

**ELECTION OFFENSE AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Margaret Dayton**

House Sponsor: Brian S. King

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**LONG TITLE**

**Committee Note:**

The Government Operations Interim Committee recommended this bill.

**General Description:**

This bill recodifies and amends portions of Title 20A, Chapter 1, Part 7, Prosecuting and Adjudicating Election Offenses.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ recodifies and amends the portion of Title 20A, Chapter 1, Part 7, Prosecuting and Adjudicating Election Offenses, relating to civil proceedings and investigations of election offenses;
- ▶ establishes procedures and requirements for a registered voter to file a verified petition alleging a violation of the Election Code;
- ▶ provides that the lieutenant governor (or another person in the event of a conflict) shall review the petition to determine whether a special investigation is necessary;
- ▶ provides for the appointment of special counsel if a special investigation is necessary;
- ▶ describes the duties of special counsel;
- ▶ provides for the filing of a civil action by special counsel;
- ▶ describes the remedies that a court shall order, or other action that a court shall take,



28 if a court finds that a significant violation of the Election Code occurred;

- 29       ▶ provides for costs and attorney fees;
- 30       ▶ provides for compensation of special counsel; and
- 31       ▶ makes technical changes.

32 **Money Appropriated in this Bill:**

33       None

34 **Other Special Clauses:**

35       None

36 **Utah Code Sections Affected:**

37 ENACTS:

- 38       **20A-1-801**, Utah Code Annotated 1953
- 39       **20A-1-802**, Utah Code Annotated 1953
- 40       **20A-1-803**, Utah Code Annotated 1953
- 41       **20A-1-805**, Utah Code Annotated 1953
- 42       **20A-1-806**, Utah Code Annotated 1953

43 RENUMBERS AND AMENDS:

- 44       **20A-1-804**, (Renumbered from 20A-1-704, as enacted by Laws of Utah 1993, Chapter
- 45       1)
- 46       **20A-1-807**, (Renumbered from 20A-1-706, as last amended by Laws of Utah 2013,
- 47       Chapter 174)
- 48       **20A-1-808**, (Renumbered from 20A-1-707, as enacted by Laws of Utah 2013, Chapter
- 49       174)

50 REPEALS:

- 51       **20A-1-703**, as last amended by Laws of Utah 2013, Chapter 174 and last amended by
- 52       Coordination Clause, Laws of Utah 2013, Chapter 174



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

55       Section 1. Section **20A-1-801** is enacted to read:

56                               **Part 8. Civil Action for Election Code Violation**

57       **20A-1-801. Title.**

58       This part is known as "Civil Action for Election Code Violation."

59 Section 2. Section **20A-1-802** is enacted to read:

60 **20A-1-802. Definitions.**

61 As used in this part:

62 (1) "Bad faith" means that a person files a petition described in Subsection

63 20A-1-803(1):

64 (a) under circumstances where a reasonable person would not believe that the  
65 allegations are true; or

66 (b) (i) within 60 days before an election that the candidate to which the petition relates  
67 will appear on the ballot; and

68 (ii) under circumstances where a reasonable person would not believe that the  
69 allegations constitute a significant violation of a provision of this title.

70 (2) "Defendant" means each person against whom an allegation is made in the verified  
71 petition described in Subsection 20A-1-803(1).

72 (3) "Receiving official" means:

73 (a) the lieutenant governor, unless the verified petition described in Section 20A-1-803  
74 alleges a violation by the governor, the lieutenant governor, or an employee of the Lieutenant  
75 Governor's Office; or

76 (b) the attorney general, if the verified petition described in Section 20A-1-803 alleges  
77 a violation by the governor, the lieutenant governor, or an employee of the Lieutenant  
78 Governor's Office.

79 (4) "Reviewing official" means:

80 (a) except as provided in Subsection (4)(b), the receiving official; or

81 (b) the reviewing official appointed under Subsection 20A-1-803(3)(a), if the receiving  
82 official appoints another individual as the reviewing official under Subsection

83 20A-1-803(3)(a).

84 (5) "Significant violation" means:

85 (a) a violation that, if known by voters before the election, may have resulted in a  
86 candidate, other than the candidate certified as having won the election, winning the election;

87 or

88 (b) a violation that, had the violation not occurred, may have resulted in a candidate,  
89 other than the candidate certified as having won the election, winning the election.

90 Section 3. Section 20A-1-803 is enacted to read:

91 **20A-1-803. Verified petition by registered voter -- Receiving and reviewing**  
92 **official -- Special investigation -- Special counsel - Civil action.**

93 (1) A registered voter may file a verified petition alleging a violation of any provision  
94 of this title, if the registered voter:

95 (a) has information relating to the alleged violation;

96 (b) the allegation is against a candidate for whom the registered voter had the right to  
97 vote, a personal campaign committee of that candidate, or a member of a personal campaign  
98 committee of that candidate.

99 (2) The registered voter described in Subsection (1) shall file the verified petition with  
100 the receiving official.

101 (3) If the receiving official determines, in writing, that the receiving official has a  
102 conflict of interest in relation to taking an action required in this part, the receiving official  
103 shall:

104 (a) designate as the reviewing official an individual who does not have a conflict of  
105 interest, in the following order of precedence:

106 (i) the attorney general;

107 (ii) the state auditor;

108 (iii) the state treasurer; or

109 (iv) the governor; and

110 (b) forward the petition to the reviewing official for further action.

111 (4) (a) The reviewing official shall gather information and determine whether, in the  
112 discretion of the reviewing official, a special investigation is necessary.

113 (b) In making the determination described in Subsection (4)(a), the reviewing official  
114 may consider the following:

115 (i) whether, based on the information available to the reviewing official, the reviewing  
116 official is able to determine that a violation did not occur;

117 (ii) the seriousness of the alleged violation;

118 (iii) whether the alleged violation was intentional or accidental;

119 (iv) whether the alleged violation could be resolved informally;

120 (v) whether the petition is frivolous or filed for the purpose of harassment;

121 (vi) whether the alleged violation should be addressed in, or is being adequately  
122 addressed in, another forum, including a criminal investigation or proceeding;

123 (vii) whether additional investigation, as part of a civil proceeding in relation to the  
124 §→ [opinion] petition ←§ , is desirable;

125 (viii) the likelihood that an action, based on the allegations, is likely to be successful;  
126 or

127 (ix) other criteria relevant to making the determination.

128 (5) If the reviewing official determines that a special investigation is necessary, the  
129 reviewing official shall:

130 (a) except as provided in Subsection (5)(b), refer the information to the attorney  
131 general, who shall appoint special counsel; or

132 (b) if the verified petition alleges that the attorney general violated a provision of this  
133 title, or if the reviewing official determines that the Office of the Attorney General has a  
134 conflict of interest in relation to the verified petition, appoint a person who is not an employee  
135 of the Office of the Attorney General as special counsel, in accordance with Title 63G, Chapter  
136 6a, Utah Procurement Code.

137 (6) The special counsel:

138 (a) shall review the petition and any evidence relative to determining whether a  
139 defendant committed a violation of a provision of this title;

140 (b) may interview individuals or gather additional evidence relative to determining  
141 whether a defendant committed a violation of a provision of this title;

142 (c) shall advise the reviewing official whether, in the opinion of the special counsel,  
143 sufficient evidence exists to establish that a defendant committed a significant violation of a  
144 provision of this title; and

145 (d) shall, within three days after the day on which the special counsel complies with  
146 Subsection (6)(c), prepare and provide to the reviewing official a document that:

147 (i) states whether, in the opinion of the special counsel, sufficient evidence exists to  
148 establish that a defendant committed at least one significant violation of a provision of this  
149 title; and

150 (ii) if the special counsel is of the opinion that sufficient evidence exists to establish  
151 that a defendant committed at least one significant violation of a provision of this title:

152 (A) states the name of each defendant for which, in the opinion of the special counsel,  
153 sufficient evidence exists to establish that the defendant committed at least one significant  
154 violation of a provision of this title;

155 (B) states each provision of this title for which, in the opinion of the special counsel,  
156 sufficient evidence exists to establish that the defendant violated; and

157 (C) may not include a description of the evidence supporting the opinion of the special  
158 counsel.

159 (7) The reviewing official shall:

160 (a) within three days after the day on which the reviewing official receives the  
161 document described in Subsection (6)(d), post a conspicuous link to the document on the home  
162 page of the reviewing official's website; and

163 (b) within seven days after the day on which the special counsel complies with  
164 Subsection (6)(c):

165 (i) determine whether, in the opinion of the reviewing official, sufficient evidence  
166 exists to establish that a defendant committed a significant violation of a provision of this title;  
167 and

168 (ii) if the reviewing official is of the opinion that sufficient evidence exists to establish  
169 that a defendant committed at least one significant violation of a provision of this title, direct  
170 the special counsel to file a civil action and serve summons in accordance with the Utah Rules  
171 of Civil Procedure:

172 (A) against each defendant for whom the reviewing official determines that sufficient  
173 evidence exists that the defendant committed a significant violation of this title; and

174 (B) that includes each significant violation for which the reviewing official determines  
175 that sufficient evidence exists.

176 (8) (a) The purpose of the civil action described in Subsection (7)(b)(ii) is to determine  
177 whether a defendant committed a significant violation of a provision of this title.

178 (b) For a civil action described in Subsection (7)(b)(ii), the complaint may include an  
179 allegation of any violation of a provision of this title by a defendant, regardless of whether the  
180 violation is alleged in the petition.

181 (c) The special counsel may amend the complaint at any time after the complaint is  
182 filed, including by adding allegations to the complaint or amending allegations already made in

183 the complaint, if the court determines that the amendment will not violate the due process  
 184 rights of the defendant against whom the added or amended allegation is made.

185 (9) (a) An action brought under this section shall:

186 (i) be heard without a jury, with the court determining all issues of fact and issues of  
 187 law; and

188 (ii) have precedence over any other civil actions.

189 (b) The court shall schedule discovery and hearings, and shall otherwise conduct  
 190 proceedings relating to an action brought under this section, in an expedited manner while  
 191 preserving the rights of the parties and the integrity of the proceedings.

192 Section 4. Section **20A-1-804**, which is renumbered from Section 20A-1-704 is  
 193 renumbered and amended to read:

194 ~~[20A-1-704].~~ **20A-1-804. Judgment and findings -- Appeal -- Criminal**  
 195 **prosecution not affected by judgment.**

196 (1) (a) ~~[If]~~ Except as provided in Subsection (2), if the court finds that the candidate  
 197 whose right to [any] office is being [investigated, or that the candidate] challenged, the  
 198 candidate's personal campaign committee, or [any] a member of the candidate's personal  
 199 campaign committee has [violated any provision of this title in the conduct of the campaign for  
 200 nomination or election, and if the candidate is not one mentioned in Subsection (2)] committed  
 201 a significant violation of any provision of this title, the judge shall enter an order:

202 (i) declaring void the election of the candidate to that office;

203 (ii) ousting and excluding the candidate from office; and

204 (iii) declaring the office vacant.

205 (b) ~~[The]~~ A vacancy created by [that order] an order described in Subsection (1)(a)  
 206 shall be filled as provided in this chapter.

207 (2) (a) ~~[If a proceeding has been brought to investigate the right of]~~ As it relates to a  
 208 candidate for either house of the Legislature, [and the] if the court finds that the candidate, the  
 209 candidate's personal campaign committee, or [any] a member of the candidate's personal  
 210 campaign committee has [violated] committed a significant violation of any provision of this  
 211 title [in the conduct of the campaign for nomination or election], the court shall:

212 (i) prepare and sign written findings of fact and conclusions of law relating to the  
 213 violation; and

214 (ii) without issuing an order, transmit those findings and conclusions to the [~~lieutenant~~  
215 ~~governor~~] reviewing official.

216 (b) The [~~lieutenant governor~~] reviewing official shall transmit the judge's findings and  
217 conclusions to the house of the Legislature for which the person is a candidate.

218 (3) (a) A party may appeal the determination of the court in the same manner as  
219 appeals may be taken in civil actions.

220 (b) A judge may not issue an injunction suspending or staying the proceeding unless:

221 (i) application is made to the court or to the presiding judge of the court;

222 (ii) all parties receive notice of the application and the time for the hearing; and

223 (iii) the judge conducts a hearing.

224 (4) Any judgment or findings and conclusions issued as provided in this section may  
225 not be construed to bar or affect in any way any criminal prosecution of any candidate or other  
226 person.

227 Section 5. Section **20A-1-805** is enacted to read:

228 **20A-1-805. Costs and attorney fees -- Other actions or remedies not foreclosed --**  
229 **Grant of immunity.**

230 (1) If judgment is in favor of the plaintiff in a civil action brought under this part, the  
231 special counsel may petition the judge to recover the reviewing official's taxable costs and  
232 attorney fees against the person whose right to the office is contested.

233 (2) The judge may not award costs or attorney fees to the defendant, unless it appears  
234 that the petitioner filed the petition in bad faith.

235 (3) Nothing in this section may be construed to prohibit any other civil or criminal  
236 actions or remedies against alleged violators.

237 (4) In the event a witness asserts a privilege against self-incrimination, the special  
238 counsel may request a person described in Subsections [77-22b-1\(1\)\(a\)\(i\)](#) through (iii) to  
239 compel testimony and the production of evidence from the witness pursuant to Title 77,  
240 Chapter 22b, Grants of Immunity.

241 Section 6. Section **20A-1-806** is enacted to read:

242 **20A-1-806. Special counsel on appeal.**

243 If either party appeals the judgment of the trial court, the reviewing official shall  
244 appoint a person to appear as special counsel in the appellate court in the matter.



245 Section 7. Section **20A-1-807**, which is renumbered from Section 20A-1-706 is  
246 renumbered and amended to read:

247 ~~[20A-1-706].~~ **20A-1-807. Compensation of special counsel.**

248 ~~[(1) If either party appeals the judgment of the trial court, the district judge, the~~  
249 ~~attorney general, or the lieutenant governor who appointed special counsel for the trial court~~  
250 ~~shall authorize that counsel, or some other person, to appear as special counsel in the appellate~~  
251 ~~court in the matter.]~~

252 ~~[(2)(a)]~~ (1) The special counsel authorized by this chapter shall receive [a] reasonable  
253 compensation for [his] the special counsel's services.

254 ~~[(b)]~~ (2) The compensation shall be audited by the ~~[lieutenant governor]~~ reviewing  
255 official and paid out of the state treasury upon ~~[a voucher and upon]~~ the written statement of  
256 the ~~[officer appointing the counsel]~~ reviewing official that:

257 ~~[(i)]~~ (a) the appointment has been made;

258 ~~[(ii)]~~ (b) the person appointed has faithfully performed the duties ~~[imposed upon him]~~  
259 of special counsel; and

260 ~~[(iii) that]~~ (c) the special counsel's bill is accurate and correct.

261 ~~[(c)]~~ (3) Compensation for special counsel shall be audited and paid in the same  
262 manner as other claims against the state are audited and paid.

263 Section 8. Section **20A-1-808**, which is renumbered from Section 20A-1-707 is  
264 renumbered and amended to read:

265 ~~[20A-1-707].~~ **20A-1-808. Transition clause.**

266 Any petition that is filed or pending under this part on or after March 1, 2013, shall be  
267 subject to the provisions of this part, including any amendments to this part made by Senate  
268 Bill 289, passed in the 2013 General Session.

269 Section 9. **Repealer.**

270 This bill repeals:

271 Section **20A-1-703, Proceedings by registered voter.**

**Legislative Review Note**  
**as of 11-20-13 2:29 PM**

**Office of Legislative Research and General Counsel**