

2013 HOUSE POLITICAL SUBDIVISIONS

HB 1397

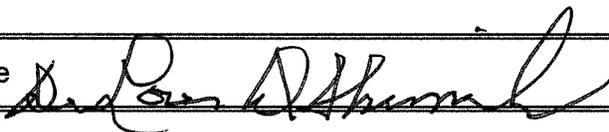
2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1397
January 31, 2013
Job # 18068

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to election offenses; and to provide a penalty.

Minutes:

Testimony1,2

Chairman N. Johnson: Opened the hearing on HB 1397.

Rep. Hatlestad: (See testimony #1). 0:14-2:00

Rep. Koppelman: I was wondering why we are taking this one offense and making it a more serious penalty maybe and not looking at the whole gambit of tampering with our election process?

Rep. Hatlestad: Part of it has to do with the large amount of publicity. I mentioned in my testimony the two situations. A group worked their tail off to get something before the voters and had a small group of individuals literally tear that away from them. So we were disenfranchised as well as denied the right to put an issue before the voters. I think that makes it a little more serious.

Rep. L. Meier: Rep. Hatlestad could you remind me what fine current is for a Class A misdemeanor?

Al Jaeger: It is one years in prison and \$2000.

Al Jaeger, Secretary of State: (See testimony #2) Rep. Koppelman has a question we asked. In discussing it with the Attorney General we felt that the main thing that there is one already taken out of that group that has a felony designation so we are just taking one more out of that. The background was when we starting seeing red flags in the review of the petitions and things started unraveling. We found out there were literally thousands of signatures that were fixed that weren't affixed by the peoples whose names they were. When I was in the Attorney General's office when this happened he said this needs to be a felony. This is the same as perjury and here we have it repeated time after time so it is pretty serious. In the case of the marijuana case page after page blue ink on every signature and the names relatively easy to read. Normally there are two or three signatures on a page we can't read. What we found out from the investigation was that the person

didn't know what they were doing so we just had signing parties. This is serious stuff. Discussed instances where people were hired to just sign these petitions. So in all these cases where they had hired people to sign people had gotten community service and we think it should be more.

Rep. Kathy Hogan: I am: concerned about those businesses that hire people to do this. Were there legal consequences to the business who hired them?

Al Jaeger: No because they are not the ones that committed the crime. We don't know what took place between the hiring firm and the business.

Rep. Kathy Hogan: Did you discuss this issue on the people who are hiring and their responsibilities with the Attorney General and look at any legislation to address that issue?

Al Jaeger: No we didn't. The responsibility still came back to the circulators. I would suggest that circulators and sponsoring committees are going to be on notice now that in North Dakota this doesn't happen. If they don't get their stuff in order they are not going to be on the ballot.

Rep. Klemin: I think there should be some type of organizational penalty also. These people that were actually setting around signing the names were not unsupervised. Someone has to hire them and be responsible for their conduct and supervise them and these individual people were not the ones that sent those signed petitions into your office. It was done by the sponsoring committee or by the organization that hired these individuals that was retained by the sponsoring committee. Those people all have some culpability in my opinion. Prosecuting an individual who might be working for those organizations or the sponsoring committee is not sending enough of a message, but these people that come in and do this for a business they are going to be around again. Would you be opposed to some kind of an amendment to this bill to bring them under the scope of this?

Al Jaeger: I don't think that we would. The only thing that I caution on is it would be how we were going to identify them. We also have a campaign finance bill that is going to be working its way through. It is actually starting on the Senate side. It has to do with sponsoring committees and measures committees. There was a law passed last session that did not work and we are proposing a solution. By the constitution 25 electors can form a sponsoring committee. They are the ones that come in with the petition and they are the ones that go out and circulate it and they bring the petition in. Organizations outside of that sponsoring committee did the hiring of this company out of Iowa to come in. The only people that can circulate a petition in North Dakota are qualified North Dakota electors so the Iowa firm could not bring people in from Iowa, but they could come in and hire ND people. My only concern is that in some cases it might be difficult to identify who would be responsible. There is a sponsoring committee and a measures committee which may not necessarily be the same. The sponsoring committee is the ones that will be coming in with the petition and as proposed in the legislation they will have to disclose when they bring in that petition all the revenue that they have received up to that point and any expenditure that they have made. That might disclose certain contributions by an organization. After it is circulated and comes in again the sponsoring committee will have to again disclose again the revenue and expenses.

Jim Silrum: Deputy Secretary of State: Rep. Klemin in direct answer to your question I don't believe that our office would be opposed to having some sort of penalty on those that are hiring these circulators, but I strongly urge the committee to consider how difficult that kind of legislation would be because there are measures that are circulated just by volunteers. There are initiated measures where the sponsoring committee hires directly those that circulate and there are those initiated measures where the sponsoring committee hires a firm that hires the circulators so legislation would have to be crafted in such a way so if circulators are hired and then reference how they are hired and then reference what the penalties would be. Our objective with this bill was just to say we know that it is illegal already for somebody to sign somebody else's name to a petition. There will be another bill before this committee saying that sponsoring committee can hire circulators at all. Maybe it would be addressed that way.

Rep. Klemin: Certainly these out of state companies that are doing this have to be authorized to do business in ND. They ought to lose their authorization to do business in ND. I think we could craft amendments to do this.

Jim Silrum: We would not be opposed to that.

Al Jaeger: The petition is on the website so if you feel strongly about the petition you could download it from our website and take it around for signatures and bring those petitions to the sponsoring committee. That might be an organized group that is very independent of the sponsoring committee and the sponsoring committee may not even have any knowledge about how that is being done. These were just college students earning some money during the summer and no clue what they were doing. I am concerned that whatever is crafted we will need help to get this amendment that strong.

Rep. Klemin: We know prosecutors have discretion and could use this.

Rep. Koppelman: As I look at the statute and what we are doing here; with respect to the specific item what we are doing now is moving it to a different number and capturing it under the higher penalty. I think the wording is good, but it could be a lot of other situation. Maybe we should reword it to capture the kind of instances you are really talking about and that are signing a whole bunch of other names fraudulently. We may need to qualify the intent. If you look at the kind of offenses we are talking about in most of this statute I think they are similar. Throwing an election is a greater offense.

Al Jaeger: We run these pass out lawyers so we think this is wording we felt would encompass it. Is it worse if you do it once or more than once? These are just kind of one person or one thing. There is an integrity issue on this. The constitution gives the right for you to initiate but there is also something the Secretary of State to do is the right of those of you who did not sign the petition to know that those of you who did sign the petition; that is was done legally.

Rep. L. Meier: If you have reasonable cause to go after an individual does your agency assume the cost to go after that individual?

Al Jaeger: No I have no prosecution authority. The Attorney General takes care of this through the States Attorney. In our appropriation we have a line item for petition review and that is specific. When we start the review we had to hire temps and they go through the petition. Once the violation is identified there are other parts of the legal system that take over. We are not involved at all.

Rep. W. Hanson: I am assuming that there is protection for someone who is signing on behalf of someone else who has authorized to sign for them.

Al Jaeger: That is one of the ways signatures get tossed out. In that case I would encourage them to take a blank petition page and have them sign it and a notary has to be involved. In our notary law we have provisions if you can only do an X, the notary can make a statement that I saw you do that. Even if you use a stamp we have that covered.

Jim Silrum: You bring up a good point. In the absentee chapter of election law there is a place where somebody who cannot sign is authorized to place an X and have a witness sign for them. We don't currently have that statue associated with this particular situation. It is currently related to absent ballot requests and submissions. You do bring up a good point and it is not addressed here.

Rep. W. Hanson: I just want to be certain in a typical case like a nursing home where some of the people with arthritis or some means cannot use their hands that their caretaker would not be subjected to a felony charge because we can't have that.

Jim Silrum: In our current situation if we were to recognize that there were two signatures that looked like they were the same handwriting that could fall under the correction period that the sponsoring committee would have where they could show that this person did not have the ability to sign and therefore could somebody sign for them. That is how that would be resolved. Initially we would just say one of these signatures would be tossed because it appears to be the same handwriting as somebody else's.

Rep. W. Hanson: I want to make sure protection is there for caretakers of the disabled or elderly so it could be applied to them.

Al Jaeger: Prosecutors have discretion. If anybody comes in with one signature over the amount required the petition would not be good because we end up tossing out some of them.

Jim Silrum: Rep. W. Hanson I think your situation would be addressed if something with Rep. Klemin's idea and Rep. Koppelman where this becomes an issue when it is an incorporated effort to defraud the system. Rep. Klemin said perhaps we should address this in a more comprehensive rather than just one at a time.

Al Jaeger: If an individual wants to sign and they know that they are in those circumstances it is very easy to enlist a notary at that point and a notary could go on record that they watched that name being affixed to the petition and that affidavit could be affixed to the petition.

Rep. W. Hanson: Last summer this happened to me; there was a drive for a water resources board as appointed by the governor. It failed, but I was walking along downtown Fargo and we encountered a signature gatherer who wanted us to sign some petition to create a water board. I asked the signature gather what this was about and they didn't really know. They did not even know what company they worked for. Say I sign as Ben Hanson because I love this bill and walk around the block five times and sign it as other people; would this frankly rather dim witted individual be subject to this felony because they had watched me sign as five different people under this law?

Al Jaeger: Yes.

Rep. W. Hanson: I would be concerned because they seem to just be so dumb that they don't catch that I am doing it five times. My fear is it was just a college kid that did not realize that they were doing something devious. If we slap them with a Class C felony, isn't that a lifelong record that could inhibit employment etc.

Al Jaeger: I think that is exactly what Rep. Klemin was getting at. There have been points brought up here. The fact is that circulator is signing a sworn statement that he or she saw every signature fixed and if you came back five times and they didn't recognize you and you didn't do any disguises they are signing that at the end saying they did it right. Countless places there are clipboards and guess what they are all on the signature page. In the pharmacy case a few years ago they decided to leave one page off, the page of sponsors and the Supreme Court said it is pretty clear, it has to be attached, but it wasn't. Those others are attached but you never see it.

Rep. J. Kelsh: If someone is POA do they have the right to sign the other person's name as POA?

Al Jaeger: I think something would have to be attached to that petition so we would know that. I believe a POA cannot cast a vote.

Rep. Hatlestad: Would that be considered a vote if I signed that petition?

Al Jaeger: No you are not voting. You are signing a petition.

Rep. Hatlestad: So the POA would allow me to sign the petition for the individual but not vote for the individual, but I could get an absentee ballot for them.

Al Jaeger: There are provisions of how that is handled so there is something they need to sign, but you cannot do a POA for voting.

Rep. Muscha: Enderlin has a quadriplegic. He can't make an X then so what do they do?

Al Jaeger: Under the Help America Vote Act I have to have a voting device at every location that will allow a person with a variety of disabilities so we have that available at every polling precinct in the state.

Chairman N. Johnson: Earlier today we heard a person could be a corporation or an individual. This uses the term person meaning an individual. Do we need to change that?

Al Jaeger: That might be a good idea. We want to make sure it is recognized that this is serious stuff and if no amendments are done this would be put into our how to pamphlet.

Rep. Koppelman: Is there any kind of notice that goes out with the circulator or we could in law if you are going to have somebody other than yourself circulating petitions they need to be notified of the following. Would that be a good idea?

Al Jaeger: We could just when we give it to the sponsoring committee; here is a checklist you may want to give to your circulators. We can do that without law. We already tell them what to do now.

Rep. Koppelman: You also talked about the fact that in this particular case the investigation showed that the people weren't aware what they were doing was even wrong, much less serious etc. Couldn't there be a requirement that notifies the sponsoring committee that you are required by law to inform the circulating committee of the requirements.

Al Jaeger: You can go to my website and you individually could download and circulate and how would you get that notice.

Rep. Koppelman: If they circulated the petition they should be given something that said this.

Al Jaeger: There could be so many circulators and I don't know from an administration standpoint how we would track that.

Rep. Koppelman: I think it would be a matter of the sponsoring committee or whoever it is that dispenses the petition; it is their responsibility to notify the people who are doing it and if they don't they could be guilty of something.

Jim Silrum: We can strength our affidavit and find a way to do that without law.

Rep. Hatlestad: Why not print it on the petition itself?

Jim Silrum: That is what we were thinking of doing that.

Al Jaeger: The petition structure is outlined in laws and we have to keep it somewhat the same.

Jim Silrum: The petition structure is outlined in law but there is also in law the authority for the Secretary of State to establish the format by which it must be so something like Rep. Hatlestad is suggesting could easily be added without the need of any law change.

Opposition: None

Chairman N. Johnson: Sounds like we have a couple of things we want to address at this time. We will just check on a couple issues and work from there.

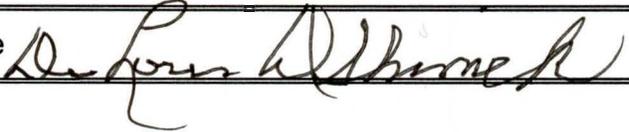
Hearing closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1397
February 14, 2013
Job # 18970

Conference Committee

Committee Clerk Signature 

(Proposed amend #1,2;Handout #3)

Minutes:

Chairman N. Johnson opened the meeting on HB 1397. The initial part of the bill was you could not sign someone else's name on a petition. Let's take a look at all the amendments together.

Rep. Koppelman: (Proposed amendment #1) Went over the proposal. 2:16 - 5:11

**Motion Made to Moved the amendment 18.8239.01002 by Rep. Koppelman:
Seconded by Rep. L. Meier**

Rep. L. Meier: On the second page line 25 when you change it to a Class C misdemeanor; what is it?

Rep. Koppelman: Actually it is changing it to Class C felony from a Class C misdemeanor.

Rep. Klemin: Up to one year or \$2,000.

Voice vote carried.

Rep. Klemin: (Proposed amendment #2) 06:11 - 13:51 I wanted to get to the organization and I did go over these amendments with the Secretary of State's office and the Attorney General's office and they have comments that I incorporated into this amendment.

Made a motion to move the amendments by Rep. Klemin: Seconded by Rep. M. Klein:

Rep. J. Kelsh: On page 2, line 25 would that replace what Rep. Koppelman's amendments do? It would appear if he is a member of the organization and he then getting signatures also, could he be double fined? As the individual that is doing it illegally and as a person that is a member of the organization that was hired to do it?

Rep. Klemin: Possibly. An individual who's culpable in more than one respect could be charged with more than one crime. This doesn't replace anything Rep. Koppelman had. It just comes at the end of line 25 after the period it is entirely new language so this is the drafting manual way to put that.

Rep. Koppelman: Rep. Klemin's amendment would deal more with the conspiracy kinds of things.

Rep. J. Kelsh: I your language is left and Rep. Klemin's is added possibly the guy could be charged with a felony twice for the same thing?

Rep. Koppelman: I think that could be the case, but I think it is more geared toward the organizational works and therefore the conspiracy so if a person conspired to do this and then they went out and did the signing then maybe they could be or should be. I don't think by doing the same act they could be charged with both. Rep. Klemin why the term organization versus person?

Rep. Klemin: When we are dealing with the organization penalty part of the criminal code and organization is a defined term and the organizational fines are stated to be organizational fines so that is why I am using that word.

Rep. Koppelman: It excludes government agencies. Is there a reason you would not want them included?

Rep. Klemin: That is the way it is currently defined. An organization under the organizational fines section of the criminal code excludes government agencies right now and that is because we don't have criminal fines against government entities.

Voice vote carried.

Rep. Klemin: (Handout #3) This is just information. Parts of the criminal code that I referred to that are sited in the amendment that I presented so that you could see what the criminal code says about accomplices and the definition of organization and what the organizational fines are.

Do Pass As Amended Motion Made By Rep. Hatlestad: Seconded by Rep. M. Klein:

Vote: 14 Yes 0 No 1 Absent Carrier: Rep. L. Meier

Closed.

February 14, 2013

15/13
USMC

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1397

Page 1, line 7, overstrike "a person" and insert immediately thereafter "an individual or organization"

Page 1, line 8, overstrike "person's" and insert immediately thereafter "individual's"

Page 1, line 23, overstrike "person" and insert immediately thereafter "individual or organization"

Page 2, line 7, overstrike "persons" and insert immediately thereafter "individuals or organizations"

Page 2, line 17, overstrike "person's" and insert immediately thereafter "individual's or organization's"

Page 2, line 20, replace "person's" with "individual's"

Page 2, line 22, replace "13" with "12"

Page 2, line 25, replace "A violation of subsection 15 is a class C felony." with "An organization, as defined in section 12.1-03-04, that violates this section is subject to the organizational fines in section 12.1-32-01.1. An individual who is a member of an organization may be convicted of a violation as an accomplice under section 12.1-03-01. The court in which the conviction is entered shall notify the secretary of state of the conviction and shall order the secretary of state to revoke the certificate of authority of any convicted organization or limited liability company. The organization may not reapply to the secretary of state for authorization to do business under any name for one year upon conviction of a class A misdemeanor and for five years upon conviction of a class C felony under this section. A violation of subsection 13 is a class C felony. A violation of subsection 15 is a class A misdemeanor if an individual signs one or two names other than the individual's own name to a petition and is a class C felony if an individual signs more than two names other than the individual's own name to a petition."

Renumber accordingly

Date: 2-12/1
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1397

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8239.
.01002

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By K Koppelman Seconded By L. Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Ben Hanson		
Vice Chairman Patrick Hatlestad			Rep. Kathy Hogan		
Rep. Thomas Beadle			Rep. Jerry Kelsh		
Rep. Matthew Klein			Rep. Naomi Muscha		
Rep. Lawrence Klemin					
Rep Kim Koppelman					
Rep. William Kretschmar					
Rep. Alex Looyesen					
Rep. Andrew Maragos					
Rep. Lisa Meier					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Join
Vote
carried*

Date: 2-14-13
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1397**

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number Klemin's Amend.

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. L. Klemin Seconded By Rep. M. Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Ben Hanson		
Vice Chairman Patrick Hatlestad			Rep. Kathy Hogan		
Rep. Thomas Beadle			Rep. Jerry Kelsh		
Rep. Matthew Klein			Rep. Naomi Muscha		
Rep. Lawrence Klemin					
Rep Kim Koppelman					
Rep. William Kretschmar					
Rep. Alex Looyen					
Rep. Andrew Maragos					
Rep. Lisa Meier					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Vote
 carried*

Date: 2-14-13
 Roll Call Vote #: 3

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1397**

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Hatlestad Seconded By Rep. M. Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Ben Hanson	✓	
Vice Chairman Patrick Hatlestad	✓		Rep. Kathy Hogan	✓	
Rep. Thomas Beadle	✓		Rep. Jerry Kelsh	✓	
Rep. Matthew Klein	✓		Rep. Naomi Muscha	✓	
Rep. Lawrence Klemm	✓				
Rep Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Alex Looyen	✓				
Rep. Andrew Maragos	✓				
Rep. Lisa Meier	✓				
Rep. Nathan Toman	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep. Meier

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1397: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1397 was placed on the Sixth order on the calendar.

Page 1, line 7, overstrike "a person" and insert immediately thereafter "an individual or organization"

Page 1, line 8, overstrike "person's" and insert immediately thereafter "individual's"

Page 1, line 23, overstrike "person" and insert immediately thereafter "individual or organization"

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Renumber accordingly

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1397

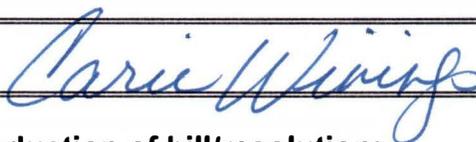
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1397
03/21/2013
Job Number 20311

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an relating to election offenses; and to provide a penalty.

Minutes:

Chairman Dever: Opened the hearing on HB 1397.

Al Jaeger, Secretary of State: See Attachment #1A, #1B, and #1C for testimony in support of the bill and a proposed amendment.

(12:10)Chairman Dever: We had a North Dakota organization that contracted with a firm in Iowa to hire people in North Dakota to circulate the petitions. So when we refer to organization, is it the organization - the committee, or is it the firm that they hired?

Al Jaeger: As I understand the way the bill was put together with the definition of "organization", I believe it refers to organization that falls under that particular category in 12.1. I think what would happen, is if we became aware of something, like in this particular case, like the sponsoring committee when they were told about this, they were surprised. The sponsoring committee itself was counting on these people to do it correctly so it would not go after the sponsoring committee. Whether the company in Iowa actually knew, they may or may not have, but definitely they had people hired that should have known and taken responsibility. This group of college students first started circulating with the clean water petition and then the marijuana person found out about them and then hired most of them to do that one. The report we got back from BCI that said that the guy did not know

what he was doing so they decided to earn their money and do it the easy way. That oversight should have had some responsibility. We want the sponsoring committees to know very clearly that this is serious stuff. That is why the format is very important to us.

Chairman Dever: A class A misdemeanor would not be a hand slap.

Al Jaeger: It is more than a hand slap, but it is still not what it probably should be.

Senator Nelson: What is the penalty for forgery? If it is forgery, then why are we not consistent with that?

Al Jaeger: That thought crossed my mind too. If they had of signed 3000 checks

Senator Nelson: I think there was some responsibility with the sponsoring committee. They should have seen that the ink was all the same and the obvious similarities in the print etc. I think you are leaving out a group that has some responsibility.

Al Jaeger: Representative Zaiser was the chair of the marijuana sponsoring committee and when I talked about something related to this bill in a committee and he basically got up and said that they "aced" him out of the process.

Jim Silrum: If I may address your questions. Representative Klemin picked the term organization out of that chapter of law as opposed to a definition anywhere else because of the broadest nature of how that term is defined in that title and chapter. Therefore sponsoring committees could be held liable to this because they could fall under that definition as well as the company that they hired by the sponsoring committee could be held responsible for this under this section. They are all covered by that term.

Chairman Dever: Reads the definition of "organization" from 12.1-03-04.

Al Jaeger: If you think about it, it does explain it to include a sponsoring committee.

Chairman Dever: I believe that Jim and I had a discussion about the forgery penalty and how it does not apply in this case.

Al Jaeger: We, as an office, identify the problem and we hand it over to the Attorney General. I believe it was prosecuted under this law in accordance with the circulation of a petition.

Senator Nelson: I would like to see protection for someone who actually fills out the rest of that petition.

Al Jaeger: That is covered under notary law. There are provisions because it is an affidavit. (talked about the marijuana petition again and how it pertained)

Chairman Dever: Was the company in Iowa registered with your office to do business in North Dakota?

Al Jaeger: I would have to look it up again but I believe they were because to do business in North Dakota you have to be registered. If they are registered in our state they have to have a registered agent in our state.

Chairman Dever: I am curious about your ability to go after them.

Jim Silrum: It must be remembered that we are an administrative office. When we find things we hand it over to the Attorney General's office to decide to prosecute. Everything will ultimately be decided by a court.

Chairman Dever: I knew that as soon as I said it.

Al Jaeger: The bill that is in front of you is a good bill with the amendments.

Chairman Dever: Closed the hearing on HB 1397.

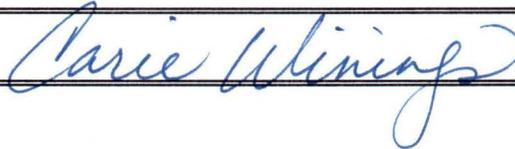
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1397
04/04/2013
Job Number 20893

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Dever: Opened HB 1397 for committee discussion.

Committee Discussion: The committee briefly discussed the purpose of the bill and the amendments that were brought by the Secretary of State's office. The committee looked over the red and green version of the bill brought by the Secretary of State's office to view the changes that would be made. The amendments were simply to put the bill in the correct order for code.

Senator Cook: Moved the Amendments 13.8239.02001.

Senator Poolman: Seconded.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Motion Carries.

Senator Schaible: Moved a Do Pass As Amended.

Senator Poolman: Seconded.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Senator Schaible: Carrier.

March 6, 2013

3/4/13
TD

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1397

Page 1, after line 6 insert:

"1."

Page 1, line 8, overstrike "1." and insert immediately thereafter "a."

Page 1, line 10, overstrike "2." and insert immediately thereafter "b."

Page 1, line 11, overstrike "3." and insert immediately thereafter "c."

Page 1, line 12, overstrike "4." and insert immediately thereafter "d."

Page 1, line 13, overstrike "5." and insert immediately thereafter "e."

Page 1, line 14, overstrike "6." and insert immediately thereafter "f."

Page 1, line 16, overstrike "7." and insert immediately thereafter "g."

Page 1, line 17, overstrike "8." and insert immediately thereafter "h."

Page 1, line 19, overstrike "9."

Page 1, line 21, after "~~10.~~" insert "i."

Page 1, line 23, replace "10." with "j."

Page 2, line 11, after the period insert "Any signature obtained in violation of this subdivision is void and may not be counted."

Page 2, line 12, replace "11." with "k."

Page 2, line 14, replace "12." with "l."

Page 2, line 15, replace "13." with "m."

Page 2, line 19, replace "14." with "n."

Page 2, line 21, replace "15." with "o."

Page 2, after line 22 insert:

"2. a."

Page 2, line 23, overstrike "subsections 1" and insert immediately thereafter "subdivisions a"

Page 2, line 23, replace "12" with "l of subsection 1"

Page 2, line 23, overstrike "Any signature obtained"

Page 2, line 24, overstrike "in violation of subsection"

Page 2, line 24, remove "10"

Page 2, line 24, overstrike "is void and may not be counted." and insert immediately thereafter:

"b. A violation of subdivision m of subsection 1 is a class C felony.

c."

Page 2, line 24, after the second "of" insert "subdivision n of"

Page 2, line 24, replace "14" with "1"

Page 2, line 26, after the period insert:

"d. A violation of subdivision o of subsection 1 is a class A misdemeanor if an individual signs one or two names other than the individual's own name to a petition and is a class C felony if an individual signs more than two names other than the individual's own name to a petition.

e."

Page 2, line 27, remove "An"

Page 2, remove line 28

Page 2, line 29, remove "under section 12.1-03-01."

Page 3, line 3, remove "A violation of subsection 13 is a class C felony. A violation of subsection 15 is"

Page 3, replace lines 4 through 6 with:

"f. An individual who is a member of an organization may be convicted of a violation as an accomplice under section 12.1-03-01.

3."

Renumber accordingly

Date: 4/4

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1397

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8239.02001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Cook Seconded By Senator Poolman

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 4/4

Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1397

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8239.02001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Schaible Seconded By Senator Poolman

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Schaible

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1397, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1397 was placed on the Sixth order on the calendar.

Page 1, after line 6 insert:

"1."

Page 1, line 8, overstrike "1." and insert immediately thereafter "a."

Page 1, line 10, overstrike "2." and insert immediately thereafter "b."

Page 1, line 11, overstrike "3." and insert immediately thereafter "c."

Page 1, line 12, overstrike "4." and insert immediately thereafter "d."

Page 1, line 13, overstrike "5." and insert immediately thereafter "e."

Page 1, line 14, overstrike "6." and insert immediately thereafter "f."

Page 1, line 16, overstrike "7." and insert immediately thereafter "g."

Page 1, line 17, overstrike "8." and insert immediately thereafter "h."

Page 1, line 19, overstrike "9."

Page 1, line 21, after "~~10.~~" insert "i."

Page 1, line 23, replace "10." with "j."

Page 2, line 11, after the period insert "Any signature obtained in violation of this subdivision is void and may not be counted."

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Page 2, line 14, replace "12." with "l."

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Page 2, line 23, overstrike "subsections 1" and insert immediately thereafter "subdivisions a"

Page 2, line 23, replace "12." with "l of subsection 1"

Page 2, line 23, overstrike "Any signature obtained"

Page 2, line 24, overstrike "in violation of subsection"

Page 2, line 24, remove "10"

Page 2, line 24, overstrike "is void and may not be counted." and insert immediately thereafter:

"b. A violation of subdivision m of subsection 1 is a class C felony.

c."

Page 2, line 24, after the second "of" insert "subdivision n of"

Page 2, line 24, replace "14" with "1"

Page 2, line 26, after the period insert:

"d. A violation of subdivision o of subsection 1 is a class A misdemeanor if an individual signs one or two names other than the individual's own name to a petition and is a class C felony if an individual signs more than two names other than the individual's own name to a petition.

e."

Page 2, line 27, remove "An"

Page 2, remove line 28

Page 2, line 29, remove "under section 12.1-03-01."

Page 3, line 3, remove "A violation of subsection 13 is a class C felony. A violation of subsection 15 is"

Page 3, replace lines 4 through 6 with:

"f. An individual who is a member of an organization may be convicted of a violation as an accomplice under section 12.1-03-01.

3."

Renumber accordingly

2013 TESTIMONY

HB 1397

#1

Chairman Johnson and members of the Political Subs Committee, for the record I am Representative Patrick Hatlestad, District One, Williston.

I stand before you to introduce HB 1397 at the request of the Secretary of State.

The bill does two things: 1) it transfers the section dealing with fraudulently signing another person's name to an initiative, referendum, recall or any other election petition from subsection 9, a Class A misdemeanor section and moves it to subsection 15 which is the Class C Felony section. 2) It makes the signing of another person's name to an initiative, referendum, or recall petition or any other election petition a Class C Felony for which a maximum penalty of 5 years imprisonment, a fine of \$5000, or both, may be imposed. By changing the classification it makes it a more serious criminal offense when committed with reference to the determination of a question submitted to qualified

electors to be decided by votes cast at an election. For the individual(s) that worked to put the petition before a vote of people, it has potentially violated/denied their legal right granted by law and potentially disenfranchised the voters of North Dakota. I use the term potentially because one signature probably will not invalidate a petition but many signatures may as we witnesses in the past election.

I respectfully ask you to support HB 1397. Thank you.

I will stand for any questions you may have.

#2

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 31, 2013

TO: Rep. N. Johnson, Chairman, and Members of the House Political Subdivision Committee

FR: Al Jaeger, Secretary of State

RE: HB 1397 – Penalty for affixing by signature the name of another person to a petition

Page 1, lines 19 and 20: The text is overstruck, the subsections are renumbered and the overstricken text becomes subsection 15 on page 2, lines 20 and 21.

Page 2, lines 20 and 21: Inserts into the renumbered subsection 15, the text removed from subsection 6 on page 1, lines 19 and 20.

Page 2, lines 22 through 25: The penalty for the above offense is raised in this bill from a class A misdemeanor to a class C felony.

We request your favorable consideration.

#1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1397

Page 2, line 20, replace "person's" with "individual's"

Page 2, line 25, after the second "A" insert "violation of subsection 13 is a class C felony. A"

Page 2, line 25, after "15" insert "is a class A misdemeanor if an individual signs one or two names other than the individual's own name to a petition and"

Page 2, line 25, after "felony" insert "if an individual signs more than two names other than the individual's own name to a petition"

Renumber accordingly

2

Rep. Lawrence R. Klemin

February 5, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1397

Page 1, line 7, replace "a person" with "an individual or an organization"

Page 1, line 8, replace "person's" with "individual's"

Page 1, line 23, replace "person" with "individual or another organization"

Page 2, line 7, replace "persons" with "individuals or organizations"

Page 2, line 17, replace "person's" with "individual's or organization's"

Page 2, line 20, replace "person's" with "individual's"

Page 2, line 25, after the period insert:

"An organization, as defined in section 12.1-03-04, that violates this section is subject to the organizational fines in section 12.1-32-01.1. An individual who is a member of an organization may be convicted of a violation as an accomplice under section 12.1-03-01. The court in which the conviction is entered shall notify the secretary of state of the conviction and shall order the secretary of state to revoke the certificate of authority of any convicted organization that is authorized to do business in North Dakota as a for profit or nonprofit corporation or limited liability company. The organization may not reapply to the secretary of state for authorization to do business under any name for one year upon conviction of a class A misdemeanor and for five years upon conviction of a class C felony under this section."

Renumber accordingly

Handout

3
HB 1397

HB 1397 References

12.1-03-01. Accomplices.

1. A person may be convicted of an offense based upon the conduct of another person when:

a. Acting with the kind of culpability required for the offense, he causes the other to engage in such conduct;

b. With intent that an offense be committed, he commands, induces, procures, or aids the other to commit it, or, having a statutory duty to prevent its commission, he fails to make proper effort to do so; or

c. He is a coconspirator and his association with the offense meets the requirements of either of the other subdivisions of this subsection.

A person is not liable under this subsection for the conduct of another person when he is either expressly or by implication made not accountable for such conduct by the statute defining the offense or related provisions because he is a victim of the offense or otherwise.

2. Unless otherwise provided, in a prosecution in which the liability of the defendant is based upon the conduct of another person, it is no defense that:

a. The defendant does not belong to the class of persons who, because of their official status or other capacity or characteristic, are by definition of the offense the only persons capable of directly committing it; or

b. The person for whose conduct the defendant is being held liable has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

12.1-03-04. Definitions and general provisions.

1. In this chapter:

a. "Agent" means any partner, director, officer, governor, manager, servant, employee, or other person authorized to act in behalf of an organization.

b. "Organization" means any legal entity, whether or not organized as a corporation, limited liability company, or unincorporated association, but does not include an entity organized as or by a governmental agency for the execution of a governmental program.

2. Nothing in this chapter shall limit or extend the criminal liability of an unincorporated association.

12.1-32-01.1. Organizational fines.

Any organization, as defined in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine in accordance with the following classification:

1. For a class A felony, a maximum fine of fifty thousand dollars.
2. For a class B felony, a maximum fine of thirty-five thousand dollars.
3. For a class C felony, a maximum fine of twenty-five thousand dollars.
4. For a class A misdemeanor, a maximum fine of fifteen thousand dollars.
5. For a class B misdemeanor, a maximum fine of ten thousand dollars.

Nothing in this section shall be construed as preventing the imposition of the sanction provided for in section 12.1-32-03, nor as preventing the prosecution of agents of the organization under section 12.1-03-03.

Attachment #1A

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

March 21, 2013

TO: Sen. Dever, Chairman, and Members of the Senate Government and Veterans' Affairs Committee

FR: Al Jaeger, Secretary of State

RE: HB 1397 – Penalty for affixing by signature the name of another person to a petition

Throughout the bill, the word "person or person's" is changed to "an individual or organization" to match the style standards adopted by the Legislative Council Code Revisor.

The major changes made by this bill are to address violations in state law for the unlawful circulation of initiative and referendum petitions. They are contained on page 2, beginning on line 26 and continuing through line 9 on page 2.

However, because of the difficulty in reading the text and because the violations are not in sequence, I requested and received permission from Senator Cook to work with John Bjornson of the Legislative Council to prepare amendments that retain all of the changes made by the House and places them in a format that is easier to read and understand.

Therefore, my testimony is based on how the bill would appear if the amendments are adopted.

Section 1, page 1, line 1: This change makes it clear that any violation of this section applies to either "an individual or organization".

Section 1, page 1, lines 19 and 20: This unlawful act, that a signature cannot be counted if in violation, is moved to page 2, lines 12 and 13 and becomes the last sentence in the "new" subsection "1.j" beginning on line 23, page 1.

Section 1, page 2, line 26: This change makes it clear that a violation of the "new" subsections "1.a" through the "new" subdivision "1.l" is a class A misdemeanor, as it is in current law.

Section 1, page 2, line 29: It changes the penalty for the violation of the "new" subdivision "1.m" on lines 18 through 21 from a class A misdemeanor to a class C felony.

Section 1, page 3, line 1: To provide the sequence for the respective subdivisions, this change refers to subdivision "1.n."

Section 1, page 3, lines 4 through 7: This addition prescribes that a violation of subdivision "1.o" is a class A misdemeanor if an individual signs one or two names on a petition (other than his or her own name) and that if that individual sign more than two names, it is a class C felony.

Section 1, page 3, lines 8 through 17: This addition prescribes penalties for an organization that violates this section.

Section 1, page 3, lines 22 and 23: This addition prescribes a penalty for an individual who is a member of an organization may be convicted as an accomplice.

13.8239.02001

FIRST ENGROSSMENT

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1397

Introduced by

Representatives Hatlestad, N. Johnson, Klemin

Senators Cook, Nelson

1 A BILL for an Act to amend and reenact section 16.1-01-12 of the North Dakota Century Code,
2 relating to election offenses; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 16.1-01-12 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **16.1-01-12. Election offenses - Penalty.**

7 1. It is unlawful for ~~a person~~ an individual or organization to:

8 ~~1.~~ a. Fraudulently alter another ~~person's~~ individual's ballot or substitute one ballot for
9 another or to otherwise defraud a voter of that voter's vote.

10 ~~2.~~ b. Obstruct a qualified elector on the way to a polling place.

11 ~~3.~~ c. Vote or offer to vote more than once in any election.

12 ~~4.~~ d. Knowingly vote in the wrong election precinct or district.

13 ~~5.~~ e. Disobey the lawful command of an election officer as defined in chapter 16.1-05.

14 ~~6.~~ f. Knowingly exclude a qualified elector from voting or knowingly allow an
15 unqualified person to vote.

16 ~~7.~~ g. Knowingly vote when not qualified to do so.

17 ~~8.~~ h. Sign an initiative, referendum, recall, or any other election petition when not
18 qualified to do so.

19 ~~9.~~ i. Sign a name other than that person's own name to an initiative, referendum, recall, or
20 any other election petition.

21 ~~10.~~ j. Circulate an initiative, referendum, recall, or any other election petition not in its
22 entirety or circulate such a petition when unqualified to do so.

23 ~~11.~~ k. Pay or offer to pay any ~~person~~ individual or organization, or receive payment or
24 agree to receive payment, on a basis related to the number of signatures

Sixty-third
Legislative Assembly

- 1 obtained for circulating an initiative, referendum, or recall petition. This
2 subsection does not prohibit the payment of salary and expenses for circulation
3 of the petition on a basis not related to the number of signatures obtained, as
4 long as the circulators file their intent to remunerate prior to submitting the
5 petitions and, in the case of initiative and referendum petitions, fully disclose all
6 contributions received pursuant to chapter 16.1-08.1 to the secretary of state
7 upon submission of the petitions. The disclosure of contributions received under
8 this section does not affect the requirement to file a preelection report by
9 ~~persons~~individuals or organizations soliciting or accepting contributions for the
10 purpose of aiding or opposing the circulation or passage of a statewide initiative
11 or referendum petition or measure placed upon a statewide ballot by action of the
12 legislative assembly under chapter 16.1-08.1. Any signature obtained in violation
13 of this subdivision is void and may not be counted.
- 14 ~~12.11.~~ k. Willfully fail to perform any duty of an election officer after having accepted the
15 responsibility of being an election officer by taking the oath as prescribed in this
16 title.
- 17 ~~13.12.~~ l. Willfully violate any rule adopted by the secretary of state pursuant to this title.
- 18 ~~14.13.~~ m. Willfully make any false canvass of votes, or make, sign, publish, or deliver any
19 false return of an election, knowing the same to be false, or willfully deface,
20 destroy, or conceal any statement or certificate entrusted to the
21 ~~person's~~individual's or organization's care.
- 22 ~~15.14.~~ n. Destroy ballots, ballot boxes, election lists, or other election supplies except as
23 provided by law.
- 24 ~~16.~~ o. Sign a name other than that individual's own name to an initiative, referendum,
25 recall, or any other election petition.
- 26 2. a. A violation of ~~subsections 1~~subdivisions a through ~~14.12~~14.12 of subsection 1 is a
27 class A misdemeanor. ~~Any signature obtained in violation of subsection 1110 is~~
28 ~~void and may not be counted.~~
- 29 b. A violation of subdivision m of subsection 1 is a class C felony.

1 c. A violation of subdivision n of subsection 15141 occurring after an election but
2 before the final canvass, or during an election, is a class C felony, and in other
3 cases is a class A misdemeanor.

4 d. A violation of subdivision o of subsection 1 is a class A misdemeanor if an
5 individual signs one or two names other than the individual's own name to a
6 petition and is a class C felony if an individual signs more than two names other
7 than the individual's own name to a petition.

8 e. An organization, as defined in section 12.1-03-04, that violates this section is
9 subject to the organizational fines in section 12.1-32-01.1. ~~An individual who is a~~
10 ~~member of an organization may be convicted of a violation as an accomplice~~
11 ~~under section 12.1-03-01.~~ The court in which the conviction is entered shall notify
12 the secretary of state of the conviction and shall order the secretary of state to
13 revoke the certificate of authority of any convicted organization or limited liability
14 company. The organization may not reapply to the secretary of state for
15 authorization to do business under any name for one year upon conviction of a
16 class A misdemeanor and for five years upon conviction of a class C felony under
17 this section. ~~A violation of subsection 13 is a class C felony. A violation of~~
18 ~~subsection 15 is a class A misdemeanor if an individual signs one or two names~~
19 ~~other than the individual's own name to a petition and is a class C felony if an~~
20 ~~individual signs more than two names other than the individual's own name to a~~
21 ~~petition.~~

22 f. An individual who is a member of an organization may be convicted of a violation
23 as an accomplice under section 12.1-03-01.

24 3. Every act which by this chapter is made criminal when committed with reference to the
25 election of a candidate is equally criminal when committed with reference to the
26 determination of a question submitted to qualified electors to be decided by votes cast
27 at an election.

13.8239.02001
Title.

Prepared by the Legislative Council staff for
Senator Cook

March 6, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1397

Page 1, after line 6 insert:

"1."

Page 1, line 8, overstrike "1." and insert immediately thereafter "a."

Page 1, line 10, overstrike "2." and insert immediately thereafter "b."

Page 1, line 11, overstrike "3." and insert immediately thereafter "c."

Page 1, line 12, overstrike "4." and insert immediately thereafter "d."

Page 1, line 13, overstrike "5." and insert immediately thereafter "e."

Page 1, line 14, overstrike "6." and insert immediately thereafter "f."

Page 1, line 16, overstrike "7." and insert immediately thereafter "g."

Page 1, line 17, overstrike "8." and insert immediately thereafter "h."

Page 1, line 19, overstrike "9."

Page 1, line 21, after "40." insert "i."

Page 1, line 23, replace "10." with "i."

Page 2, line 11, after the period insert "Any signature obtained in violation of this subdivision is void and may not be counted."

Page 2, line 12, replace "11." with "k."

Page 2, line 14, replace "12." with "l."

Page 2, line 15, replace "13." with "m."

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Page 2, line 21, replace "15." with "o."

Page 2, after line 22 insert:

"2. a."

Page 2, line 23, overstrike "subsections 1" and insert immediately thereafter "subdivisions a"

Page 2, line 23, replace "12" with "l of subsection 1"

Page 2, line 23, overstrike "Any signature obtained"

Page 2, line 24, overstrike "in violation of subsection"

Page 2, line 24, remove "10"

Page 2, line 24, overstrike "is void and may not be counted." and insert immediately thereafter:

"b. A violation of subdivision m of subsection 1 is a class C felony.

c."

Page 2, line 24, after the second "of" insert "subdivision n of"

Page 2, line 24, replace "14" with "1"

Page 2, line 26, after the period insert:

"d. A violation of subdivision o of subsection 1 is a class A misdemeanor if an individual signs one or two names other than the individual's own name to a petition and is a class C felony if an individual signs more than two names other than the individual's own name to a petition.

e."

Page 2, line 27, remove "An"

Page 2, remove line 28

Page 2, line 29, remove "under section 12.1-03-01."

Page 3, line 3, remove "A violation of subsection 13 is a class C felony. A violation of subsection 15 is"

Page 3, replace lines 4 through 6 with:

"f. An individual who is a member of an organization may be convicted of a violation as an accomplice under section 12.1-03-01.

3."

Renumber accordingly