

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 11-0089.01 Ed DeCecco

HOUSE BILL 11-1072

HOUSE SPONSORSHIP

McNulty, Stephens, Liston

SENATE SPONSORSHIP

Morse,

House Committees

State, Veterans, & Military Affairs

Senate Committees

Judiciary
Appropriations

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.*

HOUSE
3rd Reading Unamended
February 9, 2011

HOUSE
Amended 2nd Reading
February 8, 2011

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. Legislative declaration.** According to decisions
3 of the Colorado supreme court, an address falsely represents a person's
4 residential address when it does not state the complete street number and
5 name, apartment or room number, if applicable, city, and state of the
6 place where a person makes his or her permanent domicile. The
7 codification of the meaning of "false address" in House Bill 11-1072,
8 enacted in 2011, is a clarification of existing law for future designated
9 representatives.

10 **SECTION 2.** 1-40-102, Colorado Revised Statutes, is amended

1 BY THE ADDITION OF A NEW SUBSECTION to read:

2 **1-40-102. Definitions.** As used in this article, unless the context
3 otherwise requires:

4 (3.7) "DESIGNATED REPRESENTATIVE OF THE PROPONENTS" OR
5 "DESIGNATED REPRESENTATIVE" MEANS A PERSON DESIGNATED PURSUANT
6 TO SECTION 1-40-104 TO REPRESENT THE PROPONENTS IN ALL MATTERS
7 AFFECTING THE PETITION.

8 **SECTION 3.** 1-40-106 (1) and (3) (b), Colorado Revised
9 Statutes, are amended, and the said 1-40-106 is further amended BY THE
10 ADDITION OF A NEW SUBSECTION, to read:

11 **1-40-106. Title board - meetings - titles and submission clause.**

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

1 held no later than the third Wednesday in April in the year in which the
2 measure is to be voted on.

3 (3) (b) In setting a title, the title board shall consider the public
4 confusion that might be caused by misleading titles and shall, whenever
5 practicable, avoid titles for which the general understanding of the effect
6 of a "yes" or "no" vote will be unclear. The title for the proposed law or
7 constitutional amendment, which shall correctly and fairly express the
8 true intent and meaning thereof, together with the ballot title and
9 submission clause, shall be completed within two weeks after the first
10 meeting of the title board. Immediately upon completion, the secretary
11 of state shall deliver the same with the original to the ~~parties presenting~~
12 ~~it~~ DESIGNATED REPRESENTATIVES OF THE PROPONENTS, keeping the copy
13 with a record of the action taken thereon. Ballot titles shall be brief, shall
14 not conflict with those selected for any petition previously filed for the
15 same election, and shall be in the form of a question which may be
16 answered "yes" (to vote in favor of the proposed law or constitutional
17 amendment) or "no" (to vote against the proposed law or constitutional
18 amendment) and which shall unambiguously state the principle of the
19 provision sought to be added, amended, or repealed.

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

23 (b) EACH DESIGNATED REPRESENTATIVE OF THE PROPONENTS
24 SHALL CERTIFY BY A NOTARIZED AFFIDAVIT THAT THE DESIGNATED
25 REPRESENTATIVE IS FAMILIAR WITH THE PROVISIONS OF THIS ARTICLE,
26 INCLUDING BUT NOT LIMITED TO THE PROHIBITION ON CIRCULATORS' USE
27 OF FALSE ADDRESSES IN COMPLETING CIRCULATOR AFFIDAVITS, AND THE

1 SUMMARY PREPARED BY THE SECRETARY OF STATE PURSUANT TO
2 PARAGRAPH (c) OF THIS SUBSECTION (4). THE AFFIDAVIT SHALL INCLUDE
3 A PHYSICAL ADDRESS AT WHICH PROCESS MAY BE SERVED ON THE
4 DESIGNATED REPRESENTATIVE. THE DESIGNATED REPRESENTATIVE SHALL
5 SIGN AND FILE THE AFFIDAVIT WITH THE SECRETARY OF STATE AT THE
6 FIRST TITLE BOARD MEETING AT WHICH THE DESIGNATED
7 REPRESENTATIVE'S BALLOT ISSUE IS CONSIDERED.

8 (c) THE SECRETARY OF STATE SHALL PREPARE A SUMMARY OF THE
9 DESIGNATED REPRESENTATIVES OF THE PROPONENTS' RESPONSIBILITIES
10 THAT ARE SET FORTH IN THIS ARTICLE.

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

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

19 **SECTION 4.** 1-40-113 (1) (a) and (3), Colorado Revised Statutes,
20 are amended to read:

21 **1-40-113. Form - representatives of signers.** (1) (a) Each
22 section of a petition shall be printed on a form as prescribed by the
23 secretary of state. No petition shall be printed, published, or otherwise
24 circulated unless the form and the first printer's proof of the petition have
25 been approved by the secretary of state. THE DESIGNATED
26 REPRESENTATIVES OF THE PROPONENT ARE RESPONSIBLE FOR FILING THE
27 PRINTER'S PROOF WITH THE SECRETARY OF STATE, AND THE SECRETARY OF

1 STATE SHALL NOTIFY THE DESIGNATED REPRESENTATIVES WHETHER THE
2 PRINTER'S PROOF IS APPROVED. Each petition section shall designate by
3 name and mailing address two persons who shall represent the signers
4 thereof in all matters affecting the same. The secretary of state shall
5 assure that the petition contains only the matters required by this article
6 and contains no extraneous material. All sections of any petition shall be
7 prenumbered serially, and the circulation of any petition section described
8 by this article other than personally by a circulator is prohibited. Any
9 petition section circulated in whole or in part by anyone other than the
10 person who signs the affidavit attached to the petition section shall be
11 invalid. Any petition section that fails to conform to the requirements of
12 this article or is circulated in a manner other than that permitted in this
13 article shall be invalid.

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

1 **SECTION 5.** 1-40-117 (3) (b), Colorado Revised Statutes, is
2 amended to read:

3 **1-40-117. Statement of sufficiency - statewide issues.** (3) (b) In
4 the event the secretary of state issues a statement declaring that a petition,
5 having first been submitted with the required number of signatures,
6 appears not to have a sufficient number of valid signatures, the
7 ~~representatives designated by the proponents pursuant to section 1-40-104~~
8 DESIGNATED REPRESENTATIVES OF THE PROPONENTS may cure the
9 insufficiency by filing an addendum to the original petition for the
10 purpose of offering such number of additional signatures as will cure the
11 insufficiency. No addendum offered as a cure shall be considered unless
12 the addendum conforms to requirements for petitions outlined in sections
13 1-40-110, 1-40-111, and 1-40-113 and unless the addendum is filed with
14 the secretary of state within the fifteen-day period after the insufficiency
15 is declared and unless filed with the secretary of state no later than three
16 months and three weeks before the election at which the initiative petition
17 is to be voted on. All filings under this paragraph (b) shall be made by 3
18 p.m. on the day of filing. Upon submission of a timely filed addendum,
19 the secretary of state shall order the examination and verification of each
20 signature on the addendum. The addendum shall not be available to the
21 public for a period of up to ten calendar days for such examination. After
22 examining the petition, the secretary of state shall, within ten calendar
23 days, issue a statement as to whether the addendum cures the
24 insufficiency found in the original petition.

25 **SECTION 6.** 1-40-121, Colorado Revised Statutes, is
26 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

27 **1-40-121. Designated representatives - expenditures related to**

1 **petition circulation - report - penalty - definitions.** (1) AS USED IN
2 THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

6 (b) "FALSE ADDRESS" MEANS THE STREET ADDRESS, POST OFFICE
7 BOX, CITY, STATE, OR ANY OTHER DESIGNATION OF PLACE USED IN A
8 CIRCULATOR'S AFFIDAVIT THAT DOES NOT REPRESENT THE CIRCULATOR'S
9 CORRECT ADDRESS OF PERMANENT DOMICILE AT THE TIME HE OR SHE
10 CIRCULATED PETITIONS. "FALSE ADDRESS" DOES NOT INCLUDE AN
11 ADDRESS THAT MERELY OMITTS THE DESIGNATION OF "STREET," "AVENUE,"
12 "BOULEVARD," OR ANY COMPARABLE TERM.

13 (c) "REPORT" MEANS THE REPORT REQUIRED TO BE FILED
14 PURSUANT TO SUBSECTION (2) OF THIS SECTION.


15 (2) NO LATER THAN TEN DAYS AFTER THE DATE THAT THE
16 PETITION IS FILED WITH THE SECRETARY OF STATE, THE DESIGNATED
17 REPRESENTATIVES OF THE PROPONENTS MUST SUBMIT TO THE SECRETARY
18 OF STATE A REPORT THAT:

19 (a) STATES THE DATES OF CIRCULATION BY ALL CIRCULATORS WHO
20 WERE PAID TO CIRCULATE A SECTION OF THE PETITION, THE TOTAL HOURS
21 FOR WHICH EACH CIRCULATOR WAS PAID TO CIRCULATE A SECTION OF THE
22 PETITION, THE GROSS AMOUNT OF WAGES PAID FOR SUCH HOURS, AND
23 ANY ADDRESSES USED BY CIRCULATORS ON THEIR AFFIDAVITS THAT THE
24 DESIGNATED REPRESENTATIVES OR THEIR AGENTS HAVE DETERMINED,
25 PRIOR TO PETITION FILING, TO BE FALSE ADDRESSES;

26 (b) INCLUDES ANY OTHER EXPENDITURES MADE BY ANY PERSON OR
27 ISSUE COMMITTEE RELATED TO THE CIRCULATION OF PETITIONS FOR

1 SIGNATURES. SUCH INFORMATION SHALL INCLUDE THE NAME OF THE
2 PERSON OR ISSUE COMMITTEE AND THE AMOUNT OF THE EXPENDITURE.

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

14 
15 (b) (I) AFTER A HEARING IS HELD, IF THE ADMINISTRATIVE LAW
16 JUDGE DETERMINES THAT A VIOLATION OCCURRED, THE DESIGNATED
17 REPRESENTATIVES OF THE PROPONENTS SHALL BE SUBJECT TO A PENALTY
18 THAT IS EQUAL TO THREE TIMES THE AMOUNT OF ANY EXPENDITURES THAT
19 WERE OMITTED FROM OR ERRONEOUSLY INCLUDED IN THE REPORT.

20 (II) IF THE ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE
21 DESIGNATED REPRESENTATIVES KNOWINGLY MISSTATED A MATERIAL FACT
22 IN THE REPORT OR OMITTED A MATERIAL FACT FROM THE REPORT, OR IF
23 THE DESIGNATED REPRESENTATIVES NEVER FILED A REPORT, THE
24 REGISTERED ELECTOR WHO INSTITUTED THE PROCEEDINGS MAY
25 COMMENCE A CIVIL ACTION TO RECOVER REASONABLE ATTORNEY FEES
26 AND COSTS FROM THE DESIGNATED REPRESENTATIVES OF THE
27 PROPONENTS.

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

5 **SECTION 7.** 1-40-135 (3) (a), Colorado Revised Statutes, is
6 amended to read:

7 **1-40-135. Petition entities - requirements - definitions.**

8 (3) (a) Any procedures by which alleged violations involving petition
9 entities are heard and adjudicated shall be governed by the "State
10 Administrative Procedure Act", article 4 of title 24, C.R.S. If a complaint
11 is filed with the secretary of state pursuant to section 1-40-132 (1)
12 alleging that a petition entity was not licensed when it compensated any
13 circulator, the secretary may use information that the entity is required to
14 produce pursuant to ~~section 1-40-121(1)~~ SECTION 1-40-121 and any other
15 information to which the secretary may reasonably gain access, including
16 documentation produced pursuant to paragraph (b) of subsection (2) of
17 this section, at a hearing. After a hearing is held, if a violation is
18 determined to have occurred, such petition entity shall be fined by the
19 secretary in an amount not to exceed one hundred dollars per circulator
20 for each day that the named individual or individuals circulated petition
21 sections on behalf of the unlicensed petition entity. If the secretary finds
22 that a petition entity violated a provision of paragraph (c) of subsection
23 (2) of this section, the secretary shall revoke the entity's license for not
24 less than ninety days or more than one hundred eighty days. Upon finding
25 any subsequent violation of a provision of paragraph (c) of subsection (2)
26 of this section, the secretary shall revoke the petition entity's license for
27 not less than one hundred eighty days or more than one year. The

1 secretary shall consider all circumstances surrounding the violations in
2 fixing the length of the revocations.

3 **SECTION 8. Act subject to petition - effective date -**
4 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
5 following the expiration of the ninety-day period after final adjournment
6 of the general assembly (August 10, 2011, if adjournment sine die is on
7 May 11, 2011); except that, if a referendum petition is filed pursuant to
8 section 1 (3) of article V of the state constitution against this act or an
9 item, section, or part of this act within such period, then the act, item,
10 section, or part shall not take effect unless approved by the people at the
11 general election to be held in November 2012 and shall take effect on the
12 date of the official declaration of the vote thereon by the governor.

13 (2) The provisions of this act shall apply to initiative petitions
14 submitted to the directors of the legislative council and the office of
15 legislative legal services for review and comment on or after the
16 applicable effective date of this act.