

CHAPTER 255

ELECTIONS

HOUSE BILL 11-1072

BY REPRESENTATIVE(S) McNulty, Stephens, Liston, Brown, Casso, Court, Ferrandino, Gardner B., Labuda, Nikkel, Pace, Peniston, Soper, Todd, Tyler, Kerr J., Wilson;
also SENATOR(S) Morse.

AN ACT

CONCERNING THE RESPONSIBILITIES OF A DESIGNATED REPRESENTATIVE OF THE PROPONENTS OF AN INITIATIVE PETITION.

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

SECTION 1. Legislative declaration. According to decisions of the Colorado supreme court, an address falsely represents a person's residential address when it does not state the complete street number and name, apartment or room number, if applicable, city, and state of the place where a person makes his or her permanent domicile. The codification of the meaning of "false address" in House Bill 11-1072, enacted in 2011, is a clarification of existing law for future designated representatives.

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

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

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

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

1-40-106. Title board - meetings - titles and submission clause. (1) For ballot

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

(b) EACH DESIGNATED REPRESENTATIVE OF THE PROPONENTS SHALL CERTIFY BY A NOTARIZED AFFIDAVIT THAT THE DESIGNATED REPRESENTATIVE IS FAMILIAR WITH THE PROVISIONS OF THIS ARTICLE, INCLUDING BUT NOT LIMITED TO THE PROHIBITION ON CIRCULATORS' USE OF FALSE ADDRESSES IN COMPLETING CIRCULATOR AFFIDAVITS, AND THE SUMMARY PREPARED BY THE SECRETARY OF STATE PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (4). THE AFFIDAVIT SHALL INCLUDE A PHYSICAL ADDRESS AT WHICH PROCESS MAY BE SERVED ON THE DESIGNATED REPRESENTATIVE. THE DESIGNATED REPRESENTATIVE SHALL SIGN AND FILE THE AFFIDAVIT WITH THE SECRETARY OF STATE AT THE FIRST TITLE BOARD MEETING AT WHICH THE DESIGNATED REPRESENTATIVE'S BALLOT ISSUE IS CONSIDERED.

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

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

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

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

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

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

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

1-40-117. Statement of sufficiency - statewide issues. (3) (b) In the event the secretary of state issues a statement declaring that a petition, having first been submitted with the required number of signatures, appears not to have a sufficient number of valid signatures, the ~~representatives designated by the proponents pursuant to section 1-40-104~~ DESIGNATED REPRESENTATIVES OF THE PROPONENTS

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

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

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

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

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

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

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

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

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

THE AMOUNT OF THE EXPENDITURE.

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

(b) (I) AFTER A HEARING IS HELD, IF THE ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE DESIGNATED REPRESENTATIVES OF THE PROPONENTS INTENTIONALLY VIOLATED THE REPORTING REQUIREMENTS OF THIS SECTION, THE DESIGNATED REPRESENTATIVES SHALL BE SUBJECT TO A PENALTY THAT IS EQUAL TO THREE TIMES THE AMOUNT OF ANY EXPENDITURES THAT WERE OMITTED FROM OR ERRONEOUSLY INCLUDED IN THE REPORT.

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

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

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

1-40-135. Petition entities - requirements - definitions. (3) (a) Any procedures by which alleged violations involving petition entities are heard and adjudicated shall be governed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S. If a complaint is filed with the secretary of state pursuant to section 1-40-132 (1) alleging that a petition entity was not licensed when it compensated any circulator, the secretary may use information that the entity is required to produce pursuant to ~~section 1-40-121 (1)~~ SECTION 1-40-121 and any other information to which the secretary may reasonably gain access, including documentation produced pursuant to paragraph (b) of subsection (2) of this section, at a hearing. After a hearing is held, if a violation is determined to have occurred, such petition entity shall be fined by the secretary in an amount not to exceed one hundred dollars per circulator for each day that the named individual or individuals circulated petition sections on behalf of the unlicensed petition entity. If the secretary finds that a petition entity violated a provision of paragraph (c) of subsection (2) of this section, the secretary shall revoke the entity's license for not less than ninety days or more than one hundred eighty days. Upon finding any subsequent violation of a provision of paragraph (c) of subsection (2) of this section, the secretary shall revoke the petition entity's license for not less than one hundred

eighty days or more than one year. The secretary shall consider all circumstances surrounding the violations in fixing the length of the revocations.

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

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

Approved: June 2, 2011