

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: H3/13/03*

# A Bill

HOUSE BILL 2677

5 By: Representative Mahony  
6  
7

## For An Act To Be Entitled

9 AN ACT TO AUTHORIZE SUPREME COURT REVIEW  
10 OF POPULAR NAMES AND BALLOT TITLES ON  
11 INITIATIVE AND REFERENDUM PETITIONS AFTER  
12 THE PETITIONS ARE FILED; TO REPEAL EXISTING  
13 LAWS PROVIDING FOR APPROVAL AND REVIEW  
14 OF POPULAR NAMES AND BALLOT TITLES; AND  
15 FOR OTHER PURPOSES.  
16  
17

## Subtitle

19 TO AUTHORIZE SUPREME COURT REVIEW OF  
20 POPULAR NAMES AND BALLOT TITLES ON  
21 INITIATIVE AND REFERENDUM PETITIONS  
22 AFTER THE PETITIONS ARE FILED; TO REPEAL  
23 EXISTING LAWS PROVIDING FOR APPROVAL AND  
24 REVIEW OF POPULAR NAMES AND BALLOT  
25  
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
28

29 SECTION 1. Arkansas Code § 7-9-104(a) is amended to read as follows:

30 (a) The petition for any ~~ordinance, law, or amendment to the~~  
31 ~~Constitution of the State of Arkansas proposed by~~ initiative shall be ~~on~~  
32 ~~forms provided by the Secretary of State and shall read as follows in~~ in  
33 substantially the following form:  
34

35 "INITIATIVE PETITION-  
36



1 To the Honorable

2 \_\_\_\_\_

3

4 Secretary of State of the State of Arkansas, or County Clerk, or City  
5 Clerk

6

7 We, the undersigned ~~legal~~ registered voters of the State of Arkansas,  
8 or \_\_\_\_\_

9 County, Arkansas, or City of \_\_\_\_\_ or Incorporated Town of  
10 \_\_\_\_\_, Arkansas (as the case may be), respectfully propose the  
11 following amendment to the Constitution of the State, or law, or ordinance  
12 (as the case may be), ~~to wit:~~

13

14 ~~\_\_\_\_\_ (Here insert title and full text of measure proposed.)~~

15

16 \_\_\_\_\_  
17 \_\_\_\_\_

18

19 \_\_\_\_\_ and by this, our petition, order that the same be submitted to the  
20 people of said (state, or county, or municipality) ~~(as the case may be)~~, to  
21 the end that the same may be adopted, ~~enacted~~, or rejected by the ~~vote of~~  
22 ~~legal~~ voters of ~~said the~~ (state, county, or municipality) at the regular  
23 general election to be held ~~in said~~ \_\_\_\_\_ on the  
24 day of \_\_\_\_\_, 19 \_\_\_\_\_ on (insert date), and each of us  
25 ~~for himself~~ says:

26

27 I have personally signed this petition; I am a ~~legal~~ registered voter  
28 of the State of Arkansas, or \_\_\_\_\_ County, Arkansas, or City  
29 of \_\_\_\_\_ or Incorporated Town  
30 of \_\_\_\_\_, Arkansas (as the case may be), and my printed name, date  
31 of birth, residence, city or town of residence, and date of signing this  
32 petition are correctly written after my signature."  
33

33

34 (Insert popular name and ballot title of initiated measure)

35

36 BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS, OR \_\_\_\_\_

1 COUNTY, ARKANSAS, OR CITY OF OR INCORPORATED TOWN OF  
2 \_\_\_\_\_, ARKANSAS (as the case may be):

3  
4 (Insert text of initiated measure)"

5  
6 SECTION 2. Arkansas Code § 7-9-105(a) is amended to read as follows:

7 (a) The petition ~~and order of~~ for any referendum shall be ~~on forms~~  
8 ~~provided by the Secretary of State and shall read as follows~~ in substantially  
9 the following form:

10  
11 ~~"REFERENDUM PETITION FOR REFERENDUM.~~

12  
13 To the Honorable

14 \_\_\_\_\_  
15  
16 Secretary of State of the State of Arkansas, or County Clerk, or City  
17 Clerk

18  
19 We, the undersigned ~~legal~~ registered voters of the State of Arkansas,  
20 or \_\_\_\_\_ County,  
21 Arkansas, or City of \_\_\_\_\_ ~~(or Incorporated Town)~~ of  
22 \_\_\_\_\_, Arkansas (as the case may be), respectfully order by this, our  
23 petition, that Act No. \_\_\_\_\_ of the General Assembly of the State of  
24 Arkansas, approved on the \_\_\_\_\_ day of \_\_\_\_\_, 20  
25 (insert date), entitled, ~~"An Act~~ \_\_\_\_\_ ~~,"~~ or Ordinance  
26 No. \_\_\_\_\_, ~~passed approved~~ by the ~~county quorum court,~~ or the city (or town)  
27 ~~council of the City (or Incorporated Town), or County of \_\_\_\_\_, Arkansas,~~  
28 ~~on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ on (insert~~  
29 date), entitled, ~~"An Ordinance~~ \_\_\_\_\_ ~~,"~~ be referred to the  
30 people of said (state, county, or municipality) ~~(as the case may be)~~, to the  
31 end that the same may be approved or rejected by the ~~vote of the legal~~ voters  
32 of the (state, or of \_\_\_\_\_ said county, or municipality) ~~(as the case may~~  
33 ~~be) at the biennial (or annual, as the case may be, if a city ordinance)~~  
34 ~~regular general election (or at a special election , as the case may be) to~~  
35 ~~be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_; at the~~  
36 regular general election to be held on (insert date), or at a special

1 election to be called as provided by law, and each of us ~~for himself~~ says:

2  
3 I have personally signed this petition; I am a ~~legal~~ registered voter  
4 of the State of Arkansas, or \_\_\_\_\_ County, Arkansas, or City  
5 of \_\_\_\_\_ or Incorporated Town of \_\_\_\_\_, Arkansas  
6 (as the case may be), and my printed name, date of birth, residence, city or  
7 town of residence, and date of signing this petition are correctly written  
8 after my signature."

9  
10 (Insert popular name and ballot title of referred measure)

11  
12 REFERRED TO THE PEOPLE OF THE STATE OF ARKANSAS, OR \_\_\_\_\_ COUNTY,  
13 ARKANSAS, OR CITY OF \_\_\_\_\_ OR INCORPORATED TOWN OF  
14 \_\_\_\_\_, ARKANSAS (as the case may be):

15  
16 (Insert text of referred measure)

17  
18 SECTION 3. Arkansas Code § 7-9-106 is amended to read as follows:

19 7-9-106. ~~Required attachments to petitions.~~ Disclosure of initiated  
20 or referred measures – Correction or amendment.

21 (a) ~~To every petition for the initiative shall be attached a full and~~  
22 ~~correct copy of the title and the measure proposed.~~ A statewide or local  
23 initiative petition shall contain the popular name, ballot title, and full  
24 text of the proposed measure, including any preamble or introductory text.

25 (b) ~~To every petition for the referendum shall be attached a full and~~  
26 ~~correct copy of the measure on which the referendum is ordered.~~ A statewide  
27 or local referendum petition shall contain the popular name, ballot title,  
28 and full text of the measure on which the referendum is ordered, including  
29 any preamble or introductory text.

30 (c) No petition containing signatures shall be corrected or amended  
31 with regard to the popular name, ballot title, or text of the initiated or  
32 referred measure, apart from clerical or typographical errors. Corrections  
33 or amendments shall not materially change the purpose and effect of the  
34 petition.

35  
36 SECTION 4. Arkansas Code § 7-9-107 is repealed.

1           ~~7-9-107. Approval of ballot titles and popular names of petitions~~  
2 ~~prior to circulation—Publication.~~

3           ~~(a) Before any initiative or referendum petition ordering a vote upon~~  
4 ~~any amendment or act shall be circulated for obtaining signatures of~~  
5 ~~petitioners, the sponsors shall submit the original draft to the Attorney~~  
6 ~~General, with a proposed legislative or ballot title and popular name.~~

7           ~~(b) The Attorney General shall, within ten (10) days, approve and~~  
8 ~~certify or shall substitute and certify a more suitable and correct ballot~~  
9 ~~title and popular name for each amendment or act. The ballot title so~~  
10 ~~submitted or supplied by the Attorney General shall briefly and concisely~~  
11 ~~state the purpose of the proposed measure.~~

12  
13           ~~(c) If, as a result of his review of the ballot title and popular name~~  
14 ~~of a proposed initiated act or a proposed amendment to the Arkansas~~  
15 ~~Constitution, the Attorney General determines that the ballot title, or the~~  
16 ~~nature of the issue, is presented in such manner that the ballot title would~~  
17 ~~be misleading or designed in such manner that a vote "FOR" the issue would be~~  
18 ~~a vote against the matter or viewpoint that the voter believes himself~~  
19 ~~casting a vote for, or, conversely, that a vote "AGAINST" an issue would be a~~  
20 ~~vote for a viewpoint that the voter is against, the Attorney General may~~  
21 ~~reject the entire ballot title, popular name, and petition and state his~~  
22 ~~reasons therefor and instruct the petitioners to redesign the proposed~~  
23 ~~measure and the ballot title and popular name in a manner that would not be~~  
24 ~~misleading.~~

25           ~~(d) If the Attorney General refuses to act or if the sponsors feel~~  
26 ~~aggrieved at his acts in such premises, they may, by petition, apply to the~~  
27 ~~Supreme Court for proper relief.~~

28           ~~(e)(1)(A) If a sponsor of any proposed statewide initiative elects to~~  
29 ~~submit its popular name and ballot title to the Attorney General for~~  
30 ~~certification prior to September 30 of the year preceding the year in which~~  
31 ~~the initiative would be voted on, then, within ten (10) days of certification~~  
32 ~~by the Attorney General, who shall deliver such certification to the~~  
33 ~~Secretary of State on the day of certification, the Secretary of State shall~~  
34 ~~approve and certify the sufficiency of such popular name and ballot title as~~  
35 ~~certified by the Attorney General and shall cause to be published in a~~  
36 ~~newspaper with statewide circulation the entire proposal with its certified~~

1 ~~popular name and ballot title and a notice informing the public of such~~  
 2 ~~certification and the procedure identified in this section to govern any~~  
 3 ~~party who may contest such certification before the Supreme Court.~~

4 ~~(B) The procedure shall be as follows:~~

5 ~~(i) Any legal action against such certification shall be~~  
 6 ~~filed with the Supreme Court within forty five (45) days of the Secretary of~~  
 7 ~~State's publication;~~

8 ~~(ii) No such action filed later than forty five (45) days~~  
 9 ~~following publication shall be heard by the Supreme Court; and~~

10 ~~(iii) An action timely filed shall be advanced by the~~  
 11 ~~Supreme Court as a matter of public interest over all other civil cases~~  
 12 ~~except contested election cases and shall be heard and decided expeditiously.~~

13 ~~(2) Nothing in this section shall be taken to require any~~  
 14 ~~sponsor of a statewide initiative to submit its popular name and ballot title~~  
 15 ~~to the Attorney General prior to September 30 of the year preceding the year~~  
 16 ~~in which the proposal would be voted on. If the Secretary of State refuses to~~  
 17 ~~act as required in this section or if the sponsors feel aggrieved at his acts~~  
 18 ~~in such premises, they may, by petition, apply to the Supreme Court for~~  
 19 ~~proper relief.~~

20 ~~(3) Whenever the sponsor of any initiative or referendum~~  
 21 ~~petition has obtained final approval of its ballot title and popular name,~~  
 22 ~~the sponsor shall file such petition with the Secretary of State prior to~~  
 23 ~~obtaining signatures on the petition.~~

24 ~~(f) The cost of the initial publication in a newspaper of the text of~~  
 25 ~~a statewide initiative and related information as required in subsection (e)~~  
 26 ~~of this section shall be paid by the sponsor of the statewide initiative.~~

27  
 28 SECTION 5. Arkansas Code § 7-9-108 is amended to read as follows:

29 7-9-108. Procedure for circulation of petition.

30 (a) ~~Each initiative or referendum petition ordering a vote upon a~~  
 31 ~~measure having general application throughout the state shall be prepared and~~  
 32 ~~circulated in fifteen (15) or more parts, or counterparts, and each With~~  
 33 ~~regard to each separate part of any initiative or referendum petition:~~

34 ~~(1) Each part of the petition shall be an exact copy or~~  
 35 ~~counterpart of all other ~~such~~ parts of the petition upon which signatures of~~  
 36 ~~petitioners are ~~to be~~ solicited. When a sufficient number of parts are signed~~

1 by ~~a~~ the requisite number of ~~qualified electors~~ registered voters and are  
 2 filed and duly certified by the ~~Secretary of State~~ proper official, they  
 3 shall be treated and considered as one (1) petition.

4 ~~(b)(2) Each part of any petition shall have attached thereto~~  
 5 Each part of the petition shall contain the affidavit of the ~~person who~~  
 6 ~~circulated the petition~~ canvasser to the effect that all signatures appearing  
 7 thereon were made in the immediate presence of the affiant and that to the  
 8 best of the affiant's knowledge and belief each signature is genuine and that  
 9 the person so signing is a ~~legal~~ registered voter.

10 ~~(c)(3) Preceding every petition, there shall be set out~~ Each  
 11 part of the petition shall contain in boldface type, over the signature of  
 12 the Attorney General, any instructions to canvassers and signers as may  
 13 appear proper and beneficial, informing them of the privileges granted by the  
 14 Constitution and of the penalties imposed for violations of this ~~act~~  
 15 subchapter. The instructions on penalties shall be in larger type than the  
 16 other instructions.

17 (b) No signatures of petitioners on any initiative or referendum  
 18 petition shall be obtained more than eighteen (18) months before the initial  
 19 filing of the petition with the proper official for review and certification  
 20 of signatures.

21 ~~(d)(c)~~ No part of any statewide initiative or referendum petition  
 22 shall contain signatures of petitioners from more than one (1) county.

24 SECTION 6. Arkansas Code § 7-9-110 is amended to read as follows:

25 7-9-110. Designation of number and popular name.

26 (a)(1) The Secretary of State shall fix and declare the number by  
 27 which each amendment to the Arkansas Constitution proposed by the General  
 28 Assembly and each ~~initiated and referred measure~~ measure initiated or  
 29 referred by a statewide petition shall be designated.

30 (2) In the absence of a designation by the General Assembly, the  
 31 ~~The~~ Attorney General shall fix and declare the popular name ~~by which each~~  
 32 ~~amendment to the Arkansas Constitution and each initiated and referred~~  
 33 ~~measure shall be designated~~ for an amendment to the Arkansas Constitution  
 34 proposed by the General Assembly.

35 (b) ~~In all legal notices and publications, proceedings, and publicity~~  
 36 ~~affecting~~ In all notices or proceedings ordered or conducted by the Secretary

1 of State with regard to any such amendment or measure, the amendment or  
 2 measure shall be designated by both the number and the popular name ~~fixed as~~  
 3 ~~provided in subsection (a) of this section.~~

4  
 5 SECTION 7. Arkansas Code § 7-9-111(a)(1) is amended to read as  
 6 follows:

7 (a)(1) The Secretary of State shall ascertain and declare the  
 8 sufficiency or insufficiency of ~~each~~ the signatures on a statewide initiative  
 9 ~~and or~~ referendum petition within thirty (30) days after ~~it~~ the petition is  
 10 filed. The Secretary of State, after consultation with the Attorney General,  
 11 shall separately ascertain and declare the sufficiency or insufficiency of  
 12 the popular name and ballot title of a statewide initiative or referendum  
 13 petition within thirty (30) days after the petition is filed; provided, that  
 14 no such declaration shall issue if the Secretary of State determines that the  
 15 petition was not supported, as of the deadline for filing such petition, by a  
 16 prima facie sufficient number of signatures.

17  
 18 SECTION 8. Arkansas Code § 7-9-111(d) is amended to read as follows:

19 (d)~~(1)~~ If the petition ~~is~~ signatures are found to be insufficient, the  
 20 Secretary of State shall forthwith notify the sponsors in writing, through  
 21 their designated agent, and shall set forth ~~his~~ the reasons for so finding.  
 22 ~~When the notice is delivered, the~~ The sponsors shall have thirty (30) days  
 23 from the date of such notice in which to do any or all of the following:  
 24 (A) ~~Solicit and obtain additional signatures;~~  
 25 (B) ~~submit proof to show that the rejected signatures or~~  
 26 ~~some of them are good and should be counted; or~~  
 27 (C) ~~Make the petition more definite and certain~~ solicit  
 28 and file additional signatures or to submit proof that rejected signatures  
 29 are valid and should be counted.

30 ~~(2) Any amendments and corrections shall not materially change~~  
 31 ~~the purpose and effect of the petition. No change shall be made in the~~  
 32 ~~measure, except to correct apparent typographical errors or omissions.~~

33  
 34 SECTION 9. Arkansas Code § 7-9-112 is amended to read as follows:

35 7-9-112. ~~Failure to act on petition—Mandamus—Injunction.~~ Right of  
 36 review.



1           ~~(a) If the Secretary of State shall fail or refuse to examine and file~~  
2 ~~any initiative or referendum petition within the time prescribed in § 7-9-~~  
3 ~~111, any twenty five (25) qualified electors who feel aggrieved thereby may,~~  
4 ~~within fifteen (15) days thereafter, apply to the Supreme Court for a writ of~~  
5 ~~mandamus to compel the officer to certify the sufficiency of the petition.~~  
6 The sponsors of a statewide initiative or referendum petition and any  
7 registered voter shall have the immediate right to petition the Supreme Court  
8 to review the separate declaration of the Secretary of State with regard to  
9 the sufficiency or insufficiency of the popular name and ballot title of the  
10 petition. The action shall be filed not later than fifteen (15) days from  
11 the date of the declaration by the Secretary of State.

12           ~~(b) If the Supreme Court shall decide that the petition is legally~~  
13 ~~sufficient, it shall order the Secretary of State to file and certify the~~  
14 ~~sufficiency thereof as of the date upon which it was first offered for~~  
15 ~~filing, and a certified copy of the judgment shall be attached to the~~  
16 ~~petition. The Supreme Court shall act expeditiously to review the popular~~  
17 ~~name and ballot title of the petition in a manner which avoids voter~~  
18 ~~confusion and frustration which occur when a measure is stricken from the~~  
19 ~~election ballot on the eve of the election.~~

20           ~~(c) On a proper showing that any petition is not sufficient the~~  
21 ~~popular name and ballot title of the petition are insufficient, the Supreme~~  
22 ~~Court may shall~~ enjoin the Secretary of State from certifying its sufficiency  
23 and may also enjoin the various election boards from allowing the ballot  
24 title thereof to be printed on the ballots and certifying votes cast on the  
25 proposal the measure to appear on the election ballot, or in the event that  
26 votes may be cast on the measure, from canvassing and certifying the vote.

27  
28           SECTION 10. Arkansas Code Title 7, Chapter 9, Subchapter 5 is  
29 repealed.

30  
31           ~~7-9-501. Purpose.~~

32           ~~The purpose of this subchapter is to provide for the timely and~~  
33 ~~expeditious review of the legal sufficiency of initiative petitions by the~~  
34 ~~Supreme Court.~~

35  
36           ~~7-9-502. Construction.~~

1           ~~(a) The General Assembly declares that this subchapter be construed as~~  
2 ~~a measure to facilitate the provisions of Arkansas Constitution, Amendment 7.~~

3           ~~(b) The General Assembly declares that this subchapter is not intended~~  
4 ~~to expand the jurisdiction of the Supreme Court under Arkansas Constitution,~~  
5 ~~Amendment 7 but is intended to provide a process to timely review the legal~~  
6 ~~sufficiency of a measure in a manner which avoids voter confusion and~~  
7 ~~frustration which occur when measures are stricken from the ballot on the eve~~  
8 ~~of an election on the measure.~~

9  
10           ~~7-9-503. Declaration of sufficiency.~~

11           ~~(a)(1) Any Arkansas taxpayer and voter may submit a written petition~~  
12 ~~to the Secretary of State requesting the determination of legal sufficiency~~  
13 ~~of statewide initiative petitions.~~

14           ~~(2) The petitioner shall notify the sponsor of the measure of~~  
15 ~~the petition for determination by certified mail on the date that it is~~  
16 ~~submitted to the Secretary of State.~~

17           ~~(b) Within thirty (30) days after receipt of the petition for~~  
18 ~~determination, the Secretary of State shall decide and declare, after~~  
19 ~~consultation with the Attorney General, questions on one (1) or both of the~~  
20 ~~following issues:~~

21           ~~(1) Whether the popular name and ballot title of the measure are~~  
22 ~~fair and complete; and~~

23           ~~(2) Whether the measure, if subsequently approved by the~~  
24 ~~electorate, would violate any state constitutional provision or any federal~~  
25 ~~constitutional, statutory, or regulatory provision or would be invalid for~~  
26 ~~any other reason.~~

27           ~~(c) The declaration shall be in writing and shall be mailed to the~~  
28 ~~petitioner and the sponsor of the measure by certified mail on the date that~~  
29 ~~it is issued.~~

30           ~~(d) The scope of review authorized by this subchapter shall be~~  
31 ~~strictly limited to the questions referred to in subsection (b) of this~~  
32 ~~section and shall not include questions regarding the sufficiency or validity~~  
33 ~~of signatures on the initiative petitions.~~

34  
35           ~~7-9-504. Cure by correction or amendment.~~

36           ~~(a) If the Secretary of State declares the initiative petition legally~~

1 ~~insufficient, the sponsors of such measure may attempt to cure the~~  
2 ~~insufficiency by correction or amendment, as provided in Arkansas~~  
3 ~~Constitution, Amendment 7.~~

4 ~~(b) Within fifteen (15) days after a correction or amendment is filed~~  
5 ~~with the Secretary of State, the Secretary of State shall notify the~~  
6 ~~petitioner and sponsor of the measure of this declaration by certified mail~~  
7 ~~on the date that it is issued.~~

8  
9 ~~7-9-505. Right of review.~~

10 ~~The petitioner, the sponsor of the measure, and any Arkansas taxpayer~~  
11 ~~and voter shall have the immediate right to petition the Supreme Court to~~  
12 ~~review the determination of the Secretary of State regarding the sufficiency~~  
13 ~~of the initiative petition.~~

14  
15 ~~7-9-506. Effect on existing petition.~~

16 ~~(a)(1) This subchapter shall be applicable to any initiative petition~~  
17 ~~which has received the approval of the Attorney General and has been filed~~  
18 ~~with the Secretary of State, pursuant to § 7-9-107, as of March 25, 1999.~~

19 ~~(2) The Secretary of State shall review all initiative petitions~~  
20 ~~approved by the Attorney General within two (2) months after March 25, 1999.~~

21 ~~(3) If this review is not completed within the stated period,~~  
22 ~~the initiative petition will be presumed sufficient and subject to immediate~~  
23 ~~review by the Supreme Court.~~

24 ~~(b) In addition, this subchapter shall be applicable to all initiative~~  
25 ~~petitions submitted to the Attorney General after March 25, 1999.~~

26  
27 /s/ Mahony  
28  
29  
30  
31  
32  
33  
34  
35