing a statement of organization pursuant to section 16-906, a political committee that intends to submit AFTER A PERSON OR ORGANIZATION SUBMITS an application for initiative petition or referendum petition for a proposed law or constitutional amendment, A POLITICAL COMMITTEE THAT INTENDS TO SUPPORT THE MEASURE OR A POLITICAL COMMITTEE THAT INTENDS TO OPPOSE THE MEASURE may submit a copy of the text of the proposed law, referral or constitutional amendment to the director of the legislative council.
   B. No later than thirty days after receipt of the text of the measure, the legislative council staff shall review the proposed measure. The legislative council staff shall limit its consideration to errors in the drafting of the measure, confusing, conflicting or inconsistent provisions within the measure and conflicts with other state laws and federal law and shall consider and may prepare recommendations to improve the text of the proposed measure.
   C. The person or organization proposing the law or constitutional amendment may accept, modify or reject any recommendations made by the legislative council staff regarding the text of the measure solely in its discretion.

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

19-118. Registered circulators; requirements; definition
   A. All circulators who are not residents of this state and, for statewide ballot measures only, all paid circulators must register as circulators with the secretary of state before circulating petitions pursuant to this title. The political committee that is circulating the petition shall collect and submit the registrations to the secretary of state. The secretary of state shall establish in the instructions and procedures manual issued pursuant to section 16-452 a procedure for registering circulators and shall publish on a website maintained by the secretary of state all information regarding circulators that is required pursuant to this section. The secretary of state shall disqualify all signatures collected by a circulator who fails to register pursuant to this subsection as provided for in section 19-121.01, subsection A.
   B. The registration required by subsection A of this section shall include the following provisions:
      1. The circulator consents to the jurisdiction of the courts of this state in resolving any disputes concerning the circulation of petitions by that circulator.
2. The circulator shall designate an address in this state at which
the circulator will accept service of process related to disputes
concerning circulation of that circulator's petitions. Service of process
is effected under this section by delivering a copy of the subpoena to
that person individually or by leaving a copy of the subpoena at the
address designated by the circulator with a person of suitable age.

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

D. Any person may challenge the lawful registration of circulators
in the superior court of the county in which the circulator is registered.
A challenge may not be commenced more than five TEN BUSINESS days after
the date on which the petitions for which the circulator is required to be
registered are filed with the secretary of state. The person challenging
signatures may amend that complaint after the secretary of state has
removed signatures and signature sheets as prescribed in section
19-121.01. An action pursuant to this section shall be advanced on the
calendar 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. The prevailing party in an action to challenge the registration
of a circulator under this section is entitled to reasonable attorney
fees.

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

F. For the purposes of this title, "paid circulator":
1. Means a natural person who receives monetary or other
compensation that is based on the number of signatures obtained on a
petition or on the number of petitions circulated that contain signatures.
2. Does not include a paid employee of any political committee
organized pursuant to title 16, chapter 6, unless that employee's primary
responsibility is circulating petitions to obtain signatures.

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

19-118.01. Signature collection; prohibited payments;
violation; classification
A. A PERSON SHALL NOT PAY OR RECEIVE MONEY OR ANY OTHER THING OF
VALUE BASED ON THE NUMBER OF SIGNATURES COLLECTED ON A STATEWIDE
INITIATIVE OR REFERENDUM PETITION. SIGNATURES THAT ARE OBTAINED BY A PAID
CIRCULATOR WHO VIOLATES THIS SECTION ARE VOID AND SHALL NOT BE COUNTED IN DETERMINING THE LEGAL SUFFICIENCY OF THE PETITION.

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

Sec. 4. 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 affidavits of circulators; 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 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 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 OR COMPLIANCE WITH THIS CHAPTER BY ANY PERSON may not be maintained in any court in this state except as prescribed by this section. ANY person may not maintain a separate action seeking MAY CONTEST THE VALIDITY OF AN INITIATIVE OR REFERENDUM. IF MULTIPLE ACTIONS ARE FILED THAT CONTEST THE VALIDITY OF AN INITIATIVE OR REFERENDUM, INCLUDING ACTIONS FILED PURSUANT TO SUBSECTION A OF THIS SECTION. THE SEPARATE ACTIONS SHALL BE CONSOLIDATED BEFORE THE APPROPRIATE VENUE PURSUANT TO SUBSECTION D OF THIS SECTION. IN ADDITION TO CONTESTING THE VALIDITY OF AN INITIATIVE OR REFERENDUM, ANY PERSON MAY SEEK 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. 5. Legislative findings: purpose
A. The legislature finds that:
1. Statewide initiative measures enact broad and sweeping changes to the laws of this state.
2. Protecting the integrity of the initiative process through the prevention of fraud is a significant state interest.
3. Arizona currently permits the practice of paying signature gatherers based on the number of signatures collected.
4. "There is some consensus among scholars, practitioners, and even some courts that the practice of paying canvassers based on the number of signatures they collect is directly linked to high levels of fraud in the signature-gathering process." Jocelyn Friedrichs Benson, Election Fraud and the Initiative Process: A Study of the 2006 Michigan Civil Rights Initiative, 34 Fordham Urb. L.J. 889, 923 (2007).
5. To reduce fraud in the signature collecting process, states have enacted prohibitions on payment per signature.
6. "[A]vailable evidence – though limited – suggests that
circulators paid by the hour [...] have a higher validity rate than those
paid by the signature." Affidavit of Richard J. Ellis, Ph.D. at ¶ 5, Prete
v. Bradbury, No. 03-6357-AA, 2004 U.S. Dist. LEXIS 28738 (D. Or. Feb. 18,
2004), aff'd, 438 F.3d 949 (9th Cir. 2006).

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

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

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

Sec. 6. Severability
If a provision of this act or its application to any person or
circumstance is held invalid, the invalidity does not affect other
provisions or applications of the act that can be given effect without the
invalid provision or application, and to this end the provisions of this
act are severable.