

VOTER CHALLENGE REVISIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: Craig A. Frank

LONG TITLE

General Description:

This bill modifies provisions in the Election Code relating to the procedures for challenging a person's eligibility to vote.

Highlighted Provisions:

This bill:

- ▶ provides the grounds upon which a person's right to vote in an election may be challenged during or before an election;
 - ▶ requires that written challenges to a person's right to vote in an election be filed in advance of the election and provides procedures for filing and resolving the challenges before the date of the election;
 - ▶ requires the election officer to notify each person whose right to vote in the election has been challenged in writing and permits the person who has been challenged to provide information in response to the challenge;
 - ▶ requires that written challenges be submitted under oath and be subject to criminal penalties for false statements;
 - ▶ provides that an election officer's determination regarding a challenge to a person's right to vote is subject to judicial appeal;
 - ▶ requires all documents filed in relation to a written challenge to be public records;
 - ▶ provides requirements for challenging a person's right to vote at the polling place;
- and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **20A-3-105.5**, as last amended by Laws of Utah 2007, Chapter 75

36 ENACTS:

37 **20A-3-201.5**, Utah Code Annotated 1953

38 **20A-3-202.3**, Utah Code Annotated 1953

39 **20A-3-202.5**, Utah Code Annotated 1953

40 REPEALS AND REENACTS:

41 **20A-3-202**, as last amended by Laws of Utah 2007, Chapter 75



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

44 Section 1. Section **20A-3-105.5** is amended to read:

45 **20A-3-105.5. Manner of voting -- Provisional ballot.**

46 (1) The poll workers shall follow the procedures and requirements of this section

47 when:

48 (a) the person's right to vote is challenged as provided in Section 20A-3-202 or

49 20A-3-202.5;

50 (b) the person's name is not found on the official register; or

51 (c) the poll worker is not satisfied that the voter has provided valid voter

52 identification.

53 (2) When faced with one of the circumstances outlined in Subsection (1)(a) or ~~[(1)]~~(b),

54 the poll worker shall:

55 (a) request that the person provide valid voter identification; and

56 (b) review the identification provided by the person.

57 (3) If the poll worker is satisfied that the person has provided valid voter identification

58 that establishes the person's identity and residence in the voting precinct:

59 (a) the poll worker in charge of the official register shall:

60 (i) record in the official register the type of identification that established the person's
61 identity and place of residence;

62 (ii) write the provisional ballot envelope number opposite the name of the voter in the
63 official register; and

64 (iii) direct the voter to sign his name in the election column in the official register;

65 (b) another poll worker shall list the ballot number and voter's name in the pollbook;

66 and

67 (c) the poll worker having charge of the ballots shall:

68 (i) endorse his initials on the stub;

69 (ii) check the name of the voter on the pollbook list with the number of the stub;

70 (iii) give the voter a ballot and a provisional ballot envelope; and

71 (iv) allow the voter to enter the voting booth.

72 (4) If the poll worker is not satisfied that the voter has provided valid voter

73 identification that establishes the person's identity and residence in the voting precinct:

74 (a) the poll worker in charge of the official register shall:

75 (i) record in the official register that the voter did not provide valid voter
76 identification;

77 (ii) record in the official register the type of identification that was provided by the
78 voter, if any;

79 (iii) write the provisional ballot envelope number opposite the name of the voter in the
80 official register; and

81 (iv) direct the voter to sign his name in the election column in the official register;

82 (b) another poll worker shall list the ballot number and voter's name in the pollbook;

83 and

84 (c) the poll worker having charge of the ballots shall:

85 (i) endorse his initials on the stub;

- 86 (ii) check the name of the voter on the pollbook list with the number of the stub;
 - 87 (iii) give the voter a ballot and a provisional ballot envelope; and
 - 88 (iv) allow the voter to enter the voting booth.
- 89 (5) Whenever the election officer is required to furnish more than one kind of official
90 ballot to a voting precinct, the poll workers of that voting precinct shall give the registered
91 voter the kind of ballot that the voter is qualified to vote.

92 Section 2. Section **20A-3-201.5** is enacted to read:

93 **20A-3-201.5. Definitions.**

94 As used in this part:

- 95 (1) "Challenged voter" means a person whose right to vote is challenged as provided
96 in this part.
- 97 (2) "Filer" means a person who files a written statement challenging another person's
98 right to vote as provided in Section 20A-3-202.3.

99 Section 3. Section **20A-3-202** is repealed and reenacted to read:

100 **20A-3-202. Challenges to a voter's eligibility -- Basis for challenge -- Procedures.**

- 101 (1) A person's right to vote may be challenged because:
 - 102 (a) the voter is not the person whose name appears in the official register or under
103 which name the right to vote is claimed;
 - 104 (b) the voter is not a resident of Utah;
 - 105 (c) the voter is not a citizen of the United States;
 - 106 (d) the voter has not or will not have resided in Utah for 30 days immediately before
107 the date of the election;
 - 108 (e) the voter's principal place of residence is not in the voting precinct claimed;
 - 109 (f) the voter's principal place of residence is not in the geographic boundaries of the
110 election area;
 - 111 (g) the voter has already voted in the election;
 - 112 (h) the voter is not at least 18 years of age;
 - 113 (i) the voter is a convicted felon and the voter's right to vote in an election has not

114 been restored under Section 20A-2-101.5; or

115 (j) in a regular primary election or in the Western States Presidential Primary, the voter
116 does not meet the political party affiliation requirements for the ballot the voter seeks to vote.

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

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

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

122 Section 4. Section **20A-3-202.3** is enacted to read:

123 **20A-3-202.3. Pre-election challenges to a voter's eligibility in writing --**

124 **Procedure -- Form of challenge.**

125 (1) (a) A person may challenge the right to vote of a person whose name appears on
126 the official register by filing with the election officer, during regular business hours and not
127 later than 21 days before the date that early voting commences, a written statement that:

128 (i) lists the name and address of the person filing the challenge;

129 (ii) for each voter who is challenged:

130 (A) identifies the name of the challenged voter;

131 (B) lists the last known address or telephone number of the challenged voter;

132 (C) provides the basis for the challenge, as provided under Section 20A-3-202; and

133 (D) provides facts and circumstances supporting the basis provided; and

134 (iii) includes a signed affidavit, which is subject to penalties of perjury, swearing that:

135 (A) the filer exercised due diligence to personally verify the facts and circumstances
136 establishing the basis for the challenge; and

137 (B) according to the filer's personal knowledge and belief, the basis for the challenge
138 under Section 20A-3-202 for each challenged voter is valid.

139 (b) The challenge may not be based on unsupported allegations or allegations by an
140 anonymous person.

141 (c) The election officer may provide a form that meets the requirements of this section

142 for challenges filed under this section.

143 (2) (a) If the challenge is not in the proper form or if the basis for the challenge does
144 not meet the requirements of this part, the election officer may dismiss the challenge and
145 notify the filer in writing of the reasons for the dismissal.

146 (b) A challenge is not in the proper form if the challenge form is incomplete.

147 (3) Upon receipt of a challenge that meets the requirements for filing under this
148 section, the election officer shall, at least 14 days before the day on which early voting
149 commences, attempt to notify each challenged voter:

150 (a) that a challenge has been filed against the challenged voter and the challenged
151 voter may be required to cast a provisional ballot at the time of voting;

152 (b) of the basis for the challenge, which may include providing a copy of the written
153 statement to the challenged voter; and

154 (c) that the challenged voter may submit information, a sworn statement, or other
155 evidence supporting the challenged voter's right to vote in the election to the election officer
156 no later than seven days before the day on which early voting commences.

157 (4) (a) Before the day on which early voting commences, the election officer shall
158 determine whether each challenged voter is eligible to vote.

159 (b) (i) The filer of the challenge has the burden to prove, by clear and convincing
160 evidence, that the basis for challenging the voter's right to vote is valid.

161 (ii) The election officer shall resolve the challenge based on the available facts and
162 information submitted, which may include voter registration records and other documents or
163 information available to the election officer.

164 (5) A person who files a challenge under the requirements of this section is subject to
165 criminal penalties for false statements as provided under Sections 76-8-503 and 76-8-504 and
166 any other applicable criminal provision.

167 (6) A decision of the election officer regarding a person's eligibility to vote may be
168 appealed to the district court having jurisdiction over the location where the challenge was
169 filed.

170 (7) A challenged voter may register to vote or change the location of the voter's voter
171 registration if otherwise legally entitled to do so.

172 (8) All documents pertaining to a voter challenge are public records.

173 Section 5. Section **20A-3-202.5** is enacted to read:

174 **20A-3-202.5. Challenges to a voter's eligibility at time of voting -- Procedure.**

175 (1) (a) A poll worker or a person who lives in the voting precinct may challenge a
176 voter's right to vote in that voting precinct or in that election if:

177 (i) the person making the challenge and the challenged voter are both present at the
178 polling place at the time the challenge is made; and

179 (ii) the challenge is made when the challenged voter applies for a ballot.

180 (b) A person may make a challenge by orally stating the challenged voter's name and
181 the basis for the challenge, as provided under Section 20A-3-202.

182 (2) The poll worker shall record a challenge in the official register and on the
183 challenge sheets in the pollbook, including:

184 (a) the name of the challenged voter;

185 (b) the name of the person making the challenge; and

186 (c) the basis asserted for the challenge.

187 (3) If a voter's right to vote is challenged under this section, the poll worker shall
188 follow the procedures and requirements of Section 20A-3-105.5.