

# HOUSE BILL REPORT

## ESSB 5397

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**As Reported by House Committee On:**  
State Government, Elections & Information Technology

**Title:** An act relating to disclosure in initiatives, referenda, and recall petitions.

**Brief Description:** Concerning disclosure in initiatives, referenda, and recall petitions.

**Sponsors:** Senate Committee on State Government, Tribal Relations & Elections (originally sponsored by Senators Warnick, Lias, Walsh, Nelson, O'Ban, Billig, Kuderer, King, Honeyford, Wilson, Pedersen, Hunt, Wellman, Saldaña and Carlyle).

**Brief History:**

**Committee Activity:**

State Government, Elections & Information Technology: 2/20/18, 2/23/18 [DP].

**Brief Summary of Engrossed Substitute Bill**

- Requires a ballot measure sponsor or political committee that employs, or expects to employ, any person to compensate individuals for gathering signatures on a state or local initiative, referendum, or recall petition to disclose certain information to the Public Disclosure Commission about the person retained to compensate signature gatherers.
- Requires persons who directly compensate signature gatherers to maintain certain information on file pertaining to each paid signature gatherer.
- Prohibits compensation to any signature gatherer circulating a petition who has been convicted of election law violations, fraud, forgery, or identity theft in the last five years.

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**HOUSE COMMITTEE ON STATE GOVERNMENT, ELECTIONS & INFORMATION TECHNOLOGY**

**Majority Report:** Do pass. Signed by 6 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Appleton, Gregerson, Johnson and Pellicciotti.

**Minority Report:** Do not pass. Signed by 2 members: Representatives McDonald, Ranking Minority Member; Irwin.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Without recommendation. Signed by 1 member: Representative Kraft, Assistant Ranking Minority Member.

**Staff:** Desiree Omli (786-7105).

**Background:**

Initiative, Referendum, and Recall.

The Washington Constitution affords the people the power to propose or reject laws through the initiative and referendum process. The following initiatives and referendum are authorized:

- Initiatives to the People, where if petitions are certified to have a sufficient number of signatures by registered voters, the issue is submitted for a vote of the people at the next state general election;
- Initiatives to the Legislature, where if petitions are certified to have a sufficient number of signatures by registered voters, the issue is submitted to the Legislature at its next regular session; and
- Referendum measures, where laws recently passed by the Legislature are placed on the ballot after certification of petitions signed by registered voters.

The Constitution also subjects certain elective public officers to recall and discharge upon filing of a charge by a legal voter. The sponsor of a recall must circulate a petition and obtain a certain number of signatures.

Any legal voter who proposes a ballot measure must file with the Office of the Secretary of State (Secretary) a:

- copy of the measure proposed, or the act or part of such act on which the referendum is desired;
- signed affidavit or electronic submission, that the sponsor is a registered voter; and
- filing fee.

Public Disclosure Commission—Penalties.

The Public Disclosure Commission (PDC) may determine, after a hearing conducted pursuant to the Administrative Procedure Act, whether a violation under the campaign disclosure and contribution statute occurred, and may assess penalties of up to \$10,000. The PDC may also refer the matter to the Attorney General or other enforcement agency.

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**Summary of Bill:**

Disclosure Requirements.

Any ballot measure sponsor or political committee that employs, or expects to employ, any person for the purpose of compensating individuals for gathering signatures on a state or local initiative, referendum, or recall petition, within 10 days, must disclose the following to the PDC about each person retained to compensate individual signature gatherers:

- the name, address, phone number, and email address of the person retained; and
- a list of the measures for which signature gatherers will be paid.

The PDC must make the information disclosed available to the public within two days of receipt. The Secretary must post a link on its website to the PDC's website for each corresponding state initiative, referendum, or recall petition disclosing this information. Any person must update their disclosure statement within five days if he or she agrees to compensate for signatures on a measure that was not previously disclosed.

For two years after the certification date of any ballot measures for which an individual was compensated for gathering signatures, the ballot measure sponsor or political committee must ensure that each person who directly compensates an individual to gather signatures retains the following information about the signature gatherer:

- the name, permanent address and a Washington address if the signature gatherer is from out-of-state, phone number, and email address;
- a digital photograph taken within the past 12 months;
- a copy of the signature gatherer's government-issued photo identification;
- a list of the measures for which the individual will gather, or has gathered, signatures;
- documentation that the signature gatherer completed a training program outlining the rights and responsibilities of voters, signature gatherers, and property owners; and
- a confirmation that a national background check was completed and that the individual has not been convicted of a crime involving fraud, forgery, or identity theft and has not violated election laws in the past five years.

The information must be provided to the PDC or any law enforcement agency in response to an active investigation, and is exempt from public disclosure requirements. The required training program must be available electronically, and the Secretary must provide references to applicable statutes and case law for inclusion in training programs for signature gatherers.

#### Compensating Signature Gatherers.

An individual may not be compensated for gathering signatures on petitions if the individual has been convicted of a criminal offense involving elections, fraud, forgery, or identification theft in any jurisdiction in the past five years. An individual may not be compensated for gathering signatures on petitions if the individual has been found in violation of an election law in any jurisdiction in the past five years.

Compensation for gathering signatures may not be conditioned on gathering other signatures on other ballot measures for free.

#### Other Provisions.

Failure to comply with certain recordkeeping requirements, the requirement to update disclosure information, and provisions relating to compensating signature gatherers with certain criminal convictions or violations of election law is subject to the PDC's statutory penalty authority. The PDC may adopt certain rules to implement certain provisions of the act.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available. New fiscal note requested on February 23, 2018.

**Effective Date:** The bill takes effect on January 1, 2020.

**Staff Summary of Public Testimony:**

(In support) This is a well thought out bill that holds paid signature gatherers accountable, protects a voter's information collected by signature gatherers, and protects signature gatherers from possible unscrupulous employers. This equally protects the initiative process, customers, and the private property rights of store owners. Currently, customers are pulled to the ground and assaulted by signature gatherers, and signature gatherers have obstructed the path of first responders who were responding to an emergency at a store. Loss prevention officers at grocery stores are taken away from their job to deal with misbehaving signature gatherers. When an incident occurs at a store with a signature gatherer, law enforcement is called, but when law enforcement follows up with the business that hires the signature gatherer to get the identity of the signature gatherer, the business claims that they do not know who the signature gatherers are. Requiring businesses to maintain information about each signature gatherer they employ is something they should already be doing. The information is not subject to public disclosure and will be only available when there is an investigation of an event that happened at a store. Grocery stores have rights as well, as found by a court most recently in Clark County. The only recourse store owners have now is to call the police, and when they are called, the inappropriate behavior stops but starts again as soon as the police leave. This bill will give stores the information they need to track down the signature gatherer and take legal action.

This bill is modeled after a similar statute in Oregon, where the court upheld the registration disclosure requirement around paid signature gatherers. Oregon implemented more stringent requirements on signature gatherers than this bill does, and since its implementation of those requirements, they have run over 40 initiatives since 2010. Therefore, imposing additional requirements did not do away with the initiative process (as some have claimed it would).

(Opposed) The court expressly rejected the notion that occasional fraud involving paid petitioners justifies targeting paid signature gatherers with special enforcement. Initiative petitioning deals with a First Amendment right, and this bill makes the initiative process even more difficult than it already is. In Oregon, the implementation of registration for their signature gatherers quadrupled the cost of qualifying initiatives for the ballot. In our state, nearly \$1.5 million is spent to get 350,000 signatures. Quadrupling this cost would mean the cost of qualifying an initiative for the ballot in this state would be approximately \$5 million. When infringing on a First Amendment right, the state must have a compelling governmental interest, and that interest is unclear at this stage. In *Meyer v. Grant*, the United States Supreme Court struck down a Colorado law that ended paid petitioning. Taxpayer money that will be spent on implementing this could be better spent elsewhere.

**Persons Testifying:** (In support) Senator Warnick, prime sponsor; Mark Johnson, Washington Retail Association; Charlie Brown, Fred Meyer Stores; Holly Chisa, Northwest Grocery Association; Jan Gee, Washington Food Industry Association; and Mike Latham, Town & Country Markets.

(Opposed) Tim Eyman.

**Persons Signed In To Testify But Not Testifying:** None.