

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 575

Introduced by Rogert, 16.

Read first time January 21, 2009

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to initiative and referendum petitions; to
2 amend sections 32-1404, 32-1412, and 84-205, Reissue
3 Revised Statutes of Nebraska; to change provisions
4 relating to investigation and prosecution of violations
5 relating to signers and circulators of petitions and to
6 placing measures on the ballot; to harmonize provisions;
7 and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 32-1404, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 32-1404 (1) A signer of an initiative and referendum
4 petition shall be a registered voter of the State of Nebraska on or
5 before the date on which the petition is required to be filed with
6 the Secretary of State and shall meet the requirements of section
7 32-630.

8 (2) A person who circulates initiative and referendum
9 petitions shall comply with the requirements of section 32-629
10 and subsection (2) of section 32-630 and with the prohibitions
11 contained in subdivisions (3)(a), (d), (f), and (g) of section
12 32-630.

13 (3) The Secretary of State, the Attorney General, and
14 the Department of Labor may share information pertinent to any
15 employment relationship, compensation method and structure, and
16 related information regarding any circulator of an initiative or
17 referendum petition and any person employing or contracting with a
18 circulator of an initiative or referendum petition to ensure that
19 any compensation paid for circulating a petition is in compliance
20 with subdivisions (3)(e), (f), and (g) of section 32-630.

21 (4) The Nebraska State Patrol shall have exclusive
22 jurisdiction to investigate a potential violation regarding a
23 signer or a circulator of an initiative or referendum petition,
24 including a violation committed by a sponsor of a petition, an
25 individual circulator of a petition, or a person that employs,

1 trains, organizes, authorizes, or independently contracts with an
2 individual circulator. The Nebraska State Patrol shall conduct
3 any investigation related to a potential violation regarding a
4 signer or a circulator of an initiative or referendum petition in
5 cooperation with the Secretary of State, the Attorney General, and
6 the Department of Labor.

7 (5) If the Attorney General determines there is probable
8 cause to prosecute a violation regarding the circulation of an
9 initiative or referendum petition based on the investigation of the
10 Nebraska State Patrol, the Secretary of State shall issue a cease
11 and desist order suspending the circulation of the petition by the
12 person alleged to have committed the violation.

13 (6) The Attorney General shall have exclusive
14 prosecutorial power regarding violations of this section and shall
15 prosecute all violations of this section to the fullest extent of
16 the law.

17 (7) The Secretary of State, the election commissioner, or
18 the county clerk shall not accept any signature on an initiative or
19 referendum petition gathered by a person who is subject to a cease
20 and desist order while such person is subject to such order.

21 (8) Any signature on an initiative or referendum petition
22 which is circulated or submitted for signature verification by a
23 person who is convicted of violating a cease and desist order under
24 this section or who is convicted of violating any of the provisions
25 referred to in subsection (2) of this section shall be rejected

1 and shall not be counted for purposes of verifying the number of
2 signatures on the petition.

3 Sec. 2. Section 32-1412, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 32-1412 (1) If the Secretary of State refuses to place on
6 the ballot any measure proposed by an initiative petition presented
7 at least four months preceding the date of the election at which
8 the proposed law or constitutional amendment is to be voted upon
9 or a referendum petition presented within ninety days after the
10 Legislature enacting the law to which the petition applies adjourns
11 sine die or for a period longer than ninety days, any resident may
12 apply, within ten days after such refusal, to the district court
13 of Lancaster County for a writ of mandamus. If it is decided by
14 the court that such petition is legally sufficient, the Secretary
15 of State shall order the issue placed upon the ballot at the next
16 general election.

17 (2) On a showing that an initiative or referendum
18 petition is not legally sufficient, the court, on the application
19 of any resident, may enjoin the Secretary of State and all other
20 officers from certifying or printing on the official ballot for the
21 next general election the ballot title and number of such measure.
22 If a suit is filed against the Secretary of State seeking to enjoin
23 him or her from placing the measure on the official ballot, the
24 person who is the sponsor of record of the petition shall be a
25 necessary party defendant in such suit.

1 (3) ~~Such suits~~ A suit under this section shall be
 2 advanced on the court docket and heard ~~and decided~~ by the court
 3 ~~as quickly as possible-~~ within ten days after the suit is filed.
 4 The court shall issue a decision within fifteen days after the
 5 matter is submitted for decision. Either party may appeal ~~to the~~
 6 ~~Court of Appeals~~ directly to the Supreme Court within ten days
 7 after a decision is rendered. The appeal procedures described in
 8 the Administrative Procedure Act shall not apply to this section.

9 (4) The district court of Lancaster County shall have
 10 jurisdiction over all litigation arising under sections 32-1401 to
 11 32-1416.

12 Sec. 3. Section 84-205, Reissue Revised Statutes of
 13 Nebraska, is amended to read:

14 84-205 The duties of the Attorney General shall be:

15 (1) To appear and defend actions and claims against the
 16 state;

17 (2) To investigate, commence, and prosecute any and all
 18 actions resulting from violations of sections 32-1401 to 32-1417
 19 related to initiative and referendum petitions except as otherwise
 20 provided in section 32-1404;

21 (3) To consult with and advise the county attorneys, when
 22 requested by them, in all criminal matters and in matters relating
 23 to the public revenue. He or she shall have authority to require
 24 aid and assistance of the county attorney in all matters pertaining
 25 to the duties of the Attorney General in the county of such county

1 attorney and may, in any case brought to the Court of Appeals or
2 Supreme Court from any county, demand and receive the assistance of
3 the county attorney from whose county such case is brought;

4 (4) To give, when required, without fee, his or her
5 opinion in writing upon all questions of law submitted to him or
6 her by the Governor, head of any executive department, Secretary
7 of State, State Treasurer, Auditor of Public Accounts, Board of
8 Educational Lands and Funds, State Department of Education, Public
9 Service Commission, or Legislature;

10 (5) At the request of the Governor, head of any executive
11 department, Secretary of State, State Treasurer, Auditor of Public
12 Accounts, Board of Educational Lands and Funds, State Department of
13 Education, or Public Service Commission, to prosecute any official
14 bond or any contract in which the state is interested which is
15 deposited with any of them and to prosecute or defend for the
16 state all civil or criminal actions and proceedings relating to
17 any matter connected with any of such officers' departments if,
18 after investigation, he or she is convinced there is sufficient
19 legal merit to justify the proceeding. Such officers shall not
20 pay or contract to pay from the funds of the state any money for
21 special attorneys or counselors-at-law unless the employment of
22 such special counsel is made upon the written authorization of the
23 Governor or the Attorney General;

24 (6) To enforce the proper application of money
25 appropriated by the Legislature to the various funds of the state

1 and prosecute breaches of trust in the administration of such
2 funds;

3 (7) To prepare, when requested by the Governor, Secretary
4 of State, State Treasurer, or Auditor of Public Accounts or any
5 other executive department, proper drafts for contracts, forms, or
6 other writings which may be wanted for the use of the state and
7 report to the Legislature, whenever requested, upon any business
8 pertaining to the duties of his or her office;

9 (8) To pay all money received, belonging to the people
10 of the state, immediately upon receipt thereof, into the state
11 treasury;

12 (9) To keep a record in proper books provided for that
13 purpose at the expense of the state, a register of all actions and
14 demands prosecuted or defended by him or her in behalf of the state
15 and all proceedings had in relation thereto, and deliver the same
16 to his or her successor in office;

17 (10) To appear for the state and prosecute and defend all
18 civil or criminal actions and proceedings in the Court of Appeals
19 or Supreme Court in which the state is interested or a party. When
20 requested by the Governor or the Legislature, the Attorney General
21 shall appear for the state and prosecute or defend any action or
22 conduct any investigation in which the state is interested or a
23 party before any court, officer, board, tribunal, or commission;

24 (11) To prepare and promulgate model rules of procedure
25 appropriate for use by as many agencies as possible. The Attorney

1 General shall add to, amend, or revise the model rules as necessary
2 for the proper guidance of agencies;

3 (12) To include within the budget of the office
4 sufficient funding to assure oversight and representation of the
5 State of Nebraska for district court appeals of administrative
6 license revocation proceedings under section 60-498.04; and

7 (13) To create a Child Protection Division to be staffed
8 by at least three assistant attorneys general who each have five or
9 more years of experience in the prosecution or defense of felonies
10 or misdemeanors, including two years in the prosecution or defense
11 of crimes against children. Upon the written request of a county
12 attorney, the division shall provide consultation and advise and
13 assist in the preparation of the trial of any case involving a
14 crime against a child, including, but not limited to, the following
15 offenses:

16 (a) Murder as defined in sections 28-303 and 28-304;

17 (b) Manslaughter as defined in section 28-305;

18 (c) Kidnapping as defined in section 28-313;

19 (d) False imprisonment as defined in sections 28-314 and
20 28-315;

21 (e) Child abuse as defined in section 28-707;

22 (f) Pandering as defined in section 28-802;

23 (g) Debauching a minor as defined in section 28-805; and

24 (h) Offenses listed in sections 28-813, 28-813.01, and
25 28-1463.03.

1 Any offense listed in subdivisions (a) through (h) of
2 this subdivision shall include all inchoate offenses pursuant to
3 the Nebraska Criminal Code and compounding a felony pursuant to
4 section 28-301. Such crimes shall not include matters involving
5 dependent and neglected children, infraction violations, custody,
6 parenting time, visitation, or other access matters, or child
7 support. If the county attorney declines in writing to prosecute
8 a case involving a crime against a child because of an ethical
9 consideration, including the presence or appearance of a conflict
10 of interest, or for any other reason, the division shall, upon the
11 receipt of a written request of the county attorney, the Department
12 of Health and Human Services, the minor child, the parents of
13 the minor child, or any other interested party, investigate the
14 matter and either decline to prosecute the matter or initiate the
15 appropriate criminal proceedings in a court of proper jurisdiction.

16 For purposes of this subdivision, child or children shall
17 mean an individual or individuals sixteen years of age or younger.

18 Sec. 4. Original sections 32-1404, 32-1412, and 84-205,
19 Reissue Revised Statutes of Nebraska, are repealed.