



# ARIZONA HOUSE OF REPRESENTATIVES

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## **HB 2308: recall petitions and elections; revisions**

**Sponsor: Representative Kavanagh, LD 23**

**Caucus & COW**

### **Overview**

Modifies the requirements for recall petitions and elections.

### **History**

A public officer holding an elective office by election, appointment or retention is subject to a recall from that office by the qualified electors from the election district where the candidates for that office receive their votes. A number of qualified electors equivalent to 25% of the total number of votes for the office in the last preceding general election may demand, through a petition, the public officer's recall.

An individual or organization that intends to file a petition must submit an application to the filing officer before circulating the petition to be signed. The application and recall petition must go to the Secretary of State if the recall is for a state officer and statute describes who will receive the application and petition for recalls of other public offices. Current statute describes the requirements of what information must be on the application and the recall petition and what form the recall petitions and their applications must be in. Statute also outlines the procedures and restrictions circulators must follow when obtaining signatures for recall petitions (A.R.S. §§ [19-201](#), [19-202.01](#), [19-203](#), [19-204](#)).

### **Provisions**

#### ***Registered Circulators***

1. Directs all paid and nonresident circulators to register with the Secretary of State before circulating recall petitions. (Sec. 8)
2. Instructs the committee circulating the recall petition to collect and submit completed registration applications to the Secretary of State. (Sec. 8)
3. Requires the Secretary of State to do the following:
  - a) Establish a procedure for registering circulators, including circulator registration applications, in the Instructions and Procedures Manual; and
  - b) Publish all information regarding statutory requirements for circulators on a website that is maintained by the Secretary of State. (Sec. 8)
4. Stipulates that the filing officer must disqualify all signatures collected by a circulator who has failed to register. (Sec. 8)
5. Prescribes the following required information for the circulator registration application:
  - a) The full name, residence address, telephone number and email address of the circulator;
  - b) The recall petition the circulator will gather signatures for;
  - c) A statement that the circulator consents to the jurisdiction of the courts of this state;
  - d) The address of the committee in this state that the circulator is gathering signatures for and where they will receive service of process related to circulator petition disputes; and

- e) An affidavit that includes a specified statement that is signed by the circulator before a notary public. (Sec. 8)
6. Directs the Secretary of State to register and assign a circulator registration number to the circulator within five business days after submission and review of a correct and complete circulator registration application. (Sec. 8)
7. Prohibits a person from registering as a circulator if the person:
  - a) Has had a civil or criminal penalty imposed for elections violations within the preceding five years;
  - b) Has been convicted of treason or a felony and has not had their civil rights restored; or
  - c) Has been convicted of a criminal offense involving forgery, fraud or identity theft. (Sec. 8)
8. Specifies that all signatures are deemed invalid if a registered circulator is properly served with a subpoena and fails to appear or produce documents as provided in the subpoena. (Sec. 8)
9. Allows the party serving the subpoena to request an order from the court directing the filing officer to remove any signatures collected by the circulator. (Sec. 8)
10. Authorizes any person to challenge the lawful registration of circulators in the superior court in the county where the circulator is registered and directs the court to advance these actions on the calendar and decide on them as soon as possible. (Sec. 8)
11. Prohibits a challenge from being started more than 10 business days after the filing officer has received, processed and made available all final petition sheets individually numbered. (Sec. 8)
12. Provides the person challenging signatures the ability to amend their complaint after the filing officer has removed signatures and signature sheets. (Sec. 8)
13. Allows either party to appeal within five calendar days after entry of judgment. (Sec. 8)
14. Entitles the prevailing party to reasonable attorney fees in an action to challenge the registration of a circulator. (Sec. 8)
15. States that a person is guilty of a class 1 misdemeanor if they knowingly omit or misrepresent information or provide false information on a circulator registration application. (Sec. 8)

#### ***Withdrawal of Signature***

16. Adds a petition for recall that a person can withdraw their signature from within a time period prescribed in statute. (Sec. 1)
17. Permits a person to withdraw their signature from a petition no later than 5:00 p.m. on the date the petition containing their signature is submitted for verification. (Sec. 8)
18. Allows a person to do any of the following to withdraw their signature:
  - a) Verify the withdrawal by signing a statement of intent at the office of the receiving officer;
  - b) Mail a signed, notarized statement of intent to the receiving officer; or
  - c) Draw a line through the signature and printed name on the petition. (Sec. 8)
19. Stipulates that withdrawn signatures received by the time period provided must not be counted in the determination of the legal sufficiency of the petition. (Sec. 8)
20. Mandates that a person is guilty of a class 1 misdemeanor if they knowingly give or receive money or any other thing of value for signing a statement of signature withdrawal. (Sec. 8)
21. Authorizes a qualified elector of this state to sign a recall petition on any officer for whom the elector is qualified to vote. (Sec. 9)

22. Specifies that a person is guilty of a class 1 misdemeanor, unless another classification is specifically prescribed in statute, for certain acts related to petition signatures including:
  - a) Filling out the name and address portion of the petition with the intention of committing fraud; or
  - b) Violates any provision of recall petition statute, whether or not the person is an officer. (Sec. 9)

#### ***Recall Petition Signature Fraud***

23. Prescribes that a person commits recall petition signature fraud if the person does either with the intent to defraud:
  - a) Intentionally collects petition signature sheets with the knowledge that the person whose name appears on the sheet did not actually sign the petition; or
  - b) Uses any fraudulent means to obtain signatures on a recall petition. (Sec. 10)
24. Stipulates a person is not guilty of a violation of recall petition signature fraud statutes if the person is paid by a political committee to employ or subcontract with people who fraudulently obtain recall petition signatures and they report the suspected fraud to the filing officer and refuse to file the suspected unlawful signatures. (Sec. 10)
25. States that a person is guilty of a class 1 misdemeanor if they commit recall petition signature fraud. (Sec. 10)
26. Specifies that a person who participates in a pattern of recall petition signature fraud is guilty of a class 4 felony and is prohibited from participating for five years in any election, initiative, referendum or recall campaign. (Sec. 10)
27. Requires the Secretary of State to do the following:
  - a) Maintain a list of people who have been convicted of recall petition signature fraud and who are barred from participating in any election, initiative, referendum or recall campaign for five years from the date of conviction;
  - b) Publish the list on the website of the Secretary of State;
  - c) Remove a person from the list when the five-year prohibition expires; and
  - d) Provide a copy of the list if a member of the public requests it. (Sec. 10)

#### ***Removal of Petition Sheets and Ineligible Signatures***

28. Directs the filing officer to remove the following:
  - a) Sheets that are not attached to a copy of the time and date marked copy of the application;
  - b) The copy of the application from the remaining petition sheets;
  - c) Sheets that do not bear the correct petition serial number and paid circulator number, if applicable;
  - d) Sheets that have an incomplete circulator affidavit or one that has been modified;
  - e) Sheets where the circulator affidavit is not notarized, or something is incorrect with the notary;
  - f) Sheets that have signatures of the circulator or notary that are dated earlier than the dates that the electors signed the face of the petition sheet;
  - g) Sheets that are circulated by a circulator who is prohibited from participation according to statute; and
  - h) Sheets where the circulator is not properly registered with the Secretary of State at the time the petitions were circulated. (Sec. 11)
29. Requires the filing officer, after removing specified sheets, to review each sheet to determine the county of the majority of signers and:
  - a) Place a three or four letter abbreviation that designates the county on the face of the petition;

- b) Remove all signatures that are not in the county of the majority on each sheet by placing a mark next to it or striking through the signature line; and
  - c) Group all signatures sheets together by county of registration of the majority of those signing. (Sec. 11)
30. Mandates that the detached copies of the application must be made available to the applicant but can be disposed of after a reasonable time period. (Sec. 11)
31. Instructs the filing officer, after determining the county of the majority of signers, to remove the following signatures by placing a mark next to it or striking through the signature line:
- a) If the signature of the qualified elector is missing;
  - b) If the residence address or description of residence location is missing;
  - c) If the date when the petitioner signed is missing or if the date is before when the serial number was assigned or when the affidavit was complete and notarized;
  - d) Any signatures more than the 15 signatures allowed per petition;
  - e) Signatures withdrawn pursuant to statute; and
  - f) Signatures that the filing officer determines that the petition circulator has printed the name of the elector or other information in violation of statute. (Sec. 11)
32. Directs the filing officer to do the following after removing petition sheets and signatures:
- a) Count the number of signatures for verification on the remaining petitions sheets and note that number on the face of each sheet;
  - b) Number the remaining petition sheets containing signatures eligible for verification in consecutive order on the front side of each sheet; and
  - c) Count all remaining petition sheets and signatures that were not previously removed and notify the applicant of the total number of eligible signatures for verification. (Sec. 11)
33. Prescribes that the filing officer must also make a copy on the *back* of each signature sheet if the total number of signatures equals or exceeds the minimum number required. (Sec. 11)
34. Prohibits the returned signature sheets from being reused or resubmitted at any later date. (Sec. 11)

***Certification by County Recorder***

35. Stipulates that, within 60 days after receipt of the copy of the front and back of the signature sheets, the county recorder must determine the number of signatures that are disqualified for any of the following reasons:
- a) The signature is illegible, and the signer cannot be identified;
  - b) The signature was disqualified after comparison with the signature on the affidavit of registration;
  - c) The signature is determined invalid after comparison between the signature and handwriting on the petition and their voter registration file;
  - d) All but one valid signature is disqualified if a petitioner signed more than once;
  - e) On the date of signing the petition, the individual was not a qualified elector of the district;
  - f) The individual was not at least 18 years of age on the date of signing the petition or affidavit;
  - g) No residence address is provided;
  - h) The provided address is nonexistent or illegible;
  - i) There is no date of signing provided; or
  - j) Any other reason a petition sheet or signature could be removed by the filing officer pursuant to statute. (Sec. 12)
36. Requires the county recorder, at the time of certification, to:

- a) Return the copies of the signature sheets to the filing officer and obtain a dated, signed receipt for the copies; and
- b) Send notification of the certification results by mail *or electronically* to the *filing officer* and the person that submitted the recall petitions. (Sec. 12)

### **Court Actions**

37. Mandates the filing officer to provide a written statement of the reason for refusal to the person who submitted the petition, signature sheet or affidavit if the filing officer refuses to accept and file a recall petition or if they refuse to transmit the copies of a signature sheet or affidavit to the county recorder. (Sec. 14)
38. Allows any citizen, within five calendar days after the refusal, to apply to the superior court for a writ of mandamus to compel the filing officer to file the petition or transmit the facsimiles. (Sec. 14)
39. Specifies that the complaint may be filed with the county attorney or Attorney General for matters involving statewide recalls. (Sec. 14)
40. Authorizes the county attorney or Attorney General to apply to the superior court, within five calendar days after the complaint is made, for a writ of mandamus to compel the Secretary of State to file the petition or transmit the facsimiles. (Sec. 14)
41. Directs the action to be advanced on the calendar and heard and decided by the court as soon as possible. (Sec. 14)
42. Permits, within five calendar days after entry of judgment by the superior court, either party to appeal to the supreme court. (Sec. 14)
43. Stipulates that the decision of the superior court may be stayed as prescribed by adopted rules of the supreme court. (Sec. 14)
44. Instructs the filing officer to file the petition with a certified copy of the judgment attached as of the date on which it was originally offered for filing if the court finds that the petition is legally sufficient. (Sec. 14)
45. Prescribes that the most current version of the general county register statewide voter registration database at the time of filing the court action challenging a recall petition constitutes the official record used to determine on a prima facie basis that the signer of a petition was not registered to vote at the given address on the date of signing the petition. (Sec. 14)
46. Directs the county recorder to examine the version of the general county register that was current on the date the petition was signed in order to determine the validity of the signature and whether the person was eligible to sign the petition. (Sec. 14)
47. Allows a certified copy of the affidavit of registration dated before the signing of the petition to be introduced as evidence if it is in possession of the county recorder but has not yet been filed in the general county register. (Sec. 14)
48. Prohibits an action that contests the validity of a recall based on the actions of the filing officer from being maintained in any court in this state except as provided in this Act. (Sec. 14)
49. Authorizes any person to contest the validity of a recall and requires multiple actions that are filed to be consolidated before the appropriate venue. (Sec. 14)
50. Permits any person to 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 recall and enjoin the certification or printing of the ballot. (Sec. 14)

51. Specifies that the superior court in Maricopa County has jurisdiction of actions related to recalls being submitted to the electors of Arizona at large. (Sec. 14)
52. Prescribes that the superior court in the county where the district is located has jurisdiction for actions relating to local recalls for a county, special district or school district. (Sec. 14)
53. Stipulates that the county superior court where the majority of the population of the city or town resides has jurisdiction over actions relating to recalls for a city or town. (Sec. 14)

***Officer in Charge of Election***

54. Includes a special taxing district officer for which a recall election must be called. (Sec. 15)
55. The officer in charge of the election for a recall election is:
  - a) Including a member of the Legislature, the Secretary of State, for a state office;
  - b) The county officer in charge of elections, for a county or district officer or superior court judge;
  - c) The city or town clerk for a city or town officer; and
  - d) The county school superintendent of the county where the school district is located for a member of a school district governing board. (Sec. 15)

***Miscellaneous***

56. Specifies that, for an officer elected in a nonpartisan election and who is the subject of a recall, the last preceding general election is the last preceding election in which the officer was declared elected. (Sec. 2)
57. Requires the person filing an application for recall petition to submit a separate electronic copy of the statutorily required general statement in the format prescribed by the filing officer at the same time and place as submitting the application and petition. (Sec. 3)
58. Modifies where a recall petition must be submitted to stipulate that it is submitted to the appropriate filing officer as prescribed by statute. (Sec. 4)
59. Removes the requirement for the rest of the recall petition to be as prescribed for initiative and referendum. (Sec. 5)
60. Stipulates that signatures on recall petitions that are in violation of statute are void and will not be counted in determining the legal sufficiency of the petition. (Sec. 5)
61. Specifies that the presence of invalidated signatures on a recall petition does not invalidate other signatures that were properly obtained. (Sec. 5)
62. Directs each recall petition to have 15 lines for signatures that are numbered and outlines how the lines must be headed. (Sec. 5)
63. Prescribes the form that the affidavit must follow to be printed on the reverse side of each signature sheet. (Sec. 5)
64. Prohibits the form of the affidavit from being modified and stipulates that any petition containing a partially completed affidavit or one that has been modified is invalid. (Sec. 5)
65. Requires the Secretary of State to make a sample recall petition that complies with the statutory requirements available and when a committee uses such petition they are presumed to be in compliance with statute. (Sec. 6)
66. Includes the fact that the name and address were printed by the signer on the indicated date in what a circulator must swear to in the affidavit. (Sec. 7)
67. Removes the requirement for the affidavit to be in the same form as for initiative and referendum. (Sec. 7)

- 68. Specifies that there is no party designation on the recall ballot for a nonpartisan office. (Sec. 16)
- 69. Defines *paid circulator*, *pattern of recall petition signature fraud* and *special taxing district*. (Sec. 8, 10, 15)
- 70. Makes technical and conforming changes. (Sec. 2-5, 7, 9, 11-13)

**Amendments**

Committee on Government & Elections

- 1. Specifies that there may only be 10 lines on the recall petition sheets.
- 2. Stipulates that the recall petitions sheets must be stapled to the signature sheet.

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
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