

SENATE BILL NO. 130

INTRODUCED BY J. TREBAS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA RECALL ACT; PROVIDING FOR THE RECALL OF A PUBLIC OFFICER HOLDING AN ELECTIVE OFFICE WITHOUT REQUIRING A STATEMENT OF REASONS OR GROUNDS FOR RECALL; PROVIDING THAT THE SUFFICIENCY OF ANY STATEMENT OF REASONS OR GROUNDS FOR RECALL PROVIDED VOLUNTARILY IN A PETITION FOR RECALL BE A QUESTION FOR THE QUALIFIED ELECTORS OF MONTANA; REVISING THE FORM OF A RECALL PETITION; AND AMENDING SECTIONS 2-16-603, 2-16-616, 2-16-617, 2-16-621, 2-16-633, 5-7-305, AND 20-4-114, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-16-603, MCA, is amended to read:

"2-16-603. Officers subject to recall -- grounds for recall not required. (1) Any person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for the elective officer's successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) ~~Physical or mental lack of fitness, incompetence, violation of the oath of office, official misconduct, or conviction of a felony offense enumerated in Title 45 are the only grounds for recall. A person may not be recalled for performing a mandatory duty of the office that the person holds or for not performing any act that, if performed, would subject the person to prosecution for official misconduct. A statement of reasons or grounds for recall is not required for the preparation or circulation of a recall petition, the transmittal of a notice required under this part, the submission to the qualified electors of the question of the recall of a public officer holding an elective office, or any other action or procedure relating to a recall. If a statement of~~

1 reasons or grounds for recall is provided in the petition, the qualified electors shall determine the sufficiency of
 2 those statements, not the judiciary."

3
 4 **Section 2.** Section 2-16-616, MCA, is amended to read:

5 **"2-16-616. Form of recall petition.** (1) The form of the recall petition must be substantially as follows:

6 **WARNING**

7 A person who knowingly signs a name other than the person's own to this petition, who signs the
 8 person's name more than once upon a petition to recall the same officer at one election, or who is not, at the
 9 time of signing this petition, a qualified elector of the state of Montana entitled to vote for the successor of the
 10 elected officer to be recalled or the successor or successors of the officer or officers who have the authority to
 11 appoint a person to the position held by the appointed officer to be recalled is punishable by a fine of no more
 12 than \$500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or a fine of \$500 or
 13 imprisonment in the state prison for a term not to exceed 10 years, or both.

14 **RECALL PETITION**

15 To the Honorable....., Secretary of State of the State of Montana (or name and office of other filing
 16 officer): We, the undersigned qualified electors of the State of Montana (or name of appropriate state-district or
 17 political subdivision) respectfully petition that an election be held as provided by law on the question of
 18 whether....., holding the office of....., should be recalled ~~for the following reasons: (Setting out a~~
 19 ~~general statement of the reasons for recall in not more than 200 words).~~ (A statement of reasons or grounds for
 20 recall of not more than 200 words may be provided here but is not required). Each signer certifies: I have
 21 personally signed this petition; I am a qualified elector of the state of Montana and (name of appropriate political
 22 subdivision); and my residence and post-office address are correctly written after my name to the best of my
 23 knowledge and belief.

24 (2) Numbered lines must follow the language in subsection (1). Each numbered line must contain
 25 spaces for the signature, post-office address, and printed last name of the signer. Each separate sheet of the
 26 petition must contain the heading and reasons for the proposed recall as prescribed in subsection (1)."

27
 28 **Section 3.** Section 2-16-617, MCA, is amended to read:

1 **"2-16-617. Form of circulation sheets.** (1) The signatures on each petition must be placed on
2 sheets of paper known as circulation sheets. Each circulation sheet must be substantially 8 1/2 x 14 inches or a
3 continuous sheet may be folded so as to meet this size limitation. The circulation sheets must be ruled with a
4 horizontal line 1 1/2 inches from the top of the sheet. The space above the line must remain blank and must be
5 for the purpose of binding.

6 (2) The petition, for purposes of circulation, may be divided into sections, each section to contain
7 not more than 25 circulation sheets.

8 (3) Before a petition may be circulated for signatures, a sample circulation sheet must be
9 submitted to the officer with whom the petition must be filed in the form in which it will be circulated. The filing
10 officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating
11 the reasons for rejection, within 1 week of receiving the sheet.

12 ~~(4) The petition form submitted must be accompanied by a written statement containing the~~
13 ~~reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement~~
14 ~~must be sworn to by at least one of the petitioners before a person authorized to administer oaths.~~

15 ~~(5)~~(4) The filing officer shall serially number all approved petitions continuously from year to year."
16

17 **Section 4.** Section 2-16-621, MCA, is amended to read:

18 **"2-16-621. Notification to officer -- statement of justification.** Upon filing the petition or a portion of
19 the petition containing the number of valid signatures required under 2-16-614, the official with whom it is filed
20 shall immediately give written notice to the officer named in the petition. ~~The notice must state that a recall~~
21 ~~petition has been filed, If the petition provides a statement of reasons or grounds for recall, the notice must set~~
22 ~~forth the reasons contained in the petition, and must notify the officer named in the recall petition that the officer~~
23 ~~has the right to prepare and have printed on the ballot a statement containing not more than 200 words giving~~
24 ~~reasons why the officer should not be recalled. A statement of justification may not be printed on the ballot~~
25 ~~unless it is delivered to the filing official within 10 days of the date notice is given."~~

26
27 **Section 5.** Section 2-16-633, MCA, is amended to read:

28 **"2-16-633. Form of ballot.** (1) ~~The ballot at a recall election must set forth the statement contained in~~

1 the recall petition stating the reasons for demanding the recall of the officer and the officer's statement of
 2 reasons why the officer should not be recalled. If the petition provides a statement of reasons or grounds for
 3 recall, the ballot at a recall election must set forth those statements and any statement of justification as
 4 provided under 2-16-621. The question of whether the officer should be recalled must be placed on the ballot in
 5 a form similar to the following:

6 ☐ FOR recalling..... who holds the office of.....

7 ☐ AGAINST recalling..... who holds the office of.....

8 (2) The form of the ballot must be approved as provided in the election laws of this state."

10 **Section 6.** Section 5-7-305, MCA, is amended to read:

11 **"5-7-305. Penalties and enforcement.** (1) A person who violates any of the provisions of this chapter
 12 is subject to civil penalties of not less than \$250 and not more than \$7,500 according to the discretion of the
 13 district court, as court of original jurisdiction. A lobbyist who violates any of the provisions of this chapter must
 14 have the lobbyist's license suspended or revoked according to the discretion of the court. Any legislator
 15 adjudged in violation of the provisions of this chapter is additionally subject to recall under the Montana Recall
 16 Act, Title 2, chapter 16, part 6, ~~and the violation constitutes an additional basis for recall to those mentioned in~~
 17 ~~2-16-603(3).~~

18 (2) The attorney general, the commissioner, or the county attorney of the county in which the
 19 violation takes place may bring a civil action in the name of the state for any appropriate civil remedy.

20 (3) If a civil penalty action is undertaken by the attorney general or the commissioner, all costs
 21 associated with the prosecution must be paid by the state of Montana.

22 (4) (a) Any individual who has notified the attorney general, the commissioner, and the appropriate
 23 county attorney in writing that there is reason to believe that some portion of this chapter is being violated may
 24 bring in the name of the state an action (referred to as a citizen's action) authorized under this chapter if:

25 (i) the attorney general, the commissioner, or the appropriate county attorney has failed to
 26 commence an action within 90 days after notice; and

27 (ii) the attorney general, the commissioner, or the county attorney fails to commence an action
 28 within 10 days after receiving a written notice that a citizen's action will be brought if the attorney general, the

1 commissioner, or the county attorney does not bring an action.

2 (b) Each notification tolls the applicable statute of limitations until the expiration of the waiting
3 period.

4 (c) If the individual who brings the citizen's action prevails, the individual is entitled to be
5 reimbursed by the state of Montana for costs and attorney fees incurred. However, in the case of a citizen's
6 action that is dismissed and that the court also finds was brought without reasonable cause, the court may
7 order the individual commencing the action to pay all costs of trial and reasonable attorney fees incurred by the
8 defendant.

9 (5) A civil action may not be brought under this section more than 3 years after the occurrence of
10 the facts that give rise to the action.

11 (6) All civil penalties imposed pursuant to this section must be deposited in the state general fund.

12 (7) A hearing under this chapter must be held by the court unless the defendant-licensee demands
13 a jury trial. The trial must be held as soon as possible but at least 20 days after the filing of the charges and
14 must take precedence over all other matters pending before the court.

15 (8) If the court finds for the plaintiff, judgment must be rendered revoking or suspending the license
16 and the clerk of court shall file a certified copy of the judgment with the commissioner."
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18 **Section 7.** Section 20-4-114, MCA, is amended to read:

19 **"20-4-114. Penalty for failure to report.** The failure of a school trustee to report as required in 20-4-
20 110 constitutes official misconduct ~~within the meaning of 2-16-603~~ and the school trustee is subject to recall
21 under the Montana Recall Act, Title 2, chapter 16, part 6."
22

23 NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are
24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
25 the part remains in effect in all valid applications that are severable from the invalid applications.
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