

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0089.01 Ed DeCecco

HOUSE BILL 11-1072

HOUSE SPONSORSHIP

McNulty,

SENATE SPONSORSHIP

(None),

House Committees
State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE RESPONSIBILITIES OF A DESIGNATED
102 REPRESENTATIVE OF THE PROPONENTS OF AN INITIATIVE
103 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>.)

Currently, proponents of a ballot initiative petition are required to designate 2 persons (designated representatives) to represent the proponents in all matters related to the petition. The bill requires the designated representatives to appear at a title board meeting and to

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.

certify, by a notarized affidavit signed at the first title board meeting, that they are familiar with the laws related to initiatives and a summary related to the responsibilities of the designated representatives. The secretary of state must prepare this summary and provide a notary public at the title board meeting. If the designated representatives fail to appear at the title board meeting or do not file the affidavit, the title board may not set a ballot title.

In addition, the bill requires the following actions related to the designated representatives:

- ! The designated representatives must file the first printer's proof of the petition sections with the secretary of state;
- ! The secretary of state must notify the designated representatives whether the printer's proof is approved;
- ! The designated representatives must file with the secretary of state the bound volumes of the petition sections with signatures; and
- ! Within 10 days after filing the petition, the designated representatives must file a report with the secretary of state that includes all expenditures made related to petition circulators and any other expenditures (report).

Within 10 days after the report is filed, a registered elector may file a written complaint alleging a violation of the requirements for the report. The designated representatives have 10 days to cure the alleged violation. If the violation is not cured, an administrative law judge shall conduct a hearing on the complaint. Penalties for a violation are equal to 3 times the amount of any expenditures that were omitted from or erroneously included in the report and, in some instances, attorney fees and costs.

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

2 **SECTION 1.** 1-40-102, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **1-40-102. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (3.7) "DESIGNATED REPRESENTATIVE OF THE PROPONENTS" OR
7 "DESIGNATED REPRESENTATIVE" MEANS A PERSON DESIGNATED PURSUANT
8 TO SECTION 1-40-104 TO REPRESENT THE PROPONENTS IN ALL MATTERS
9 AFFECTING THE PETITION.

10 **SECTION 2.** 1-40-106 (1) and (3) (b), Colorado Revised

1 Statutes, are amended, and the said 1-40-106 is further amended BY THE
2 ADDITION OF A NEW SUBSECTION, to read:

3 **1-40-106. Title board - meetings - titles and submission clause.**

4 (1) For ballot issues, beginning with the first submission of a draft after
5 an election, the secretary of state shall convene a title board consisting of
6 the secretary of state, the attorney general, and the director of the office
7 of legislative legal services or the director's designee. The title board, by
8 majority vote, shall proceed to designate and fix a proper fair title for
9 each proposed law or constitutional amendment, together with a
10 submission clause, at public meetings to be held at the hour determined
11 by the title board on the first and third Wednesdays of each month in
12 which a draft or a motion for reconsideration has been submitted to the
13 secretary of state. To be considered at such meeting, a draft shall be
14 submitted to the secretary of state no later than 3 p.m. on the twelfth day
15 before the meeting at which the draft is to be considered by the title board
16 AND THE DESIGNATED REPRESENTATIVES OF THE PROPONENTS MUST
17 COMPLY WITH THE REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION.
18 The first meeting of the title board shall be held no sooner than the first
19 Wednesday in December after an election, and the last meeting shall be
20 held no later than the third Wednesday in April in the year in which the
21 measure is to be voted on.

22 (3) (b) In setting a title, the title board shall consider the public
23 confusion that might be caused by misleading titles and shall, whenever
24 practicable, avoid titles for which the general understanding of the effect
25 of a "yes" or "no" vote will be unclear. The title for the proposed law or
26 constitutional amendment, which shall correctly and fairly express the
27 true intent and meaning thereof, together with the ballot title and

1 submission clause, shall be completed within two weeks after the first
2 meeting of the title board. Immediately upon completion, the secretary
3 of state shall deliver the same with the original to the ~~parties presenting~~
4 ~~it~~ DESIGNATED REPRESENTATIVES OF THE PROPONENTS, keeping the copy
5 with a record of the action taken thereon. Ballot titles shall be brief, shall
6 not conflict with those selected for any petition previously filed for the
7 same election, and shall be in the form of a question which may be
8 answered "yes" (to vote in favor of the proposed law or constitutional
9 amendment) or "no" (to vote against the proposed law or constitutional
10 amendment) and which shall unambiguously state the principle of the
11 provision sought to be added, amended, or repealed.

12 (4) (a) EACH DESIGNATED REPRESENTATIVE OF THE PROPONENTS
13 SHALL APPEAR AT ANY TITLE BOARD MEETING AT WHICH THE DESIGNATED
14 REPRESENTATIVE'S BALLOT ISSUE IS CONSIDERED.

15 (b) EACH DESIGNATED REPRESENTATIVE OF THE PROPONENTS
16 SHALL CERTIFY BY A NOTARIZED AFFIDAVIT THAT THE DESIGNATED
17 REPRESENTATIVE IS FAMILIAR WITH THE PROVISIONS OF THIS ARTICLE AND
18 THE SUMMARY PREPARED BY THE SECRETARY OF STATE PURSUANT TO
19 PARAGRAPH (c) OF THIS SUBSECTION (4). THE AFFIDAVIT SHALL INCLUDE
20 A PHYSICAL ADDRESS AT WHICH PROCESS MAY BE SERVED ON THE
21 DESIGNATED REPRESENTATIVE. THE DESIGNATED REPRESENTATIVE SHALL
22 SIGN AND FILE THE AFFIDAVIT WITH THE SECRETARY OF STATE AT THE
23 FIRST TITLE BOARD MEETING AT WHICH THE DESIGNATED
24 REPRESENTATIVE'S BALLOT ISSUE IS CONSIDERED.

25 (c) THE SECRETARY OF STATE SHALL PREPARE A SUMMARY FOR
26 THE DESIGNATED REPRESENTATIVES OF THE PROPONENTS'
27 RESPONSIBILITIES THAT ARE SET FORTH IN THIS ARTICLE.

1 (d) THE TITLE BOARD SHALL NOT SET A TITLE FOR A BALLOT ISSUE
2 IF EITHER DESIGNATED REPRESENTATIVE OF THE PROPONENTS FAILS TO
3 APPEAR AT A TITLE BOARD MEETING OR FILE THE AFFIDAVIT AS REQUIRED
4 BY PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (4). THE TITLE BOARD
5 MAY CONSIDER THE BALLOT ISSUE AT ITS NEXT MEETING, BUT THE
6 REQUIREMENTS OF THIS SUBSECTION (4) SHALL CONTINUE TO APPLY.

7 (e) THE SECRETARY OF STATE SHALL PROVIDE A NOTARY PUBLIC
8 FOR THE DESIGNATED REPRESENTATIVES AT THE TITLE BOARD MEETING.

9 **SECTION 3.** 1-40-113 (1) (a) and (3), Colorado Revised Statutes,
10 are amended to read:

11 **1-40-113. Form - representatives of signers.** (1) (a) Each
12 section of a petition shall be printed on a form as prescribed by the
13 secretary of state. No petition shall be printed, published, or otherwise
14 circulated unless the form and the first printer's proof of the petition have
15 been approved by the secretary of state. THE DESIGNATED
16 REPRESENTATIVES OF THE PROPONENT ARE RESPONSIBLE FOR FILING THE
17 PRINTER'S PROOF WITH THE SECRETARY OF STATE, AND THE SECRETARY OF
18 STATE SHALL NOTIFY THE DESIGNATED REPRESENTATIVES WHETHER THE
19 PRINTER'S PROOF IS APPROVED. Each petition section shall designate by
20 name and mailing address two persons who shall represent the signers
21 thereof in all matters affecting the same. The secretary of state shall
22 assure that the petition contains only the matters required by this article
23 and contains no extraneous material. All sections of any petition shall be
24 prenumbered serially, and the circulation of any petition section described
25 by this article other than personally by a circulator is prohibited. Any
26 petition section circulated in whole or in part by anyone other than the
27 person who signs the affidavit attached to the petition section shall be

1 invalid. Any petition section that fails to conform to the requirements of
2 this article or is circulated in a manner other than that permitted in this
3 article shall be invalid.

4 (3) Prior to the time of filing, the persons designated in the
5 petition to represent the signers shall bind the sections of the petition in
6 convenient volumes consisting of one hundred sections of the petition if
7 one hundred or more sections are available or, if less than one hundred
8 sections are available to make a volume, consisting of all sections that are
9 available. Each volume consisting of less than one hundred sections shall
10 be marked on the first page of the volume. However, any volume that
11 contains more or less than one hundred sections, due only to the oversight
12 of the designated representatives of the signers or their staff, shall not
13 result in a finding of insufficiency of signatures therein. Each section of
14 each volume shall include the affidavits required by section 1-40-111 (2),
15 together with the sheets containing the signatures accompanying the
16 same. These bound volumes shall be filed with the secretary of state BY
17 THE DESIGNATED REPRESENTATIVES OF THE PROPONENTS.

18 **SECTION 4.** 1-40-117 (3) (b), Colorado Revised Statutes, is
19 amended to read:

20 **1-40-117. Statement of sufficiency - statewide issues.** (3) (b) In
21 the event the secretary of state issues a statement declaring that a petition,
22 having first been submitted with the required number of signatures,
23 appears not to have a sufficient number of valid signatures, the
24 ~~representatives designated by the proponents pursuant to section 1-40-104~~
25 DESIGNATED REPRESENTATIVES OF THE PROPONENTS may cure the
26 insufficiency by filing an addendum to the original petition for the
27 purpose of offering such number of additional signatures as will cure the

1 insufficiency. No addendum offered as a cure shall be considered unless
2 the addendum conforms to requirements for petitions outlined in sections
3 1-40-110, 1-40-111, and 1-40-113 and unless the addendum is filed with
4 the secretary of state within the fifteen-day period after the insufficiency
5 is declared and unless filed with the secretary of state no later than three
6 months and three weeks before the election at which the initiative petition
7 is to be voted on. All filings under this paragraph (b) shall be made by 3
8 p.m. on the day of filing. Upon submission of a timely filed addendum,
9 the secretary of state shall order the examination and verification of each
10 signature on the addendum. The addendum shall not be available to the
11 public for a period of up to ten calendar days for such examination. After
12 examining the petition, the secretary of state shall, within ten calendar
13 days, issue a statement as to whether the addendum cures the
14 insufficiency found in the original petition.

15 **SECTION 5.** 1-40-121, Colorado Revised Statutes, is
16 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

17 **1-40-121. Designated representatives - expenditures related to**
18 **petition circulation - report - penalty - definitions.** (1) AS USED IN
19 THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

20 (a) "EXPENDITURE" SHALL HAVE THE SAME MEANING AS SET
21 FORTH IN SECTION 2 (8) OF ARTICLE XXVIII OF THE STATE CONSTITUTION
22 AND INCLUDES A PAYMENT TO A CIRCULATOR.

23 (b) "REPORT" MEANS THE REPORT REQUIRED TO BE FILED
24 PURSUANT TO SUBSECTION (2) OF THIS SECTION.

25 (2) NO LATER THAN TEN DAYS AFTER THE DATE THAT THE
26 PETITION IS FILED WITH THE SECRETARY OF STATE, THE DESIGNATED
27 REPRESENTATIVES OF THE PROPONENTS MUST SUBMIT TO THE SECRETARY

1 OF STATE A REPORT THAT:

2 (a) STATES THE DATES OF CIRCULATION BY ALL CIRCULATORS WHO
3 WERE PAID TO CIRCULATE A SECTION OF THE PETITION, THE TOTAL HOURS
4 FOR WHICH EACH CIRCULATOR WAS PAID TO CIRCULATE A SECTION OF THE
5 PETITION, AND THE GROSS AMOUNT OF WAGES PAID FOR SUCH HOURS; AND

6 (b) INCLUDES ANY OTHER EXPENDITURES MADE BY ANY PERSON OR
7 ISSUE COMMITTEE RELATED TO THE CIRCULATION OF PETITIONS FOR
8 SIGNATURES. SUCH INFORMATION SHALL INCLUDE THE NAME OF THE
9 PERSON OR ISSUE COMMITTEE AND THE AMOUNT OF THE EXPENDITURE.

10 (3) (a) WITHIN TEN DAYS AFTER THE DATE THE REPORT IS FILED,
11 A REGISTERED ELECTOR MAY FILE A COMPLAINT ALLEGING A VIOLATION
12 OF THE REQUIREMENTS FOR THE REPORT SET FORTH IN SUBSECTION (2) OF
13 THIS SECTION. THE DESIGNATED REPRESENTATIVES OF THE PROPONENTS
14 MAY CURE THE ALLEGED VIOLATION BY FILING A REPORT OR AN
15 ADDENDUM TO THE ORIGINAL REPORT WITHIN TEN DAYS AFTER THE DATE
16 THE COMPLAINT IS FILED. IF THE VIOLATION IS NOT CURED, AN
17 ADMINISTRATIVE LAW JUDGE SHALL CONDUCT A HEARING ON THE
18 COMPLAINT WITHIN FOURTEEN DAYS AFTER THE DATE OF THE ADDITIONAL
19 FILING OR THE DEADLINE FOR THE ADDITIONAL FILING, WHICHEVER IS
20 SOONER.

21 (b) (I) THE DESIGNATED REPRESENTATIVES OF THE PROPONENTS
22 SHALL HAVE THE BURDEN OF PROOF AT THE HEARING REGARDING THE
23 SUFFICIENCY OF THE REPORT.

24 (II) AFTER A HEARING IS HELD, IF THE ADMINISTRATIVE LAW JUDGE
25 DETERMINES THAT A VIOLATION OCCURRED, THE DESIGNATED
26 REPRESENTATIVES OF THE PROPONENTS SHALL BE SUBJECT TO A PENALTY
27 THAT IS EQUAL TO THREE TIMES THE AMOUNT OF ANY EXPENDITURES THAT

1 WERE OMITTED FROM OR ERRONEOUSLY INCLUDED IN THE REPORT.

2 (III) IF THE ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE
3 DESIGNATED REPRESENTATIVES KNOWINGLY MISSTATED A MATERIAL FACT
4 IN THE REPORT OR OMITTED A MATERIAL FACT FROM THE REPORT, OR IF
5 THE DESIGNATED REPRESENTATIVES NEVER FILED A REPORT, THE
6 REGISTERED ELECTOR WHO INSTITUTED THE PROCEEDINGS MAY
7 COMMENCE A CIVIL ACTION TO RECOVER REASONABLE ATTORNEY FEES
8 AND COSTS FROM THE DESIGNATED REPRESENTATIVES OF THE
9 PROPONENTS.

10 (c) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ANY
11 PROCEDURES RELATED TO A COMPLAINT SHALL BE GOVERNED BY THE
12 "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24,
13 C.R.S.

14 **SECTION 6.** 1-40-135 (3) (a), Colorado Revised Statutes, is
15 amended to read:

16 **1-40-135. Petition entities - requirements - definitions.**

17 (3) (a) Any procedures by which alleged violations involving petition
18 entities are heard and adjudicated shall be governed by the "State
19 Administrative Procedure Act", article 4 of title 24, C.R.S. If a complaint
20 is filed with the secretary of state pursuant to section 1-40-132 (1)
21 alleging that a petition entity was not licensed when it compensated any
22 circulator, the secretary may use information that the entity is required to
23 produce pursuant to ~~section 1-40-121(1)~~ SECTION 1-40-121 and any other
24 information to which the secretary may reasonably gain access, including
25 documentation produced pursuant to paragraph (b) of subsection (2) of
26 this section, at a hearing. After a hearing is held, if a violation is
27 determined to have occurred, such petition entity shall be fined by the

1 secretary in an amount not to exceed one hundred dollars per circulator
2 for each day that the named individual or individuals circulated petition
3 sections on behalf of the unlicensed petition entity. If the secretary finds
4 that a petition entity violated a provision of paragraph (c) of subsection
5 (2) of this section, the secretary shall revoke the entity's license for not
6 less than ninety days or more than one hundred eighty days. Upon finding
7 any subsequent violation of a provision of paragraph (c) of subsection (2)
8 of this section, the secretary shall revoke the petition entity's license for
9 not less than one hundred eighty days or more than one year. The
10 secretary shall consider all circumstances surrounding the violations in
11 fixing the length of the revocations.

12 **SECTION 7. Act subject to petition - effective date.** This act
13 shall take effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly (August
15 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
16 referendum petition is filed pursuant to section 1 (3) of article V of the
17 state constitution against this act or an item, section, or part of this act
18 within such period, then the act, item, section, or part shall not take effect
19 unless approved by the people at the general election to be held in
20 November 2012 and shall take effect on the date of the official
21 declaration of the vote thereon by the governor.