

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 160

Introduced by Schumacher, 22.

Read first time January 14, 2013

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to elections; to amend sections 32-1302 and
2 32-1403, Reissue Revised Statutes of Nebraska, and
3 section 32-101, Revised Statutes Cumulative Supplement,
4 2012; to provide for electronic signatures on recall,
5 initiative, and referendum petitions; to provide powers
6 and duties; to provide fees; to create a fund; to provide
7 penalties; to harmonize provisions; to provide operative
8 dates; to provide severability; to repeal the original
9 sections; and to declare an emergency.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 32-101, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 32-101 Sections 32-101 to 32-1551 and sections 2 to 16
4 and 19 to 21 of this act shall be known and may be cited as the
5 Election Act.

6 Sec. 2. It is the intent of the Legislature to facilitate
7 the rights of the people reserved in Article III of the Constitution
8 of Nebraska through the use of electronic signatures on petitions and
9 electronic verification of signatures on petitions used in the
10 recall, initiative, and referendum processes. In order to overcome
11 obstacles to the exercise of those rights, take advantage of modern
12 technology, and provide for a contemplative environment in which
13 those rights might be exercised, the Legislature finds that there is
14 a need to establish the means to ensure the validity of the
15 electronic signatures and of the verification process and to ensure
16 that security measures are in place to prevent opportunities for
17 fraud and misuse.

18 Sec. 3. For purposes of sections 2 to 16 of this act:

19 (1) Electronic signature means the submission of data by
20 an eligible signer as prescribed by section 6 of this act;

21 (2) Eligible signer means an individual who is eligible
22 to sign a recall petition, an initiative petition, or a referendum
23 petition, as applicable;

24 (3) Petition means a recall petition, an initiative
25 petition, and a referendum petition;

1 (4) Petition sponsor means (a) the principal circulator
2 pursuant to section 32-1303, (b) the petition sponsor filing pursuant
3 to section 32-1405, or (c) a person who directly or indirectly
4 contributes five thousand dollars or more in support of a petition
5 and if any person so contributing is not a natural person, the
6 governing board of the entity, the chief executive officer of the
7 entity, any person in control, within the meaning of the Internal
8 Revenue Code of 1986 as defined in section 49-801.01, of the entity,
9 and any registered lobbyist materially involved with the entity in
10 the design or promotion of the petition, except that for purposes of
11 filings with the Secretary of State or an election commissioner or
12 county clerk relating to a petition and for purposes of conducting
13 litigation involving a petition, only a person identified under
14 subdivision (a) or (b) of this subdivision shall be considered to be
15 a petition sponsor;

16 (5) Registered participant means a person who complies
17 with section 16 of this act;

18 (6) State agency means any agency, board, or court of
19 state government or any constitutional officer of the executive,
20 legislative, or judicial branch of state government except individual
21 members of the Legislature; and

22 (7) State-qualified data means a valid voter
23 identification number issued or assigned by the Secretary of State,
24 an audit trail of which is maintained by the Secretary of State; a
25 qualifying self-assigned personal identification number preregistered

1 by an eligible signer with the Secretary of State or an election
2 commissioner or county clerk; a personal identification number on a
3 state tax return filed with the Department of Revenue; a unique
4 access code or other unique electronic identifier assigned or
5 approved by a state agency for use in identifying a party in
6 communications with the state agency and which the Secretary of State
7 has integrated into the electronic signature process; or other data
8 which is maintained for purposes of identification by a state agency
9 or county agency independently of the voter registration register and
10 which is accessible by the Secretary of State.

11 Sec. 4. The Secretary of State shall provide for the
12 submission of electronic signatures for every petition unless the
13 petition sponsor opts out of the use of electronic signatures by
14 notifying the Secretary of State at the time of filing an affidavit
15 under section 32-1303 or filing the petition for review under section
16 32-1405, as applicable. If the petition sponsor does not opt out
17 under this section, an eligible signer may choose whether to submit
18 his or her electronic signature for a petition or sign the petition
19 manually. Sections 2 to 16 of this act shall not be construed to
20 require an eligible signer to use electronic signatures or to require
21 a petition sponsor to opt for or against the use of electronic
22 signatures.

23 Sec. 5. (1) At the time of filing an affidavit under
24 section 32-1303 or filing a petition for review under section
25 32-1405, a petition sponsor who does not opt out under section 4 of

1 this act shall pay a filing fee or file a qualifying affidavit.

2 (2) The filing fee shall be ten thousand dollars for an
3 initiative petition proposing a constitutional amendment and five
4 thousand dollars for any other petition.

5 (3) A petition sponsor who cannot afford the filing fee
6 may file a qualifying affidavit in lieu of the filing fee. If the
7 petition sponsor reports to the Nebraska Accountability and
8 Disclosure Commission fifty thousand dollars or more in aggregate
9 contributions in support of the petition or ten thousand dollars or
10 more in aggregate contributions from a petition sponsor, the
11 qualifying affidavit ceases to have effect and the petition sponsor
12 shall pay the appropriate filing fee before further use of electronic
13 signatures for such petition is permitted.

14 Sec. 6. Subject to section 4 of this act, an eligible
15 signer may sign a petition by use of an electronic signature. The
16 Secretary of State and each election commissioner or county clerk
17 shall accept an electronic signature meeting the requirements of this
18 section and include the signature in the count of signatures
19 necessary to validate the petition. No circulator signature or
20 notarization shall be required for electronic signatures. The use of
21 an electronic signature shall have the same force and effect as the
22 use of a manual signature on a petition if and only if the electronic
23 signature complies with the following requirements:

24 (1) The electronic signature is submitted by an eligible
25 signer to a web site established pursuant to section 12 of this act;

1 (2) A signer at the time of submitting the electronic
2 signature also submits (a) his or her name, address, county of
3 residence, political party affiliation, and date of birth as shown on
4 his or her voter registration record, (b) his or her assent to the
5 petition document, and (c) a unique identifier which (i) can be
6 verified against other state-qualified data associated with the
7 signer or (ii) would be acceptable in commercial financial
8 transactions involving the transfer of money between financial
9 institutions such as credit card transactions;

10 (3) The electronic signature is correlated with the
11 signer as evidenced by a reasonable match with voter registration
12 records and voting records which correspond to at least one item of
13 state-qualified data or by the execution of a financial transaction
14 initiated under the signer's name and involving one or more financial
15 institutions, which financial transaction may be evidenced by an
16 online contribution to the Petition Operations Fund using the
17 eligible signer's credit or debit card;

18 (4) The electronic signature has not been disqualified
19 because of abuse as defined in rules and regulations adopted and
20 promulgated by the Secretary of State;

21 (5) The electronic signature has not been repudiated as a
22 result of the post card mailed pursuant to section 7 of this act;

23 (6) The electronic signature has not been previously
24 submitted and verified as a signature on the same petition; and

25 (7) The electronic signature conforms to reasonable rules

1 and regulations adopted and promulgated by the Secretary of State
2 which facilitate the intent stated in section 2 of this act.

3 Sec. 7. Upon receipt of an electronic signature, the
4 Secretary of State shall mail a post card by United States mail to
5 the signer at the address on his or her voter registration record
6 notifying the signer that his or her signature has been received,
7 identifying the petition to which the signature is attached, and
8 notifying the signer that he or she has ten days to contact the
9 office of the Secretary of State to indicate that he or she did not
10 submit the signature.

11 Sec. 8. If for any reason an electronic signature cannot
12 be correlated with the signer as required in subdivision (3) of
13 section 6 of this act, the eligible signer may submit his or her
14 name, address, county of residence, political party affiliation, and
15 date of birth as shown on his or her voter registration record and a
16 request that a petition be mailed to the address shown on his or her
17 voter registration record. The Secretary of State shall encrypt
18 coding on a single signature petition form to identify the form and
19 the eligible signer requesting the form and shall mail the form to
20 such address by United States mail. The eligible signer may return
21 the completed form to the Secretary of State prior to the deadline
22 and the form shall qualify as an electronic signature for the
23 petition. No circulator signature or notarization shall be required
24 on a single signature petition form under this section.

25 Sec. 9. The Secretary of State shall make public on a

1 county-by-county basis, at least once each week, the number of
2 electronic signatures collected for each petition.

3 Sec. 10. On or before January 1, 2014, the Secretary of
4 State shall adopt and promulgate rules and regulations to carry out
5 sections 2 to 16 of this act and to facilitate the intent stated in
6 section 2 of this act. The Secretary of State shall seek the advice
7 of public and private entities in developing the rules and
8 regulations, including the Department of Administrative Services. The
9 rules and regulations shall provide for a degree of security for the
10 process of submitting electronic signatures and electronic signature
11 verification reasonably related to the risks and consequences of
12 fraud or misuse. The rules and regulations shall, at a minimum,
13 require the maintenance of an audit trail of public Internet protocol
14 addresses identified with the session in which the electronic
15 signature was submitted, the data submitted by the signer, the time
16 and date of the submission, the state-qualified data used for
17 verification, and the date the post card required under section 7 of
18 this act was mailed.

19 Sec. 11. The Secretary of State may establish and update
20 a verification data base from state and county agencies for purposes
21 of implementing sections 2 to 16 of this act. The verification data
22 collected by the Secretary of State for purposes of sections 2 to 16
23 of this act shall be confidential and shall not be a public record
24 within the meaning of sections 84-712 to 84-712.09. The verification
25 data base shall include data which is unique to an eligible signer,

1 which is maintained by a state or county agency independently of the
2 voter registration register and voting records, and which is
3 accessible to the Secretary of State, including, but not limited to,
4 motor vehicle operators' licenses and state identification cards.

5 Sec. 12. The Secretary of State shall establish a secure
6 server located within Nebraska and under the direct control of the
7 Secretary of State and a secure web site on the server with a uniform
8 resource locator designated by the Secretary of State for purposes of
9 submission of electronic signatures for petitions. Any interaction
10 with the server is deemed to have occurred in Nebraska. The web site
11 shall set forth the full text of any petition for which electronic
12 signatures are being accepted. The web site shall be designed so that
13 an eligible signer views the full text of the petition before being
14 able to submit his or her electronic signature for the petition. The
15 web site shall include links to web sites which provide information
16 related to the petition and which are maintained in support of or
17 opposition to the petition by petition sponsors and registered
18 participants.

19 Sec. 13. Any person may challenge a petition for which
20 electronic signatures were gathered prior to the election at which
21 the question would be submitted. The person challenging the petition
22 shall, at the time of filing the litigation in court, file an
23 affidavit with the Secretary of State identifying every person who
24 directly or indirectly contributed one thousand dollars or more in
25 cash or in kind for the litigation in opposition to the relevant

1 petition. If any person so contributing is not a natural person, the
2 affidavit shall also identify the governing board of the entity, the
3 chief executive officer of the entity, any person in control, within
4 the meaning of the Internal Revenue Code of 1986 as defined in
5 section 49-801.01, of the entity, and any registered lobbyist
6 materially involved with the entity in opposition to the petition. If
7 after filing the initial affidavit any additional persons meet such
8 criteria, an additional affidavit shall be filed with the Secretary
9 of State within three working days after meeting such criteria. Any
10 failure to identify such persons shall be grounds for dismissal of
11 the litigation.

12 Sec. 14. The Secretary of State may operate a secure web
13 site account for the purpose of receiving credit card contributions.
14 The Secretary of State shall remit contributions to the State
15 Treasurer for credit to the Petition Operations Fund.

16 Sec. 15. The Petition Operations Fund is created. The
17 fund shall be used for purposes of carrying out sections 2 to 16 of
18 this act. Any money in the fund available for investment shall be
19 invested by the state investment officer pursuant to the Nebraska
20 Capital Expansion Act and the Nebraska State Funds Investment Act.

21 Sec. 16. A person may become a registered participant and
22 request that a link be placed on the web site created by the
23 Secretary of State under section 12 of this act by applying to the
24 Secretary of State. The application shall provide the appropriate
25 information regarding the link and shall be accompanied by a

1 registration fee of two hundred fifty dollars for each link or an
2 affidavit stating that such person cannot afford such fee. The link
3 shall be to a web site maintained by the registered participant which
4 provides information supporting or opposing a petition on the web
5 site created by the Secretary of State.

6 Sec. 17. Section 32-1302, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 32-1302 (1) Except for trustees of sanitary and
9 improvement districts, any elected official of a political
10 subdivision and any elected member of the governing bodies of cities,
11 villages, counties, irrigation districts, natural resources
12 districts, public power districts, school districts, community
13 college areas, educational service units, hospital districts, and
14 metropolitan utilities districts may be removed from office by recall
15 pursuant to sections 32-1301 to 32-1309. A trustee of a sanitary and
16 improvement district may be removed from office by recall pursuant to
17 sections 31-786 to 31-793.

18 (2) If due to reapportionment the boundaries of the area
19 served by the official or body change, the recall procedure and
20 special election provisions of sections 32-1301 to 32-1309 shall
21 apply to the registered voters within the boundaries of the new area.

22 (3) The recall procedure and special election provisions
23 of such sections shall apply to members of the governing bodies
24 listed in subsection (1) of this section, other than sanitary and
25 improvement districts, who are elected by precinct, district, or

1 subdistrict of the political subdivision. Only registered voters of
2 such member's precinct, district, or subdistrict may sign a recall
3 petition or vote at the recall election. The recall election shall be
4 held within the member's precinct, district, or subdistrict. When an
5 elected member is nominated by precinct, district, or subdistrict in
6 the primary election and elected at large in the general election,
7 the recall provisions shall apply to the registered voters at the
8 general election.

9 (4) The recall procedure and special election provisions
10 shall apply to the mayor and members of the city council of
11 municipalities with a home rule charter notwithstanding any contrary
12 provisions of the home rule charter.

13 (5) Electronic signatures may be gathered pursuant to
14 sections 2 to 16 of this act.

15 Sec. 18. Section 32-1403, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 32-1403 A full and correct copy of the title and text of
18 the law or amendment to the Constitution of Nebraska to be proposed
19 by an initiative petition or the measure sought to be referred to the
20 registered voters by a referendum petition shall be printed upon each
21 sheet of the petition which contains signatures. The petition may be
22 filed with the Secretary of State in numbered sections for
23 convenience in handling. Electronic signatures may be gathered
24 pursuant to sections 2 to 16 of this act.

25 Sec. 19. Intentional interference with the operation or

1 integrity of a server or web site established under section 12 of
2 this act is a Class III felony.

3 Sec. 20. Attempting to submit the electronic signature of
4 another person is a Class IV felony.

5 Sec. 21. Reporting to the Secretary of State that an
6 electronic signature was not submitted if in fact such electronic
7 signature was submitted is a Class I misdemeanor.

8 Sec. 22. Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14,
9 15, 16, 17, 18, 19, 20, 21, and 24 of this act become operative on
10 January 1, 2014. The remaining sections of this act become operative
11 on their effective date.

12 Sec. 23. If any section in this act or any part of any
13 section is declared invalid or unconstitutional, the declaration
14 shall not affect the validity or constitutionality of the remaining
15 portions.

16 Sec. 24. Original sections 32-1302 and 32-1403, Reissue
17 Revised Statutes of Nebraska, are repealed.

18 Sec. 25. Original section 32-101, Revised Statutes
19 Cumulative Supplement, 2012, is repealed.

20 Sec. 26. Since an emergency exists, this act takes effect
21 when passed and approved according to law.