

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 687

Introduced by Bloomfield, 17.

Read first time January 06, 2016

Committee: Government, Military and Veterans Affairs

- 1 A BILL FOR AN ACT relating to recall; to amend sections 32-1205, 32-1301,
- 2 32-1302, 32-1304, 32-1305, and 32-1309, Reissue Revised Statutes of
- 3 Nebraska, sections 32-628, 32-1303, and 32-1306, Revised Statutes
- 4 Cumulative Supplement, 2014, and section 32-1308, Revised Statutes
- 5 Supplement, 2015; to provide for recall of an official elected or
- 6 appointed to a state elective office; to harmonize provisions; and
- 7 to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 32-628, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 32-628 (1) All petitions prepared or filed pursuant to the Election
4 Act or any petition which requires the election commissioner or county
5 clerk to verify signatures by utilizing the voter registration register
6 shall provide a space at least two and one-half inches long for written
7 signatures, a space at least two inches long for printed names, and
8 sufficient space for date of birth and street name and number, city or
9 village, and zip code. Lines on each petition shall not be less than one-
10 fourth inch apart. Petitions may be designed in such a manner that lines
11 for signatures and other information run the length of the page rather
12 than the width. Petitions shall provide for no more than twenty
13 signatures per page.

14 (2) For the purpose of preventing fraud, deception, and
15 misrepresentation, every sheet of every petition containing signatures
16 shall have upon it, above the signatures, the statements contained in
17 this subsection, except that a petition for recall of an ~~elected~~ official
18 shall also have the additional information specified in subsection (2) of
19 section 32-1304. The statements shall be printed in boldface type in
20 substantially the following form:

21 WARNING TO PETITION SIGNERS—VIOLATION OF ANY OF THE FOLLOWING
22 PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL CHARGES: Any
23 person who signs any name other than his or her own to any petition or
24 who is not qualified to sign the petition shall be guilty of a Class I
25 misdemeanor. Any person who falsely swears to a circulator's affidavit on
26 a petition, who accepts money or other things of value for signing a
27 petition, or who offers money or other things of value in exchange for a
28 signature upon any petition shall be guilty of a Class IV felony.

29 (3) Every sheet of a petition which contains signatures shall have
30 upon it, below the signatures, an affidavit as provided in this
31 subsection, except that the affidavit for a petition for recall of an

1 ~~elected~~ official shall also include the additional language specified in
2 subsection (3) of section 32-1304. The affidavit shall be in
3 substantially the following form:

4 STATE OF NEBRASKA)

5)ss.

6 COUNTY OF)

7 , (name of circulator) being first duly
8 sworn, deposes and says that he or she is the circulator of this petition
9 containing signatures, that he or she is at least eighteen
10 years of age, that each person whose name appears on the petition
11 personally signed the petition in the presence of the affiant, that the
12 date to the left of each signature is the correct date on which the
13 signature was affixed to the petition and that the date was personally
14 affixed by the person signing such petition, that the affiant believes
15 that each signer has written his or her name, street and number or voting
16 precinct, and city, village, or post office address correctly, that the
17 affiant believes that each signer was qualified to sign the petition, and
18 that the affiant stated to each signer the object of the petition as
19 printed on the petition before he or she affixed his or her signature to
20 the petition.

21 Circulator

22 Address

23 Subscribed and sworn to before me, a notary public, this day
24 of 20.... at, Nebraska.

25 Notary Public

26 (4) Each sheet of a petition shall have upon its face and in plain
27 view of persons who sign the petition a statement in letters not smaller
28 than sixteen-point type in red print on the petition. If the petition is
29 circulated by a paid circulator, the statement shall be as follows: This
30 petition is circulated by a paid circulator. If the petition is
31 circulated by a circulator who is not being paid, the statement shall be

1 as follows: This petition is circulated by a volunteer circulator.

2 Sec. 2. Section 32-1205, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 32-1205 A political subdivision in which an official is recalled or
5 a vacancy needs to be filled as the result of a recall petition shall pay
6 the costs of the recall procedure and any special election held as a
7 result of a recall election. If a recall election is canceled pursuant to
8 section 32-1306, the political subdivision shall be responsible for costs
9 incurred related to the canceled election. If a person holding a state
10 elective office is the subject of a recall petition, the state shall be
11 responsible for all costs of the recall procedure, any special election,
12 or costs incurred related to a canceled election. The costs shall include
13 all chargeable costs as provided in section 32-1202 associated with
14 preparing for and conducting a recall or special election.

15 Sec. 3. Section 32-1301, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 32-1301 For purposes of sections 32-1301 to 32-1309 and section 6 of
18 this act: , ~~filing clerk shall mean~~

19 (1) Filing clerk means the election commissioner or county clerk for
20 recall of elected officers of cities, villages, counties, irrigation
21 districts, natural resources districts, public power districts, school
22 districts, community college areas, educational service units, hospital
23 districts, and metropolitan utilities districts and the Secretary of
24 State for recall of an official elected or appointed to a state elective
25 office; -

26 (2) Official means an elected official of a political subdivision or
27 an elected member of the governing body of a political subdivision listed
28 in subdivision (1) of this section or an official elected or appointed to
29 a state elective office; and

30 (3) State elective office means the office of Governor, Lieutenant
31 Governor, Secretary of State, Auditor of Public Accounts, State

1 Treasurer, Attorney General, member of the Legislature, and member of a
2 board or commission with one or more election districts of more than one
3 county other than a board subject to recall under sections 31-786 to
4 31-793 or listed in subdivision (1) of this section.

5 Sec. 4. Section 32-1302, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 32-1302 (1) Any official ~~Except for trustees of sanitary and~~
8 ~~improvement districts, any elected official of a political subdivision~~
9 ~~and any elected member of the governing bodies of cities, villages,~~
10 ~~counties, irrigation districts, natural resources districts, public power~~
11 ~~districts, school districts, community college areas, educational service~~
12 ~~units, hospital districts, and metropolitan utilities districts~~ may be
13 removed from office by recall pursuant to sections 32-1301 to 32-1309 and
14 section 6 of this act. A trustee of a sanitary and improvement district
15 may be removed from office by recall pursuant to sections 31-786 to
16 31-793.

17 (2) If due to reapportionment the boundaries of the area served by
18 the official ~~or body~~ change, the recall procedure and special election
19 provisions of sections 32-1301 to 32-1309 and section 6 of this act shall
20 apply to the registered voters within the boundaries of the new area.

21 (3) The recall procedure and special election provisions of such
22 sections shall apply to officials ~~members of the governing bodies listed~~
23 ~~in subsection (1) of this section, other than sanitary and improvement~~
24 ~~districts, who are elected by precinct, district, or subdistrict of the~~
25 ~~political subdivision~~. Only registered voters of such official's ~~member's~~
26 precinct, district, or subdistrict may sign a recall petition or vote at
27 the recall election. The recall election shall be held within the
28 official's ~~member's~~ precinct, district, or subdistrict. When an elected
29 official ~~member~~ is nominated by precinct, district, or subdistrict in the
30 primary election and elected at large in the general election, the recall
31 provisions shall apply to the registered voters at the general election.

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

5 Sec. 5. Section 32-1303, Revised Statutes Cumulative Supplement,
6 2014, is amended to read:

7 32-1303 (1) A petition demanding that the question of removing an
8 elected official of a political subdivision or member of a governing body
9 listed in section 32-1302 be submitted to the registered voters shall be
10 signed by registered voters equal in number to at least thirty-five
11 percent of the total vote cast for such ~~that~~ office in the last general
12 election, except that (a) for an office for which more than one candidate
13 is chosen, the petition shall be signed by registered voters equal in
14 number to at least thirty-five percent of the number of votes cast for
15 the person receiving the most votes for such office in the last general
16 election, (b) for a member of a board of a Class I school district, the
17 petition shall be signed by registered voters of the school district
18 equal in number to at least twenty-five percent of the total number of
19 registered voters residing in the district on the date that the recall
20 petitions are first procured ~~checked-out~~ from the filing clerk by the
21 principal circulator or circulators, and (c) for a member of a governing
22 body of a village, the petition shall be signed by registered voters
23 equal in number to at least forty-five percent of the total vote cast for
24 the person receiving the most votes for that office in the last general
25 election. The signatures shall be affixed to petition papers and shall be
26 considered part of the petition.

27 (2) Petition circulators shall comply with ~~conform~~ to the
28 requirements of sections 32-629 and 32-630.

29 (3) The petition papers shall be procured from the filing clerk.
30 Prior to the issuance of such petition papers, an affidavit shall be
31 signed and filed with the filing clerk by at least one registered voter.

1 Such voter or voters shall be deemed to be the principal circulator or
2 circulators of the recall petition. The affidavit shall state the name
3 and office of the official sought to be removed, shall include in
4 typewritten form in concise language of sixty words or less the reason or
5 reasons for which recall is sought, and shall request that the filing
6 clerk issue initial petition papers to the principal circulator or
7 circulators for circulation. The filing clerk shall notify the official
8 sought to be removed by any method specified in section 25-505.01 or, if
9 notification cannot be made with reasonable diligence by any of the
10 methods specified in section 25-505.01, by leaving a copy of the
11 affidavit at the official's usual place of residence and mailing a copy
12 by first-class mail to the official's last-known address. If the official
13 chooses, he or she may submit a defense statement in typewritten form in
14 concise language of sixty words or less for inclusion on the petition.
15 Any such defense statement shall be submitted to the filing clerk within
16 twenty days after the official receives the copy of the affidavit. The
17 principal circulator or circulators shall gather the petition papers
18 within twenty days after the receipt of the official's defense statement.
19 The filing clerk shall notify the principal circulator or circulators
20 that the necessary signatures must be gathered within thirty days after
21 ~~from~~ the date of issuing the petitions.

22 (4) The filing clerk, upon issuing the initial petition papers or
23 any subsequent petition papers, shall enter in a record, to be kept in
24 his or her office, the name of the principal circulator or circulators to
25 whom the papers were issued, the date of issuance, and the number of
26 papers issued. The filing clerk shall certify on the papers the name of
27 the principal circulator or circulators to whom the papers were issued
28 and the date they were issued. No petition paper shall be accepted as
29 part of the petition unless it bears such certificate. The principal
30 circulator or circulators who procure ~~check-out~~ petitions from the filing
31 clerk may distribute such petitions to persons who may act as circulators

1 of such petitions.

2 (5) Petition signers shall comply with ~~conform to~~ the requirements
3 of sections 32-629 and 32-630. Each signer of a recall petition shall be
4 a registered voter and qualified by his or her place of residence to vote
5 for the office in question.

6 Sec. 6. (1) A petition demanding that the question of removing an
7 official elected or appointed to a state elective office be submitted to
8 the registered voters shall be signed by registered voters equal in
9 number to at least thirty-five percent of the total vote cast for such
10 office in the last general election. The signatures shall be affixed to
11 petition papers and shall be considered part of the petition.

12 (2) Petition circulators shall comply with the requirements of
13 sections 32-629 and 32-630.

14 (3) The petition papers shall be procured from the filing clerk.
15 Prior to the issuance of such petition papers, an affidavit shall be
16 signed and filed with the filing clerk by at least one registered voter.
17 Such voter or voters shall be deemed to be the principal circulator or
18 circulators of the recall petition. The affidavit shall state the name
19 and office of the official sought to be removed and shall include in
20 typewritten form in concise language of sixty words or less the reason or
21 reasons for which recall is sought. Such reason or reasons shall be
22 factual and based on the official's conduct during his or her term of
23 office. The affidavit shall request that the filing clerk issue initial
24 petition papers to the principal circulator or circulators for
25 circulation. The filing clerk shall notify the official sought to be
26 removed by any method specified in section 25-505.01 or, if notification
27 cannot be made with reasonable diligence by any of the methods specified
28 in section 25-505.01, by leaving a copy of the affidavit at the
29 official's usual place of residence and mailing a copy by first-class
30 mail to the official's last-known address. If the official chooses, he or
31 she may submit a defense statement in typewritten form in concise

1 language of sixty words or less for inclusion on the petition. Any such
2 defense statement shall be submitted to the filing clerk within twenty
3 days after the official receives the copy of the affidavit. The principal
4 circulator or circulators shall gather the petition papers within twenty
5 days after the receipt of the official's defense statement. The filing
6 clerk shall notify the principal circulator or circulators that the
7 necessary signatures must be gathered within sixty days after the date of
8 issuing the petitions.

9 (4) The filing clerk, upon issuing the initial petition papers or
10 any subsequent petition papers, shall enter in a record, to be kept in
11 his or her office, the name of the principal circulator or circulators to
12 whom the papers were issued, the date of issuance, and the number of
13 papers issued. The filing clerk shall certify on the papers the name of
14 the principal circulator or circulators to whom the papers were issued
15 and the date they were issued. No petition paper shall be accepted as
16 part of the petition unless it bears such certificate. The principal
17 circulator or circulators who procure petitions from the filing clerk may
18 distribute such petitions to persons who may act as circulators of such
19 petitions.

20 (5) Petition signers shall comply with the requirements of sections
21 32-629 and 32-630. Each signer of a recall petition shall be a registered
22 voter and qualified by his or her place of residence to vote for the
23 office in question.

24 Sec. 7. Section 32-1304, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 32-1304 (1) The Secretary of State shall design the uniform petition
27 papers to be distributed by all filing clerks and shall keep a sufficient
28 number of such blank petition papers on file for distribution to any
29 filing clerk requesting recall petitions. The petition papers shall as
30 nearly as possible conform to the requirements of section 32-628.

31 (2) In addition to the requirements specified in section 32-628, for

1 the purpose of preventing fraud, deception, and misrepresentation, every
2 sheet of each petition paper presented to a registered voter for his or
3 her signature shall have upon it, above the lines for signatures, (a) a
4 statement that the signatories must be registered voters qualified by
5 residence to vote for the office in question and support the holding of a
6 recall election and (b) in letters not smaller than sixteen-point type in
7 red print (i) the name and office of the official individual sought to be
8 recalled, (ii) the reason or reasons for which recall is sought, (iii)
9 the defense statement, if any, submitted by the official, and (iv) the
10 name of the principal circulator or circulators of the recall petition.
11 The decision of a county attorney to prosecute or not to prosecute any
12 individual shall not be stated on a petition as a reason for recall.

13 (3) Every sheet of each petition paper presented to a registered
14 voter for his or her signature shall have upon it, below the lines for
15 signatures, an affidavit as required in subsection (3) of section 32-628
16 which also includes language substantially as follows: "and that the
17 affiant stated to each signer, before the signer affixed his or her
18 signature to the petition, the following: (a) The name and office of the
19 official individual sought to be recalled, (b) the reason or reasons for
20 which recall is sought as printed on the petition, (c) the defense
21 statement, if any, submitted by the official as printed on the petition,
22 and (d) the name of the principal circulator or circulators of the recall
23 petition".

24 (4) Each petition paper shall contain a statement entitled
25 Instructions to Petition Circulators prepared by the Secretary of State
26 to assist circulators in understanding the provisions governing the
27 petition process established by sections 32-1301 to 32-1309 and section 6
28 of this act. The instructions shall include the following statements:

29 (a) No one circulating this petition paper in an attempt to gather
30 signatures shall sign the circulator's affidavit unless each person who
31 signed the petition paper did so in the presence of the circulator.

1 (b) No one circulating this petition paper in an attempt to gather
2 signatures shall allow a person to sign the petition until the circulator
3 has stated to the person (i) the object of the petition as printed on the
4 petition, (ii) the name and office of the official individual sought to
5 be recalled, (iii) the reason or reasons for which recall is sought as
6 printed on the petition, (iv) the defense statement, if any, submitted by
7 the official as printed on the petition, and (v) the name of the
8 principal circulator or circulators of the recall petition.

9 Sec. 8. Section 32-1305, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 32-1305 (1) The principal circulator or circulators shall file, as
12 one instrument, all petition papers comprising a recall petition for
13 signature verification with the filing clerk within thirty days, for an
14 elected official of a political subdivision or an elected member of a
15 governing body listed in section 32-1301, or sixty days, for an official
16 elected or appointed to a state elective office, after the filing clerk
17 issues the initial petition papers to the principal circulator or
18 circulators as provided in section 32-1303 and section 6 of this act.

19 (2) If the filing clerk is the subject of a recall petition, the
20 signature verification process shall be conducted by two election
21 commissioners or county clerks appointed by the Secretary of State.
22 Mileage and expenses incurred ~~by officials appointed~~ pursuant to this
23 subsection shall be reimbursed by the political subdivision involved in
24 the recall. If the filing clerk subject to a recall petition is holding a
25 state elective office, the mileage and expenses incurred pursuant to this
26 subsection shall be reimbursed by the state.

27 (3) For an elected official of a political subdivision or elected
28 member of a governing body listed in section 32-1301 ~~Within fifteen days~~
29 ~~after the filing of the petition,~~ the filing clerk shall ascertain within
30 fifteen days after the filing of the petition whether ~~or not~~ the petition
31 is signed by the requisite number of registered voters. For an official

1 elected or appointed to a state elective office, the filing clerk shall
2 have thirty days after the filing of the petition to ascertain whether
3 the petition is signed by the requisite number of registered voters. No
4 new signatures may be added after the initial filing of the petition
5 papers. No signatures may be removed unless the filing clerk receives an
6 affidavit signed by the person requesting his or her signature be removed
7 before the petitions are filed with the filing clerk for signature
8 verification. If the petition is found to be sufficient, the filing clerk
9 shall attach to the petition a certificate showing the result of such
10 examination. If the requisite number of signatures has not been gathered,
11 the filing clerk shall file the petition in his or her office without
12 prejudice to the filing of a new petition for the same purpose.

13 Sec. 9. Section 32-1306, Revised Statutes Cumulative Supplement,
14 2014, is amended to read:

15 32-1306 (1) If the recall petition is found to be sufficient, the
16 filing clerk shall notify the official whose removal is sought and the
17 governing body of the affected political subdivision or state entity, if
18 any, that sufficient signatures have been gathered. Notification of the
19 official sought to be removed may be by any method specified in section
20 25-505.01 or, if notification cannot be made with reasonable diligence by
21 any of the methods specified in section 25-505.01, by leaving such notice
22 at the official's usual place of residence and mailing a copy by first-
23 class mail to the official's last-known address.

24 (2) If the subject of the recall is an elected official of a
25 political subdivision or an elected member of a governing body listed in
26 section 32-1301, the ~~The~~ governing body of the political subdivision
27 shall order an election to be held not less than thirty nor more than
28 seventy-five days after the notification of the official whose removal is
29 sought under subsection (1) of this section, except that if any other
30 election is to be held in that political subdivision within ninety days
31 after such notification, the governing body of the political subdivision

1 shall provide for the holding of the recall election on the same day. If
2 the subject of the recall is a person holding a state elective office,
3 the Secretary of State shall order an election to be held not less than
4 thirty nor more than seventy-five days after the notification of the
5 official whose removal is sought under subsection (1) of this section,
6 except that if any other election is to be held in the state within
7 ninety days after such notification, the Secretary of State shall provide
8 for the holding of the recall election on the same day. All resignations
9 shall be tendered as provided in section 32-562. If the official whose
10 removal is sought resigns before the recall election is held and the
11 filing clerk has notice of such resignation , ~~the governing body may~~
12 ~~cancel the recall election if the governing body notifies the election~~
13 ~~commissioner or county clerk of the cancellation~~ at least sixteen days
14 prior to the election, the recall election may be canceled, otherwise the
15 recall election shall be held as scheduled.

16 (3) If the governing body of the political subdivision fails or
17 refuses to order a recall election within the time required, the election
18 may be ordered by the district court having jurisdiction over a county in
19 which the ~~elected~~ official serves. If the Secretary of State fails or
20 refuses to order a recall election within the time required, the election
21 may be ordered by the district court of Lancaster County. If a filing
22 clerk other than the Secretary of State is subject to a recall election,
23 the Secretary of State shall conduct the recall election. If the
24 Secretary of State is subject to a recall election, the Governor shall
25 appoint an election commissioner to conduct the recall election.

26 Sec. 10. Section 32-1308, Revised Statutes Supplement, 2015, is
27 amended to read:

28 32-1308 (1) If a majority of the votes cast at a recall election are
29 against the removal of the official named on the ballot or the election
30 results in a tie, the official shall continue in office for the remainder
31 of his or her term but may be subject to further recall attempts as

1 provided in section 32-1309.

2 (2) If a majority of the votes cast at a recall election are for the
3 removal of the official named on the ballot, he or she shall, regardless
4 of any technical defects in the recall petition, be deemed removed from
5 office unless a recount is ordered. If the official is deemed removed,
6 the removal shall result in a vacancy in the office which shall be filled
7 as provided in this section and sections 32-566 ~~32-567~~ to 32-570, 32-573,
8 ~~and 32-574, 75-103, and 79-314.~~

9 (3) If the election results show a margin of votes equal to one
10 percent or less between the removal or retention of the official in
11 question, the Secretary of State, election commissioner, or county clerk
12 shall order a recount of the votes cast unless the official named on the
13 ballot files a written statement with the filing clerk that he or she
14 does not want a recount.

15 (4) If there are vacancies in the offices of one-half or more of the
16 members of any governing body or state entity at one time due to the
17 recall of such members, a special election to fill such vacancies shall
18 be conducted as expeditiously as possible by the Secretary of State,
19 election commissioner, or county clerk.

20 (5) No official who is removed at a recall election or who resigns
21 after the initiation of the recall process shall be appointed to fill the
22 vacancy resulting from his or her removal or the removal of any other
23 member of the same governing body or state entity during the remainder of
24 his or her term of office.

25 Sec. 11. Section 32-1309, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 32-1309 No recall petition shall be filed against an ~~elected~~
28 official within twelve months after a recall election has failed to
29 remove him or her from office or within six months after the beginning of
30 his or her term of office or within six months prior to the incumbent
31 filing deadline for the office.

1 Sec. 12. Original sections 32-1205, 32-1301, 32-1302, 32-1304,
2 32-1305, and 32-1309, Reissue Revised Statutes of Nebraska, sections
3 32-628, 32-1303, and 32-1306, Revised Statutes Cumulative Supplement,
4 2014, and section 32-1308, Revised Statutes Supplement, 2015, are
5 repealed.