

SENATE BILL No. 103

AN ACT concerning elections; relating to recalls; amending K.S.A. 25-4302, 25-4307, 25-4308, 25-4311, 25-4315, 25-4322, 25-4325, 25-4329 and 60-1205 and K.S.A. 2002 Supp. 25-4306 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 25-4302 is hereby amended to read as follows: 25-4302. (a) Grounds for recall are conviction of a felony, misconduct in office, ~~incompetence~~ or failure to perform duties prescribed by law. No recall submitted to the voters shall be held void because of the insufficiency of the grounds, application, or petition by which the submission was procured.

(b) *As used in this section, the term "misconduct in office" means a violation of law by the officer that impacts the officer's ability to perform the official duties of the office.*

Sec. 2. K.S.A. 2002 Supp. 25-4306 is hereby amended to read as follows: 25-4306. The application under K.S.A. 25-4305 shall include (a) the name and office of the person sought to be recalled, (b) the grounds for recall described in particular in not more than 200 words, (c) a statement that the sponsors are residents of the state of Kansas and possess the qualifications of an elector of the state of Kansas and who signed the application with the statement of grounds for recall attached, (d) the designation of a recall committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the recall, (e) the designation of at least 100 residents of the state of Kansas who possess the qualifications of electors of the state of Kansas and who subscribe to the application as sponsors for purposes of circulation, and (f) the signatures and addresses of registered electors in the state or election district of the state officer sought to be recalled equal in number to not less than 10% of the votes cast for ~~the all candidates for the office of the state officer sought to be recalled, such percentage to be based upon the last general election for the current term of office of the officer sought to be recalled in the last general election at which a person was elected to such office.~~

Sec. 3. K.S.A. 25-4307 is hereby amended to read as follows: 25-4307. Notice on all matters pertaining to the application and petition may be served on any member of the recall committee in person or by mail addressed to a committee member as indicated on the application. The secretary of state, upon request, shall notify the recall committee of the official number of votes cast for ~~the all candidates for the office of the state officer sought to be recalled, such percentage to be based upon the last general election for the current term of office of the officer sought to be recalled in the last general election at which a person was elected to such office.~~ County election officers shall assist the secretary of state as requested by such secretary.

Sec. 4. K.S.A. 25-4308 is hereby amended to read as follows: 25-4308. ~~The secretary of state shall review the application and shall either certify it or notify the recall committee of the grounds of refusal. The secretary of state shall deny certification if he or she~~ (a) *The secretary of state shall review the application and shall either certify such application or notify the recall committee of the grounds of refusal. The secretary of state shall deny certification if the secretary of state determines that (a):*

(1) *The facts do not support the grounds for recall as stated in the application;*

(2) *the application is not substantially in the required form;* ~~(b);~~

(3) *the application was filed during the first ~~one hundred and twenty~~ (120) 120 days of the term of office of the official sought to be recalled or within less than ~~two hundred~~ (200) 200 days of the termination of the term of office of the state officer sought to be recalled;* ~~(c);~~

(4) *the person named in the application is not a state officer;* ~~(d);~~

(5) *there is an insufficient number of required signatures of any kind;* ~~(e);~~

(6) *the state officer sought to be recalled has been or is being subjected to another recall election during such officer's current term of office* ~~or (f);~~ or

(7) *the application does not conform to any other requirement of this act.*

(b) *All mandamus proceedings to compel a recall election and all injunction proceedings to restrain a recall election shall be commenced not less than 30 days after the secretary of state's decision.*

Sec. 5. K.S.A. 25-4311 is hereby amended to read as follows: 25-4311. Before being filed, each petition shall be certified by an affidavit by the sponsor who personally circulated the petition. The affidavit shall state in substance that (a) the person signing the affidavit is a sponsor, (b) the person is the only circulator of that petition or copy, (c) the signatures were made in ~~his or her~~ *the petition circulator's* actual presence, (d) to the best of ~~his or her~~ *the petition circulator's* knowledge, the signatures are those of the persons whose names they purport to be, and (e) the person circulated the petition in the manner provided by this act. In determining the sufficiency of the petition, the secretary of state and county election officers assisting the secretary of state shall not count subscriptions on petitions not properly certified. Only one election may be held for the recall of a particular state officer in a single term of office, and no application for a second recall election within a single term shall be approved nor shall any petition therefor be circulated. No petition may be filed within less than ~~one hundred and eighty (180)~~ *180* days of the termination of the term of office of the state officer sought to be recalled. The recall committee may file the petition only if signed by registered electors in the state or in the election district of the state officer sought to be recalled equal in number to not less than ~~forty percent (40%)~~ *40%* of the votes cast for all candidates for the *office of the state officer sought to be recalled, such percentage to be based upon the last general election for the current term of office of the state officer sought to be recalled in the last general election at which a person was elected to such office.*

Sec. 6. K.S.A. 25-4315 is hereby amended to read as follows: 25-4315. The secretary of state shall, ~~through county election officers,~~ provide each *county election board officer* in the state or in the election district of the state officer sought to be recalled with ~~four (4) copies~~ *one copy* of the statement of the grounds for recall included in the application and ~~four (4) copies~~ *one copy* of the statement of not more than ~~two hundred (200)~~ *200* words made by the state officer sought to be recalled in justification of ~~his or her~~ *such state officer's* conduct in office. The state officer sought to be recalled may provide the secretary of state with ~~his or her~~ *such state officer's* statement within ~~ten (10)~~ *10* days after the date the secretary of state gave notification that the petition was properly filed. ~~Each election board shall post all copies of the statements for and against recall in conspicuous places at its polling place, one of which places shall be immediately outside, and one of which shall be immediately inside, the entrance to the polling place. Each county election officer shall maintain such statements for public inspection.~~

Sec. 7. K.S.A. 25-4322 is hereby amended to read as follows: 25-4322. (a) Before any petition for recall of a local officer is circulated, a copy thereof accompanied by names and addresses of the recall committee and sponsors shall be filed in the office of the county election officer with whom the petitions are required to be filed. The copy of the petition so filed shall be subscribed by the members of the recall committee in the presence of such county election officer. The recall committee shall represent all sponsors and subscribers in matters relating to the recall. Notice on all matters pertaining to the recall may be served on any member of the recall committee in person or by mail addressed to a committee member as indicated on the petition so filed. The county election officer, upon request, shall notify the recall committee of the official number of votes cast for ~~the all candidates for the office of the local officer sought to be recalled, such percentage to be based upon the last general election for the current term of office of the officer sought to be recalled in the last general election at which a person was elected to such office.~~

~~(b) Before any petition for recall of a local officer is circulated, the county election officer shall transmit a copy of such petition to the county or district attorney or to the attorney designated pursuant to subsection (c) for determination of the sufficiency of the grounds stated in the petition for recall. Within five days of receipt of the copy of the petition from the county election officer, the county or district attorney or the attorney designated pursuant to subsection (c) shall make such determination and notify the county election officer and the recall committee of such determination.~~

~~(c) In the case of a recall of the county or district attorney, a judge of the district court of such county shall designate an attorney to deter-~~

~~mine the sufficiency of the grounds stated in the petition for recall. Such attorney shall perform the duties imposed on the county or district attorney in the recall of other local officers.~~

(b) Before any petition for recall of a local officer is circulated, the county election officer shall transmit a copy of such petition to the county or district attorney or to the attorney designated pursuant to subsection (c) for determination of the sufficiency of the grounds stated in the petition for recall. Within five days of receipt of the copy of the petition from the county election officer, the county or district attorney or the attorney designated pursuant to subsection (c) shall make such determination and notify the county election officer and the recall committee of such determination. Such determination shall include whether:

(1) The facts do not support the grounds for recall as stated in the petition for recall;

(2) the petition is not substantially in the required form;

(3) the petition was filed during the first 120 days of the term of office of the official sought to be recalled or within less than 180 days of the termination of the term of office of the officer sought to be recalled;

(4) the person named in the petition is not a local officer;

(5) there is an insufficient number of required signatures of any kind;

(6) the local officer sought to be recalled has been or is being subjected to another recall election during such officer's current term of office; or

(7) the application does not conform to any other requirement of this act.

(c) In the case of a recall of the county or district attorney, a judge of the district court of such county shall designate an attorney to determine the sufficiency of the grounds stated in the petition for recall. Such attorney shall perform the duties imposed on the county or district attorney in the recall of other local officers.

(d) All mandamus proceedings to compel a recall election and all injunction proceedings to restrain a recall election shall be commenced not less than 30 days after the county or district attorney's decision.

Sec. 8. K.S.A. 25-4325 is hereby amended to read as follows: 25-4325. Before being filed, each petition shall be certified by an affidavit by the sponsor who personally circulated the petition. The affidavit shall state in substance that (a) the person signing the affidavit is a sponsor, (b) the person is the only circulator of that petition or copy, (c) the signatures were made in such person's actual presence, (d) to the best of such person's knowledge, the signatures are those of the persons whose names they purport to be, (e) the person circulated the petition in the manner provided by this act and (f) the person signing the affidavit, being duly sworn, on oath states that the statements of grounds for recall contained in the recall petition are true. In determining the sufficiency of the petition, the county election officer shall not count signatures on petitions not properly certified. The recall committee may file the petition only if signed by registered electors in the election district of the local officer sought to be recalled equal in number to not less than 40% of the votes cast for all candidates for the *office of the local officer sought to be recalled, such percentage to be based upon the last general election for the current term of office of the local officer sought to be recalled in the last general election at which a person was elected to such office.* If more than one person was elected to such office at such election the number of signatures required shall be equal to not less than 40% of the votes cast at such election for all candidates for the office divided by the number of persons elected to such office.

Sec. 9. K.S.A. 25-4329 is hereby amended to read as follows: 25-4329. ~~The county election officer shall provide each election board in the election district of the local officer sought to be recalled with four (4) copies of the statement of the grounds for recall included in the petition and four (4) copies of the statement of not more than two hundred (200) words made by the local officer sought to be recalled in justification of his or her conduct in office. The person sought to be recalled may provide the county election officer with his or her statement within ten (10) days after the date such county election officer gave notification that the petition was properly filed. Each election board shall post all copies of the statements for and against recall in conspicuous places at the polling place, one of which places shall be immediately outside, and one of which~~

~~shall be immediately inside the entrance to the polling place. Within 10 days after the date the county election officer gave notification that the recall petition was properly filed, the person sought to be recalled may provide to the county election officer such person's statement, containing not more than 200 words, in justification of such person's conduct in office. The county election officer shall maintain such statement for public inspection.~~

Sec. 10. K.S.A. 60-1205 is hereby amended to read as follows: 60-1205. Every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township or city office, except those subject to removal from office only by impeachment, who shall (1) willfully *engage in* misconduct ~~himself or herself~~ *while* in office, (2) willfully neglect to perform any duty enjoined upon ~~him or her~~ *him or her* such person by law, ~~or~~ (3) *demonstrate mental impairment such that the person lacks the capacity to manage the office held, or* (4) who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit ~~his or her~~ *such person's* office and shall be ousted from such office in the manner hereinafter provided.

Sec. 11. K.S.A. 25-4302, 25-4307, 25-4308, 25-4311, 25-4315, 25-4322, 25-4325, 25-4329 and 60-1205 and K.S.A. 2002 Supp. 25-4306 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.