

CONGRESSIONAL DISTRICT RESIDENCY

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions in Title 20A, Election Code, regarding the residency of a candidate or person elected for United States House of Representatives.

Highlighted Provisions:

This bill:

▸ requires a candidate for the United States House of Representatives to be a resident for at least six months of the district for which the candidate files a declaration of candidacy; and

▸ requires a person elected to the United States House of Representatives to be a resident of the district from which the person was elected.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-9-201, as last amended by Laws of Utah 2011, Third Special Session, Chapter 2

20A-13-101.5, as enacted by Laws of Utah 2011, Third Special Session, Chapter 8

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



28 Section 1. Section **20A-9-201** is amended to read:

29 **20A-9-201. Declarations of candidacy -- Candidacy for more than one office or of**
30 **more than one political party prohibited with exceptions -- General filing and form**
31 **requirements -- Affidavit of impecuniosity.**

32 (1) Before filing a declaration of candidacy for election to any office, a person shall:

33 (a) be a United States citizen; and

34 (b) meet the legal requirements of that office.

35 (2) (a) Except as provided in Subsection (2)(b), a person may not:

36 (i) file a declaration of candidacy for, or be a candidate for, more than one office in
37 Utah during any election year; or

38 (ii) appear on the ballot as the candidate of more than one political party.

39 (b) (i) A person may file a declaration of candidacy for, or be a candidate for, President
40 or Vice President of the United States and another office, if the person resigns the person's
41 candidacy for the other office after the person is officially nominated for President or Vice
42 President of the United States.

43 (ii) A person may file a declaration of candidacy for, or be a candidate for, more than
44 one justice court judge office.

45 (3) (a) (i) Except for presidential candidates, before the filing officer may accept any
46 declaration of candidacy, the filing officer shall:

47 (A) read to the prospective candidate the constitutional and statutory qualification
48 requirements for the office that the candidate is seeking; and

49 (B) require the candidate to state whether or not the candidate meets those
50 requirements.

51 (ii) Before accepting a declaration of candidacy for the office of county attorney, the
52 county clerk shall ensure that the person filing that declaration of candidacy is:

53 (A) a United States citizen;

54 (B) an attorney licensed to practice law in Utah who is an active member in good
55 standing of the Utah State Bar;

56 (C) a registered voter in the county in which the person is seeking office; and

57 (D) a current resident of the county in which the person is seeking office and either has
58 been a resident of that county for at least one year or was appointed and is currently serving as

59 county attorney and became a resident of the county within 30 days after appointment to the
60 office.

61 (iii) Before accepting a declaration of candidacy for the office of district attorney, the
62 county clerk shall ensure that, as of the date of the election, the person filing that declaration of
63 candidacy is:

64 (A) a United States citizen;

65 (B) an attorney licensed to practice law in Utah who is an active member in good
66 standing of the Utah State Bar;

67 (C) a registered voter in the prosecution district in which the person is seeking office;
68 and

69 (D) a current resident of the prosecution district in which the person is seeking office
70 and either will have been a resident of that prosecution district for at least one year as of the
71 date of the election or was appointed and is currently serving as district attorney and became a
72 resident of the prosecution district within 30 days after receiving appointment to the office.

73 (iv) Before accepting a declaration of candidacy for the office of county sheriff, the
74 county clerk shall ensure that the person filing the declaration of candidacy:

75 (A) as of the date of filing:

76 (I) is a United States citizen;

77 (II) is a registered voter in the county in which the person seeks office;

78 (III) (Aa) has successfully met the standards and training requirements established for
79 law enforcement officers under Title 53, Chapter 6, Part 2, Peace Officer Training and
80 Certification Act; or

81 (Bb) has met the waiver requirements in Section 53-6-206; and

82 (IV) is qualified to be certified as a law enforcement officer, as defined in Section
83 53-13-103; and

84 (B) as of the date of the election, shall have been a resident of the county in which the
85 person seeks office for at least one year.

86 (v) Before accepting a declaration of candidacy for the office of governor, lieutenant
87 governor, state auditor, state treasurer, attorney general, state legislator, or State Board of
88 Education member, the filing officer shall ensure:

89 (A) that the person filing the declaration of candidacy also files the financial disclosure

90 required by Section 20A-11-1603; and

91 (B) if the filing officer is not the lieutenant governor, that the financial disclosure is
92 provided to the lieutenant governor according to the procedures and requirements of Section
93 20A-11-1603.

94 (vi) Before accepting a declaration of candidacy for the office of United States House
95 of Representatives, the county clerk shall ensure that the person filing the declaration of
96 candidacy:

97 (A) is a resident of the district for which the person is filing; and

98 (B) has been a resident of the district for which the person is filing for at least six
99 months before the day on which the person files the declaration of candidacy.

100 (b) If the prospective candidate states that the qualification requirements for the office
101 are not met, the filing officer may not accept the prospective candidate's declaration of
102 candidacy.

103 (c) If the candidate meets the requirements of Subsection (3)(a) and states that the
104 requirements of candidacy are met, the filing officer shall:

105 (i) inform the candidate that:

106 (A) the candidate's name will appear on the ballot as it is written on the declaration of
107 candidacy;

108 (B) the candidate may be required to comply with state or local campaign finance
109 disclosure laws; and

110 (C) the candidate is required to file a financial statement before the candidate's political
111 convention under:

112 (I) Section 20A-11-204 for a candidate for constitutional office;

113 (II) Section 20A-11-303 for a candidate for the Legislature; or

114 (III) local campaign finance disclosure laws, if applicable;

115 (ii) except for a presidential candidate, provide the candidate with a copy of the current
116 campaign financial disclosure laws for the office the candidate is seeking and inform the
117 candidate that failure to comply will result in disqualification as a candidate and removal of the
118 candidate's name from the ballot;

119 (iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide
120 Electronic Voter Information Website Program and inform the candidate of the submission

121 deadline under Subsection 20A-7-801(4)(a);

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

124 (A) signing the pledge is voluntary; and

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

126 (v) accept the candidate's declaration of candidacy; and

127 (vi) if the candidate has filed for a partisan office, provide a certified copy of the
128 declaration of candidacy to the chair of the county or state political party of which the
129 candidate is a member.

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

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

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

136 (4) Except for presidential candidates, the form of the declaration of candidacy shall be
137 substantially as follows:

138 "State of Utah, County of ____

139 I, _____, declare my intention of becoming a candidate for the office
140 of ____ as a candidate for the ____ party. I do solemnly swear that: I will meet the
141 qualifications to hold the office, both legally and constitutionally, if selected; I reside at
142 _____ in the City or Town of _____, Utah, Zip Code _____ Phone No. _____; I
143 will not knowingly violate any law governing campaigns and elections; I will file all
144 campaign financial disclosure reports as required by law; and I understand that failure
145 to do so will result in my disqualification as a candidate for this office and removal of
146 my name from the ballot. The mailing address that I designate for receiving official
147 election notices is _____.

148 _____

149 Subscribed and sworn before me this _____(month\day\year).

150 Notary Public (or other officer qualified to administer oath.)"

151 (5) (a) Except for presidential candidates, the fee for filing a declaration of candidacy

152 is:

153 (i) \$25 for candidates for the local school district board; and
154 (ii) 1/8 of 1% of the total salary for the full term of office legally paid to the person
155 holding the office, but not less than \$5, for all other federal, state, and county offices.

156 (b) Except for presidential candidates, the filing officer shall refund the filing fee to
157 any candidate:

158 (i) who is disqualified; or

159 (ii) who the filing officer determines has filed improperly.

160 (c) (i) The county clerk shall immediately pay to the county treasurer all fees received
161 from candidates.

162 (ii) The lieutenant governor shall:

163 (A) apportion to and pay to the county treasurers of the various counties all fees
164 received for filing of nomination certificates or acceptances; and

165 (B) ensure that each county receives that proportion of the total amount paid to the
166 lieutenant governor from the congressional district that the total vote of that county for all
167 candidates for representative in Congress bears to the total vote of all counties within the
168 congressional district for all candidates for representative in Congress.

169 (d) (i) A person who is unable to pay the filing fee may file a declaration of candidacy
170 without payment of the filing fee upon a prima facie showing of impecuniosity as evidenced by
171 an affidavit of impecuniosity filed with the filing officer and, if requested by the filing officer,
172 a financial statement filed at the time the affidavit is submitted.

173 (ii) A person who is able to pay the filing fee may not claim impecuniosity.

174 (iii) (A) False statements made on an affidavit of impecuniosity or a financial
175 statement filed under this section shall be subject to the criminal penalties provided under
176 Sections 76-8-503 and 76-8-504 and any other applicable criminal provision.

177 (B) Conviction of a criminal offense under Subsection (5)(d)(iii)(A) shall be
178 considered an offense under this title for the purposes of assessing the penalties provided in
179 Subsection 20A-1-609(2).

180 (iv) The filing officer shall ensure that the affidavit of impecuniosity is printed in
181 substantially the following form:

182 "Affidavit of Impecuniosity

183 Individual Name
184 _____ Address _____

185 Phone Number _____

186 I, _____ (name), do solemnly [swear] [affirm], under penalty of law
187 for false statements, that, owing to my poverty, I am unable to pay the filing fee required by
188 law.

189 Date _____ Signature _____

190 Affiant

191 Subscribed and sworn to before me on _____ (month\day\year)

192 _____
193 (signature)

194 Name and Title of Officer Authorized to Administer Oath _____"

195 (v) The filing officer shall provide to a person who requests an affidavit of
196 impecuniosity a statement printed in substantially the following form, which may be included
197 on the affidavit of impecuniosity:

198 "Filing a false statement is a criminal offense. In accordance with Section 20A-1-609, a
199 candidate who is found guilty of filing a false statement, in addition to being subject to criminal
200 penalties, will be removed from the ballot."

201 (vi) The filing officer may request that a person who makes a claim of impecuniosity
202 under this Subsection (5)(d) file a financial statement on a form prepared by the election
203 official.

204 (6) If there is no legislative appropriation for the Western States Presidential Primary
205 election, as provided in Part 8, Western States Presidential Primary, a candidate for President
206 of the United States who is affiliated with a registered political party and chooses to participate
207 in the regular primary election shall:

208 (a) file a declaration of candidacy, in person or via a designated agent, with the
209 lieutenant governor:

210 (i) on a form developed and provided by the lieutenant governor; and

211 (ii) on or after the second Friday in March and before 5 p.m. on the third Thursday in
212 March before the next regular primary election;

213 (b) identify the registered political party whose nomination the candidate is seeking;

214 (c) provide a letter from the registered political party certifying that the candidate may
215 participate as a candidate for that party in that party's presidential primary election; and

216 (d) pay the filing fee of \$500.

217 (7) Any person who fails to file a declaration of candidacy or certificate of nomination
218 within the time provided in this chapter is ineligible for nomination to office.

219 (8) A declaration of candidacy filed under this section may not be amended or
220 modified after the final date established for filing a declaration of candidacy.

221 Section 2. Section **20A-13-101.5** is amended to read:

222 **20A-13-101.5. Representatives to the United States Congress -- Four**
223 **representative districts -- When elected -- District boundaries.**

224 (1) (a) (i) The state of Utah is divided into four districts for the election of
225 representatives to the Congress of the United States, with one member to be elected from each
226 Congressional district.

227 (ii) A person elected to the United States House of Representatives from Utah shall be
228 a resident of the district from which the person is elected.

229 (b) At the general election to be held in 2012, and biennially thereafter, one
230 representative from each Congressional district shall be elected to serve in the Congress of the
231 United States.

232 (2) The Legislature adopts the official census population figures and maps of the
233 Bureau of the Census of the United States Department of Commerce developed in connection
234 with the taking of the 2010 national decennial census as the official data for establishing
235 Congressional district boundaries.

236 (3) (a) The Legislature enacts the numbers and boundaries of the Congressional
237 districts designated in the Congressional block assignment file that is the electronic component
238 of the bill that enacts this section.

239 (b) That Congressional block assignment file, and Congressional boundaries generated
240 from that Congressional block assignment file, may be accessed via the Utah Legislature's
241 website.

As required by legislative rules and practice, the Office of Legislative Research and General Counsel provides the following legislative review note to assist the Legislature in making its own determination as to the constitutionality of the bill. The note is based on an analysis of relevant federal constitutional law as applied to the bill. The note is not written for the purpose of influencing whether the bill should become law, but is written to provide information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

This bill requires a candidate for the United States House of Representatives to be a resident of the district for which the candidate filed a declaration of candidacy. The United States Constitution establishes the qualifications for a representative in the United States House of Representatives: "No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." U. S. Const. art. I, § 2, cl. 2.

The United States Supreme Court has held that "the power to add qualifications is not within the 'original powers' of the States, and thus is not reserved to the States by the Tenth Amendment." U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 800 (1995) (striking down a term limit established by a state constitution). The Constitution, having fixed the qualifications of members, precludes the States from exercising any power to add additional qualifications. *Id.* at 806. Lower courts have similarly applied this interpretation of the United States Constitution in cases challenging a residency qualification. See Campbell v. Davidson, 233 F.3d 1229, 1235 (10th Cir. 2000) (striking down residency requirements for a candidate finding that the requirement impermissibly imposes additional qualifications on a candidate); State ex rel. Chavez v. Evans, 446 P.2d 445, 581 (N.M. 1968) (invalidating a state statute requiring candidates for U.S. House to be residents of the district to which they sought election because

the statute unconstitutionally adds additional qualifications).

There is a high probability that the residency requirement of this bill will be adjudged unconstitutional on the basis of the above legal principles.

Office of Legislative Research and General Counsel