

1 SENATE BILL NO. 13

2 INTRODUCED BY D. EMRICH

3 BY REQUEST OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING ~~ALL~~ SUPREME COURT ORIGINAL JURISDICTION  
6 ~~OTHER THAN OF WRITS OF HABEAS CORPUS AND PROVIDING FOR RELATED TO~~ DISTRICT COURT  
7 REVIEW OF BALLOT MEASURES; AMENDING ~~SECTION SECTIONS 3-2-202 AND~~ 13-27-605, MCA;  
8 ~~REPEALING SECTION 3-2-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

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

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12 **Section 1.** Section 3-2-202, MCA, is amended to read:

13 "3-2-202. **Original jurisdiction -- review of ballot statements.** (1) In the exercise of its original  
14 jurisdiction, the supreme court has power to issue writs of mandamus, certiorari, prohibition, injunction, and  
15 habeas corpus.

16 (2) The supreme court has the power to issue all other writs necessary and proper to the complete  
17 exercise of its appellate jurisdiction.

18 (3) (a) ~~The supreme court has original jurisdiction to review the petitioner's ballot statements for  
19 initiated measures and the attorney general's ballot statements for referred measures and the attorney  
20 general's legal sufficiency determination in an action brought pursuant to 13-27-605.~~

21 (b) (i) ~~In an original proceeding under subsection (3)(a), the petitioner and the attorney general  
22 shall certify the absence of factual issues or shall stipulate to and file any factual record necessary to the  
23 supreme court's consideration of the petitioner's ballot statements or the attorney general's legal sufficiency  
24 determination.~~

25 (ii) ~~If the parties to an original proceeding under subsection (3)(a) fail to make the certification or  
26 stipulation required by subsection (3)(b)(i), the supreme court shall refer the proceeding to the district court in  
27 the county of residence of the lead petitioner for development of a factual record and an order that addresses~~

1 the issues provided in 13-27-605(3). Any party may appeal the order of the district court to the supreme court  
2 by filing a notice of appeal within 5 days of the date of the order of the district court. If a lead petitioner has not  
3 been designated in accordance with this section or if the parties to the proceeding agree, the proceeding must  
4 be referred to the district court for Lewis and Clark County.

5 (4) As used in this section, "lead petitioner" means an individual designated by the petitioner or  
6 petitioners on a form provided by the secretary of state.

7 (5) Nothing in subsection (3) limits the right to challenge a ballot issue enacted by a vote of the  
8 people."

10 **Section 2.** Section 13-27-605, MCA, is amended to read:

11 **"13-27-605. Court review of attorney general opinion or approved petitioner statements.** (1) If  
12 the proponents of a statewide ballot issue believe that the ballot statements approved by the attorney general  
13 do not satisfy the requirements of 13-27-212 or 13-27-213 or believe that the attorney general was incorrect in  
14 determining that the petition was legally deficient, they may, within 10 days of the attorney general's  
15 determination regarding legal sufficiency provided for in 13-27-226, file an original proceeding in the supreme  
16 court district court challenging the adequacy of the statement or the attorney general's determination and  
17 requesting the court to alter the statement or modify the attorney general's determination.

18 (2) If the opponents of a statewide ballot issue believe that the petitioner ballot statements  
19 approved by the attorney general do not satisfy the requirements of 13-27-212 or 13-27-213 or believe that the  
20 attorney general was incorrect in determining that the petition was legally sufficient, they may, within 10 days of  
21 the date of certification to the governor that the completed petition has been officially filed, file an original  
22 proceeding in the supreme district court challenging the adequacy of the statement or the attorney general's  
23 determination and requesting the court to alter the statement or overrule the attorney general's determination  
24 concerning the legal sufficiency of the petition. The attorney general shall respond to a complaint within 5 days.

25 (3) (a) Notice must be served upon the secretary of state and upon the attorney general.

26 (b) If the proceeding requests modification of ballot statements, an action brought under this  
27 section must state how the petitioner's ballot statements approved by the attorney general do not satisfy the

1 requirements of 13-27-212 or 13-27-213 and must propose alternate ballot statements that satisfy the  
2 requirements of 13-27-212 and 13-27-213.

3 (c) (i) Pursuant to Article IV, section 7(2), of the Montana constitution, an action brought pursuant  
4 to this section takes precedence over other cases and matters in ~~the supreme~~ district court. The court shall  
5 examine the proposed issue and the challenged statement or determination of the attorney general and shall as  
6 soon as possible render a decision as to the adequacy of the ballot statements or the correctness of the  
7 attorney general's determination.

8 (ii) If the district court decides that the ballot statements do not meet the requirements of 13-27-  
9 212 or 13-27-213, it may order the attorney general to revise the ballot statements within 5 days or certify to the  
10 secretary of state ballot statements that the court determines will meet the requirements of 13-27-212 and 13-  
11 27-213. A ballot statement revised by the attorney general pursuant to the court's order or certified by the court  
12 ~~must be placed on the petition for circulation and on the official ballot~~ is appealable to the supreme court.

13 (iii) If the district court decides that the attorney general's legal sufficiency determination is  
14 incorrect and that a proposed issue does not comply with statutory and constitutional requirements governing  
15 submission of the issue to the electors, any petitions supporting the issue are void and the issue may not  
16 appear on the ballot unless otherwise ordered by the supreme court. A proponent of the statewide ballot issue  
17 may resubmit a revised issue, pursuant to 13-27-214, subject to the deadlines provided in this chapter.

18 (iv) If the district court decides that the attorney general's legal deficiency determination is incorrect  
19 and that a proposed statewide ballot issue complies with statutory and constitutional requirements governing  
20 submission of the issue to the electors, the attorney general shall prepare ballot statements that comply with  
21 13-27-212 and 13-27-213 and forward the statements to the secretary of state within 5 days of the court's  
22 decision. This decision is appealable to the supreme court.

23 (4) A petition may be circulated by a signature gatherer upon transmission of the sample petition  
24 form by the secretary of state pending review under this section. If, upon review, the attorney general, ~~or the~~  
25 ~~supreme~~ district court, ~~or supreme~~ court revises the petition form or ballot statements, any petitions signed prior  
26 to the revision are void.

27 (5) An original proceeding in ~~the supreme~~ district court under this section ~~is the exclusive remedy~~

1     may be appealed to the supreme court for a challenge to the petitioner's ballot statements, as approved by the  
2     attorney general, or the attorney general's legal sufficiency determination. A statewide ballot issue may not be  
3     invalidated under this section after the secretary of state has certified the ballot under 13-12-201.

4           (6)     This section does not limit the right to challenge a constitutional defect in the substance of an  
5     issue approved by a vote of the people."

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7           **NEW SECTION. Section 2. Repealer.** The following section of the Montana Code Annotated is  
8     repealed:

9     3-2-202. Original jurisdiction -- review of ballot statements.

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11           **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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