

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0443.01 Dan Cartin

HOUSE BILL 10-1100

HOUSE SPONSORSHIP

Stephens,

SENATE SPONSORSHIP

(None),

House Committees
State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 CONCERNING WITHDRAWAL OF AN INITIATIVE PETITION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Section 1 of the bill makes legislative findings and declarations.

Section 3 of the bill repeals current law authorizing the proponents of an initiative petition to withdraw the petition from consideration as a ballot issue by requesting the secretary of state, no later than 60 days prior to the election, not to place the petition on the ballot. Instead, the bill prohibits the proponents or other persons from withdrawing an initiative petition after it has been submitted to the secretary of state for verification

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

of signatures.

Section 4 of the bill specifies that the proponents or the designated representatives of the proponents of an initiative petition withdraw an initiative petition if the proponents or the designated representatives of the proponents:

- ! Do not submit the initiative petition to the secretary of state for title setting;
- ! Do not circulate the initiative petition for signatures after the titles and submission clause have been fixed and determined;
- ! Discontinue circulation of the initiative petition prior to the expiration of the period for filing an initiative petition with the secretary of state; or
- ! Do not file the initiative petition with the secretary of state for the examination of names and signatures.

Section 4 of the bill also makes it unlawful and a class 1 misdemeanor offense for any person, directly or through any other person:

- ! To pay, loan, or contribute, or offer or promise to pay, loan, or contribute, any money or valuable consideration to or for the proponents or the designated representatives of the proponents of an initiative petition, or to or for any other person, to compel, induce, or prevail upon the proponents or designated representatives to withdraw the petition from consideration as a ballot issue; or
- ! To receive, agree to accept, or contract for any money, contribution, gift, loan, or other valuable consideration for withdrawing or agreeing to withdraw an initiative petition from consideration as a ballot issue.

Section 2 of the bill makes a conforming amendment necessitated by the addition of the offense in section 3.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) During the 2008 general election, the proponents of certain
5 citizen-initiated ballot issues were offered money or other valuable
6 consideration by persons to withdraw the ballot issues from the general
7 election ballot and subsequently withdrew those measures;

1 (b) The payments to withdraw these citizen-initiated ballot issues
2 effectively silenced, for a negotiated cost, the thousands of individuals
3 who had signed initiative petitions for the measures and the public
4 discourse associated with an election campaign contrary to the letter and
5 spirit of the right of initiative guaranteed the people of Colorado by
6 section 1 of article V of the Colorado constitution;

7 (c) The large amounts of money that the persons and groups
8 offered to and that were accepted by the proponents of these
9 citizen-initiated ballot issues to gain the removal of the measures from the
10 ballot and foreclose consideration by the voters at the election gave rise
11 to an appearance of impropriety or corruption in the election campaign on
12 the measures.

13 (2) The general assembly further finds and declares that:

14 (a) The state of Colorado has an interest in ensuring that the right
15 to legislate reserved to the people by the initiative process under section
16 1 (2) of article V of the Colorado constitution does not become a
17 subterfuge or vehicle for the personal economic gain of individuals or
18 groups and that those citizen-initiated ballot issues are submitted to the
19 people for adoption or rejection pursuant to section 1 (7) of article V of
20 the Colorado constitution;

21 (b) The state of Colorado has previously acted to protect the
22 integrity and reliability of the initiative process in the provisions of
23 articles 40 and 45 of title 1, Colorado Revised Statutes, specifically, and
24 has regulated elections and governmental operations in ways similar to
25 the provisions of section 4 of House Bill 10-___ by prohibiting the
26 intimidation of electors, giving or promising money or employment to
27 electors, receiving money or jobs in connection with voting or refraining

1 to vote for a particular person or measure, and bribery of public servants;

2 (c) The narrowly focused prohibition contained in section 4 of
3 House Bill 10-____ on the transfer of money or valuable consideration
4 for the purpose of effectuating the withdrawal of a citizen-initiated ballot
5 issue or the acceptance of money or valuable consideration in exchange
6 for that withdrawal is consistent with the concept that it is offensive to
7 give money in exchange for a vote or official action and with state
8 regulation of such activities.

9 (3) The general assembly further finds and declares that:

10 (a) A contribution or expenditure that is made for the purpose of
11 advancing or opposing a citizen-initiated ballot issue in an election
12 campaign is protected political speech;

13 (b) The transfer of money or other valuable consideration to the
14 proponents of a citizen-initiated ballot issue for the purpose of gaining the
15 removal of the measure from consideration as a ballot issue cannot
16 reasonably be characterized as a contribution or an expenditure within the
17 meaning of the campaign finance law and is inconsistent with the type of
18 advocacy and political speech protected by the constitution;

19 (c) The provisions of section 4 of House Bill 10-____ are
20 therefore permissible governmental regulation that is distinguishable from
21 the limitations on contributions and expenditures in ballot initiative
22 campaigns that have been found to impermissibly impair freedom of
23 expression;

24 (d) The narrowly focused provisions of section 4 of House Bill
25 10-____ will serve the compelling governmental interest of removing
26 corruption or the appearance of corruption from ballot initiative
27 campaigns and promote public confidence in government and the right of

1 initiative.

2 **SECTION 2.** 1-40-132 (1), Colorado Revised Statutes, is
3 amended to read:

4 **1-40-132. Enforcement.** (1) The secretary of state is charged
5 with the administration and enforcement of the provisions of this article
6 relating to initiated or referred measures and state constitutional
7 amendments. The secretary of state shall have the authority to
8 promulgate rules as may be necessary to administer and enforce any
9 provision of this article that relates to initiated or referred measures and
10 state constitutional amendments. The secretary of state may conduct a
11 hearing, upon a written complaint by a registered elector, on any alleged
12 violation of the provisions relating to the circulation of a petition, which
13 may include but shall not be limited to the preparation or signing of an
14 affidavit by a circulator OR RELATING TO THE WITHDRAWAL OF AN
15 INITIATIVE PETITION AS PROVIDED IN SECTION 1-40-134. If the secretary
16 of state, after the hearing, has reasonable cause to believe that there has
17 been a violation of the provisions of this article relating to initiated or
18 referred measures and state constitutional amendments, he or she shall
19 notify the attorney general, who may institute a criminal prosecution. If
20 a circulator is found to have violated any provision of this article or is
21 otherwise shown to have made false or misleading statements relating to
22 his or her section of the petition, such section of the petition shall be
23 deemed void.

24 **SECTION 3.** 1-40-134, Colorado Revised Statutes, is amended
25 to read:

26 **1-40-134. Withdrawal of initiative petition - restriction.** The
27 ~~designated representatives of the proponents of an initiative petition may~~

1 ~~withdraw the petition from consideration as a ballot issue by filing a letter~~
2 ~~with the secretary of state requesting that the petition not be placed on the~~
3 ~~ballot. The letter shall be signed and acknowledged by both designated~~
4 ~~representatives before an officer authorized to take acknowledgments and~~
5 ~~shall be filed no later than sixty days prior to the election at which the~~
6 ~~initiative is to be voted upon~~ NEITHER THE DESIGNATED
7 REPRESENTATIVES OF THE PROPONENTS OF AN INITIATIVE PETITION NOR
8 ANY OTHER PERSON MAY WITHDRAW THE PETITION FROM CONSIDERATION
9 AS A BALLOT ISSUE AFTER THE PETITION HAS BEEN FILED WITH THE
10 SECRETARY OF STATE FOR VERIFICATION PURSUANT TO SECTIONS 1-40-108
11 AND 1-40-116.

12 **SECTION 4.** Article 40 of title 1, Colorado Revised Statutes, is
13 amended BY THE ADDITION OF A NEW SECTION to read:

14 **1-40-136. Unlawful compensation for withdrawal of initiative**
15 **petition - complaint - penalty.** (1) FOR PURPOSES OF THIS SECTION, THE
16 PROPONENTS OR THE DESIGNATED REPRESENTATIVES OF THE PROPONENTS
17 OF AN INITIATIVE PETITION WITHDRAW AN INITIATIVE PETITION IF THE
18 PROPONENTS OR THE DESIGNATED REPRESENTATIVES OF THE PROPONENTS:

19 (a) DO NOT SUBMIT THE INITIATIVE PETITION TO THE SECRETARY
20 OF STATE FOR TITLE SETTING PURSUANT TO SECTION 1-40-105;

21 (b) DO NOT CIRCULATE THE INITIATIVE PETITION FOR SIGNATURES
22 AFTER THE TITLES AND SUBMISSION CLAUSE HAVE BEEN FIXED AND
23 DETERMINED PURSUANT TO SECTIONS 1-40-106 AND 1-40-107;

24 (c) DISCONTINUE CIRCULATION OF THE INITIATIVE PETITION PRIOR
25 TO THE EXPIRATION OF THE PERIOD FOR FILING AN INITIATIVE PETITION
26 WITH THE SECRETARY OF STATE PURSUANT TO SECTION 1-40-108; OR

27 (d) DO NOT FILE THE INITIATIVE PETITION WITH THE SECRETARY OF

1 STATE FOR THE EXAMINATION OF NAMES AND SIGNATURES PURSUANT TO
2 SECTION 1-40-116.

3 (2) (a) (I) IT IS UNLAWFUL FOR ANY PERSON, DIRECTLY OR
4 THROUGH ANY OTHER PERSON:

5 (A) TO PAY, LOAN, OR CONTRIBUTE, OR OFFER OR PROMISE TO PAY,
6 LOAN, OR CONTRIBUTE, ANY MONEY OR VALUABLE CONSIDERATION TO OR
7 FOR THE PROPONENTS OR THE DESIGNATED REPRESENTATIVES OF THE
8 PROPONENTS OF AN INITIATIVE PETITION, OR TO OR FOR ANY OTHER
9 PERSON, TO COMPEL, INDUCE, OR PREVAIL UPON THE PROPONENTS OR
10 DESIGNATED REPRESENTATIVES TO WITHDRAW THE INITIATIVE PETITION;
11 OR

12 (B) TO RECEIVE, AGREE TO ACCEPT, OR CONTRACT FOR ANY
13 MONEY, CONTRIBUTION, GIFT, LOAN, OR OTHER VALUABLE CONSIDERATION
14 FOR WITHDRAWING OR AGREEING TO WITHDRAW AN INITIATIVE PETITION.

15 (II) FOR PURPOSES OF THIS SECTION, "PERSON" MEANS ANY
16 NATURAL PERSON, PARTNERSHIP, COMMITTEE, ASSOCIATION,
17 CORPORATION, LABOR ORGANIZATION, POLITICAL PARTY, OR OTHER
18 ORGANIZATION OR GROUP OF PERSONS.

19 (b) EACH OFFENSE SET FORTH IN PARAGRAPH (a) OF THIS
20 SUBSECTION (2) IS A CLASS 1 MISDEMEANOR PUNISHABLE AS PROVIDED IN
21 SECTION 18-1.3-501, C.R.S.

22 **SECTION 5. Act subject to petition - effective date.** This act
23 shall take effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly (August
25 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
26 referendum petition is filed pursuant to section 1 (3) of article V of the
27 state constitution against this act or an item, section, or part of this act

1 within such period, then the act, item, section, or part shall not take effect
2 unless approved by the people at the general election to be held in
3 November 2010 and shall take effect on the date of the official
4 declaration of the vote thereon by the governor.