

1 **RESTORATION OF THE RIGHT TO VOTE AND HOLD**

2 **ELECTIVE OFFICE**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: John G. Mathis**

6 Senate Sponsor: Peter C. Knudson

7

8 **LONG TITLE**

9 **Committee Note:**

10 The Government Operations and Political Subdivisions Interim Committee
11 recommended this bill.

12 **General Description:**

13 This bill amends provisions in Title 20A, Election Code, to address the restoration of
14 the right to vote or hold elective office.

15 **Highlighted Provisions:**

16 This bill:

- 17 ▶ provides a process by which a person convicted of a misdemeanor for violating the
18 Election Code may have the right to vote or hold office restored;
- 19 ▶ prohibits a person convicted of a misdemeanor for violating the Election Code from
20 registering to vote or remaining registered to vote, unless the right to vote has been
21 restored;
- 22 ▶ authorizes a challenge to the right to vote if the voter is convicted of a misdemeanor
23 for violating the Election Code, unless the right to vote has been restored; and
- 24 ▶ makes technical changes.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **20A-1-609**, as enacted by Laws of Utah 1993, Chapter 1

32 **20A-2-101**, as last amended by Laws of Utah 2008, Chapter 276

33 **20A-3-202**, as repealed and reenacted by Laws of Utah 2010, Chapter 83

34 **20A-9-203**, as last amended by Laws of Utah 2010, Chapter 197

35 ENACTS:

36 **20A-2-101.3**, Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **20A-1-609** is amended to read:

40 **20A-1-609. Omnibus penalties.**

41 (1) Unless another penalty is specifically provided, any person who violates any
42 provision of this title is guilty of a class B misdemeanor.

43 (2) ~~[A]~~ Except as provided by Section 20A-2-101.3 or 20A-2-101.5, a person
44 convicted of any offense under this title may not:

45 (a) file a declaration of candidacy for any office or appear on the ballot as a candidate
46 for any office during the election cycle in which the violation occurred;

47 (b) take or hold the office to which he was elected; and

48 (c) receive the emoluments of the office to which he was elected.

49 (3) (a) Any person convicted of any offense under this title forfeits the right to vote at
50 any election unless ~~[restored to civil rights]~~ the right to vote is restored as provided ~~[by law]~~ in
51 Section 20A-2-101.3 or 20A-2-101.5.

52 (b) Any person may challenge ~~[that person's]~~ the right to vote of a person described in
53 Subsection (3)(a) by following the procedures and requirements of Section 20A-3-202.

54 Section 2. Section **20A-2-101** is amended to read:

55 **20A-2-101. Eligibility for registration.**

56 (1) Except as provided in Subsection (2), any person may apply to register to vote in an
57 election who:

58 (a) is a citizen of the United States;

59 (b) has been a resident of Utah for at least the 30 days immediately before the election;
 60 (c) will be at least 18 years old on the day of the election; and
 61 (d) currently resides within the voting district or precinct in which the person applies to
 62 register to vote.

63 (2) (a) (i) A person who is involuntarily confined or incarcerated in a jail, prison, or
 64 other facility within a voting precinct is not a resident of that voting precinct and may not
 65 register to vote in that voting precinct unless the person was a resident of that voting precinct
 66 before the confinement or incarceration.

67 (ii) A person who is involuntarily confined or incarcerated in a jail or prison is resident
 68 of the voting precinct in which the person resided before the confinement or incarceration.

69 (b) A person who has been convicted of a felony ~~[whose]~~ or a misdemeanor for an
 70 offense under this title may not register to vote or remain registered to vote unless the person's
 71 right to vote has [not] been restored as provided [by law may not register to vote] in Section
 72 20A-2-101.3 or 20A-2-101.5.

73 (c) A person whose right to vote has been restored, as provided in Section 20A-2-101.3
 74 or 20A-2-101.5, is eligible to register to vote.

75 (3) A person who is eligible to vote and who resides within the geographic boundaries
 76 of the entity in which the election is held may register to vote in a:

- 77 (a) regular general election;
- 78 (b) regular primary election;
- 79 (c) municipal general election;
- 80 (d) municipal primary election;
- 81 (e) statewide special election;
- 82 (f) local special election;
- 83 (g) local district election; and
- 84 (h) bond election.

85 Section 3. Section **20A-2-101.3** is enacted to read:

86 **20A-2-101.3. Convicted misdemeanants -- Restoration of right to vote or hold**
 87 **office.**

88 (1) As used in this section, "misdemeanant" means a person convicted of a
 89 misdemeanor for an offense under this title.

90 (2) A misdemeanant's right to register to vote and to vote in an election is restored
91 when the misdemeanant:

92 (a) is sentenced to probation;

93 (b) is granted parole; or

94 (c) has successfully completed the term of incarceration to which the misdemeanant
95 was sentenced.

96 (3) A misdemeanant's right to hold elective office is restored when:

97 (a) the misdemeanor for an offense under this title is expunged as provided in Title 77,
98 Chapter 40, Utah Expungement Act; or

99 (b) (i) five years have passed since the date of the misdemeanant's most recent
100 misdemeanor conviction of an offense under this title;

101 (ii) the misdemeanant has paid all court-ordered restitution and fines; and

102 (iii) for each misdemeanor conviction that has not been expunged, the misdemeanant
103 has:

104 (A) completed probation in relation to the misdemeanor;

105 (B) been granted parole in relation to the misdemeanor; or

106 (C) successfully completed the term of incarceration associated with the misdemeanor.

107 Section 4. Section **20A-3-202** is amended to read:

108 **20A-3-202. Challenges to a voter's eligibility -- Basis for challenge -- Procedures.**

109 (1) A person's right to vote may be challenged because:

110 (a) the voter is not the person whose name appears in the official register or under
111 which name the right to vote is claimed;

112 (b) the voter is not a resident of Utah;

113 (c) the voter is not a citizen of the United States;

114 (d) the voter has not or will not have resided in Utah for 30 days immediately before
115 the date of the election;

116 (e) the voter's principal place of residence is not in the voting precinct claimed;

117 (f) the voter's principal place of residence is not in the geographic boundaries of the
118 election area;

119 (g) the voter has already voted in the election;

120 (h) the voter is not at least 18 years of age;

121 (i) the voter has been convicted of a misdemeanor for an offense under this title and the
122 voter's right to vote in an election has not been restored under Section 20A-2-101.3;

123 ~~[(†)]~~ (j) the voter is a convicted felon and the voter's right to vote in an election has not
124 been restored under Section 20A-2-101.5; or

125 ~~[(‡)]~~ (k) in a regular primary election or in the Western States Presidential Primary, the
126 voter does not meet the political party affiliation requirements for the ballot the voter seeks to
127 vote.

128 (2) A person who challenges another person's right to vote at an election shall do so
129 according to the procedures and requirements of:

130 (a) Section 20A-3-202.3, for challenges issued in writing more than 21 days before the
131 day on which early voting commences; or

132 (b) Section 20A-3-202.5, for challenges issued in person at the time of voting.

133 Section 5. Section **20A-9-203** is amended to read:

134 **20A-9-203. Declarations of candidacy -- Municipal general elections.**

135 (1) (a) (i) A person may become a candidate for any municipal office if:

136 (A) the person is a registered voter; and

137 (B) (I) the person has resided within the municipality in which that person seeks to
138 hold elective office for the 12 consecutive months immediately before the date of the election;
139 or

140 (II) if the territory in which the person resides was annexed into the municipality, the
141 person has resided within the annexed territory or the municipality the 12 consecutive months
142 immediately before the date of the election.

143 (ii) For purposes of determining whether a person meets the residency requirement of
144 Subsection (1)(a)(i)(B)(I) in a municipality that was incorporated less than 12 months before
145 the election, the municipality shall be considered to have been incorporated 12 months before
146 the date of the election.

147 (b) In addition to the requirements of Subsection (1)(a), each candidate for a municipal
148 council position shall, if elected from a district, be a resident of the council district from which
149 elected.

150 (c) In accordance with Utah Constitution Article IV, Section 6, any mentally
151 incompetent person, any person convicted of a felony, or any person convicted of treason or a

152 crime against the elective franchise may not hold office in this state until the right to hold
153 elective office is restored under Section 20A-2-101.3 or 20A-2-101.5.

154 (2) (a) Except as provided in Subsection (2)(b) or (2)(c), each person seeking to
155 become a candidate for a municipal office shall:

156 (i) file a declaration of candidacy, in person with the city recorder or town clerk, during
157 office hours and not later than the close of normal office hours, between July 1 and July 15 of
158 any odd numbered year; and

159 (ii) pay the filing fee, if one is required by municipal ordinance.

160 (b) (i) As used in this Subsection (2)(b), "registered voters" means the number of
161 persons registered to vote in the municipality on the January 1 of the municipal election year.

162 (ii) A third, fourth, or fifth class city that used the convention system to nominate
163 candidates in the last municipal election as authorized by Subsection 20A-9-404(3) or used the
164 process contained in this Subsection (2)(b) in the last municipal election or a town that used the
165 convention system to nominate candidates in the last municipal election as authorized by
166 Subsection 20A-9-404(3) or used the process contained in this Subsection (2)(b) in the last
167 municipal election may, by ordinance, require, in lieu of the convention system, that candidates
168 for municipal office file a nominating petition signed by a percentage of registered voters at the
169 same time that the candidate files a declaration of candidacy.

170 (iii) The ordinance shall specify the number of signatures that the candidate must
171 obtain on the nominating petition in order to become a candidate for municipal office under
172 this Subsection (2), but that number may not exceed 5% of registered voters.

173 (c) Any resident of a municipality may nominate a candidate for a municipal office by:

174 (i) filing a nomination petition with the city recorder or town clerk during office hours,
175 but not later than the close of normal office hours, between July 1 and July 15 of any
176 odd-numbered year; and

177 (ii) paying the filing fee, if one is required by municipal ordinance.

178 (3) (a) Before the filing officer may accept any declaration of candidacy or nomination
179 petition, the filing officer shall:

180 (i) read to the prospective candidate or person filing the petition the constitutional and
181 statutory qualification requirements for the office that the candidate is seeking; and

182 (ii) require the candidate or person filing the petition to state whether or not the

183 candidate meets those requirements.

184 (b) If the prospective candidate does not meet the qualification requirements for the
185 office, the filing officer may not accept the declaration of candidacy or nomination petition.

186 (c) If it appears that the prospective candidate meets the requirements of candidacy, the
187 filing officer shall:

188 (i) inform the candidate that the candidate's name will appear on the ballot as it is
189 written on the declaration of candidacy;

190 (ii) provide the candidate with a copy of the current campaign financial disclosure laws
191 for the office the candidate is seeking and inform the candidate that failure to comply will
192 result in disqualification as a candidate and removal of the candidate's name from the ballot;

193 (iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide
194 Electronic Voter Information Website Program and inform the candidate of the submission
195 deadline under Subsection 20A-7-801(4)(a);

196 (iv) provide the candidate with a copy of the pledge of fair campaign practices
197 described under Section 20A-9-206 and inform the candidate that:

198 (A) signing the pledge is voluntary; and

199 (B) signed pledges shall be filed with the filing officer; and

200 (v) accept the declaration of candidacy or nomination petition.

201 (d) If the candidate elects to sign the pledge of fair campaign practices, the filing
202 officer shall:

203 (i) accept the candidate's pledge; and

204 (ii) if the candidate has filed for a partisan office, provide a certified copy of the
205 candidate's pledge to the chair of the county or state political party of which the candidate is a
206 member.

207 (4) The declaration of candidacy shall substantially comply with the following form:

208 "I, (print name) ____, being first sworn, say that I reside at ____ Street, City of ____,
209 County of ____, state of Utah, Zip Code ____, Telephone Number (if any) ____; that I am a
210 registered voter; and that I am a candidate for the office of ____ (stating the term). I will meet
211 the legal qualifications required of candidates for this office. I will file all campaign financial
212 disclosure reports as required by law and I understand that failure to do so will result in my
213 disqualification as a candidate for this office and removal of my name from the ballot. I

214 request that my name be printed upon the applicable official ballots. (Signed)

215 _____

216 Subscribed and sworn to (or affirmed) before me by ____ on this

217 _____(month\day\year).

218 (Signed) _____ (Clerk or other officer qualified to administer oath)"

219 (5) (a) In all first and second class cities, and in third, fourth, or fifth class cities that

220 have not passed the ordinance authorized by Subsection (2)(b) and in towns that have not

221 passed the ordinance authorized by Subsection (2)(b), any registered voter may be nominated

222 for municipal office by submitting a petition signed by:

223 (i) 25 residents of the municipality who are at least 18 years old; or

224 (ii) 20% of the residents of the municipality who are at least 18 years old.

225 (b) (i) The petition shall substantially conform to the following form:

226 "NOMINATION PETITION

227 The undersigned residents of (name of municipality) being 18 years old or older

228 nominate (name of nominee) to the office of ____ for the (two or four-year term, whichever is

229 applicable)."

230 (ii) The remainder of the petition shall contain lines and columns for the signatures of

231 persons signing the petition and their addresses and telephone numbers.

232 (6) (a) In third, fourth, and fifth class cities that have passed the ordinance authorized

233 by Subsection (2)(b), and in towns that have passed the ordinance authorized by Subsection

234 (2)(b), any registered voter may be nominated for municipal office by submitting a petition

235 signed by the same percentage of registered voters in the municipality as required by the

236 ordinance passed under authority of Subsection (2)(b).

237 (b) (i) The petition shall substantially conform to the following form:

238 "NOMINATION PETITION

239 The undersigned residents of (name of municipality) being 18 years old or older

240 nominate (name of nominee) to the office of (name of office) for the (two or four-year term,

241 whichever is applicable)."

242 (ii) The remainder of the petition shall contain lines and columns for the signatures of

243 persons signing the petition and their addresses and telephone numbers.

244 (7) If the declaration of candidacy or nomination petition fails to state whether the

245 nomination is for the two or four-year term, the clerk shall consider the nomination to be for
246 the four-year term.

247 (8) (a) The clerk shall verify with the county clerk that all candidates are registered
248 voters.

249 (b) Any candidate who is not registered to vote is disqualified and the clerk may not
250 print the candidate's name on the ballot.

251 (9) Immediately after expiration of the period for filing a declaration of candidacy, the
252 clerk shall:

253 (a) cause the names of the candidates as they will appear on the ballot to be published:

254 (i) in at least two successive publications of a newspaper with general circulation in the
255 municipality; and

256 (ii) as required in Section 45-1-101; and

257 (b) notify the lieutenant governor of the names of the candidates as they will appear on
258 the ballot.

259 (10) A declaration of candidacy or nomination petition filed under this section may not
260 be amended after the expiration of the period for filing a declaration of candidacy.

261 (11) (a) A declaration of candidacy or nomination petition filed under this section is
262 valid unless a written objection is filed with the clerk within five days after the last day for
263 filing.

264 (b) If an objection is made, the clerk shall:

265 (i) mail or personally deliver notice of the objection to the affected candidate
266 immediately; and

267 (ii) decide any objection within 48 hours after it is filed.

268 (c) If the clerk sustains the objection, the candidate may correct the problem by
269 amending the declaration or petition within three days after the objection is sustained or by
270 filing a new declaration within three days after the objection is sustained.

271 (d) (i) The clerk's decision upon objections to form is final.

272 (ii) The clerk's decision upon substantive matters is reviewable by a district court if
273 prompt application is made to the district court.

274 (iii) The decision of the district court is final unless the Supreme Court, in the exercise
275 of its discretion, agrees to review the lower court decision.

276 (12) Any person who filed a declaration of candidacy and was nominated, and any
277 person who was nominated by a nomination petition, may, any time up to 23 days before the
278 election, withdraw the nomination by filing a written affidavit with the clerk.

Legislative Review Note
as of 11-22-10 7:32 AM

Office of Legislative Research and General Counsel