

HB0022S04 compared with HB0022S03

~~deleted text~~ shows text that was in HB0022S03 but was deleted in HB0022S04.

Inserted text shows text that was not in HB0022S03 but was inserted into HB0022S04.

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Representative ~~Brad~~Brian M. ~~Daw~~Greene proposes the following substitute bill:

NOMINATION PETITION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Election Code relating to a petition to nominate a candidate for office.

Highlighted Provisions:

This bill:

- ▶ establishes a procedure for an individual to remove the individual's signature from a candidate nomination petition;
- ▶ recodifies amends, and clarifies criminal provisions relating to a candidate nomination petition;
- ▶ provides that criminal provisions relating to a candidate nomination petition apply to both a candidate nomination petition for a registered political party and a candidate nomination petition for a qualified political party;

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- ▶ imposes criminal and civil penalties when a signature gatherer intentionally misrepresents the purpose of a nomination petition or certain other information relating to the petition;
- ▶ requires a signature gatherer to display certain information relating to a candidate for whom they are collecting signatures;
- ▶ ~~{requires}~~ prohibits paying a signature gatherer on a per signature, or per valid signature, basis;
- ▶ prohibits an individual from acting as a signature gatherer ~~{to be a registered voter;~~
- ▶ ~~prohibits a person from paying an individual to collect signatures}~~ for a ~~{candidate}~~ nomination petition if the individual has been convicted of a violent crime or a crime of moral turpitude;
- ▶ grants rulemaking authority to the director of elections; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-9-403, as last amended by Laws of Utah 2016, Chapter 28

20A-9-405, as enacted by Laws of Utah 2014, Chapter 17

20A-9-408, as last amended by Laws of Utah 2016, Chapter 28

20A-9-411, as enacted by Laws of Utah 2015, Chapter 296

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

Section 1. Section **20A-9-403** is amended to read:

20A-9-403. Regular primary elections.

(1) (a) Candidates for elective office that are to be filled at the next regular general election shall be nominated in a regular primary election by direct vote of the people in the manner prescribed in this section. The fourth Tuesday of June of each even-numbered year is designated as regular primary election day. Nothing in this section shall affect a candidate's

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ability to qualify for a regular general election's ballot as an unaffiliated candidate under Section 20A-9-501 or to participate in a regular general election as a write-in candidate under Section 20A-9-601.

(b) Each registered political party that chooses to have the names of its candidates for elective office featured with party affiliation on the ballot at a regular general election shall comply with the requirements of this section and shall nominate its candidates for elective office in the manner prescribed in this section.

(c) A filing officer may not permit an official ballot at a regular general election to be produced or used if the ballot denotes affiliation between a registered political party or any other political group and a candidate for elective office who was not nominated in the manner prescribed in this section or in Subsection 20A-9-202(4).

(d) Unless noted otherwise, the dates in this section refer to those that occur in each even-numbered year in which a regular general election will be held.

(2) (a) Each registered political party, in a statement filed with the lieutenant governor, shall:

(i) either declare their intent to participate in the next regular primary election or declare that the registered political party chooses not to have the names of its candidates for elective office featured on the ballot at the next regular general election; and

(ii) if the registered political party participates in the upcoming regular primary election, identify one or more registered political parties whose members may vote for the registered political party's candidates and whether ~~[or not persons]~~ individuals identified as unaffiliated with a political party may vote for the registered political party's candidates.

(b) (i) A registered political party that is a continuing political party must file the statement described in Subsection (2)(a) with the lieutenant governor no later than 5 p.m. on November 15 of each odd-numbered year.

(ii) An organization that is seeking to become a registered political party under Section 20A-8-103 must file the statement described in Subsection (2)(a) at the time that the registered political party files the petition described in Section 20A-8-103.

(3) (a) Except as provided in Subsection (3)(e), ~~[a person who has submitted]~~ an individual who submits a declaration of candidacy under Section 20A-9-202 shall appear as a candidate for elective office on the regular primary ballot of the registered political party listed

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on the declaration of candidacy only if the ~~[person]~~ individual is certified by the appropriate filing officer as having submitted a set of nomination petitions that was:

(i) circulated and completed in accordance with Section 20A-9-405; and

(ii) signed by at least two percent of the registered political party's members who reside in the political division of the office that the ~~[person]~~ individual seeks.

(b) A candidate for elective office shall submit nomination petitions to the appropriate filing officer for verification and certification no later than 5 p.m. on the final day in March. Candidates may supplement their submissions at any time on or before the filing deadline.

(c) The lieutenant governor shall determine for each elective office the total number of signatures that must be submitted under Subsection (3)(a)(ii) by counting the aggregate number of ~~[persons]~~ individuals residing in each elective office's political division who have designated a particular registered political party on their voter registration forms as of November 1 of each odd-numbered year. The lieutenant governor shall publish this determination for each elective office no later than November 15 of each odd-numbered year.

(d) The filing officer shall, subject to Section 20A-9-411:

(i) verify signatures on a nomination ~~[petitions]~~ petition in a transparent and orderly manner;

(ii) certify signatures on a nomination petition no sooner than February 20;

~~[(ii)]~~ (iii) for all qualifying candidates for elective office who submitted nomination petitions to the filing officer, issue certifications referenced in Subsection (3)(a) no later than 5 p.m. on the first Monday after the third Saturday in April;

~~[(iii)]~~ (iv) consider active and inactive voters eligible to sign nomination petitions;

~~[(iv)]~~ (v) consider ~~[a person]~~ an individual who signs a nomination petition a member of a registered political party for purposes of Subsection (3)(a)(ii) if the ~~[person has designated]~~ individual designates that registered political party as the ~~[person's]~~ individual's party membership on the ~~[person's]~~ individual's most recent voter registration form that was signed by the individual; and

~~[(v)]~~ (vi) utilize procedures described in Section 20A-7-206.3 to verify submitted nomination petition signatures, or use statistical sampling procedures to verify submitted nomination petition signatures pursuant to rules made under Subsection (3)(f).

(e) Notwithstanding any other provision in this Subsection (3), a candidate for

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lieutenant governor may appear on the regular primary ballot of a registered political party without submitting nomination petitions if the candidate files a declaration of candidacy and complies with Subsection 20A-9-202(3).

(f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director of elections, within the Office of the Lieutenant Governor, shall make rules that:

(i) provide for the use of statistical sampling procedures that:

(A) filing officers are required to use to verify signatures under Subsection (3)(d); and

(B) reflect a bona fide effort to determine the validity of a candidate's entire submission, using widely recognized statistical sampling techniques; and

(ii) provide for the transparent, orderly, and timely submission, verification, and certification of nomination petition signatures.

(g) The county clerk shall:

(i) review the declarations of candidacy filed by candidates for local boards of education to determine if more than two candidates have filed for the same seat;

(ii) place the names of all candidates who have filed a declaration of candidacy for a local board of education seat on the nonpartisan section of the ballot if more than two candidates have filed for the same seat; and

(iii) determine the order of the local board of education candidates' names on the ballot in accordance with Section 20A-6-305.

(h) An individual who collects signatures for a candidate under this section shall, while collecting the signatures, wear or carry a hat, shirt, tag, sign, or other item that contains the following information, plainly visible to an individual from whom the signature gatherer is requesting a signature:

(i) the name of each individual on whose behalf the signature gatherer is collecting signatures; and

(ii) the following information for each individual described in Subsection (3)(h)(i):

(A) the party for which the individual is seeking nomination;

(B) the office that the individual is seeking; and

(C) if applicable, the district in which the individual is running for office.

(i) (i) A person may not pay ~~for an individual;~~ ~~another person~~ to collect signatures for a candidate ~~{nomination petition}~~ under this section per signature collected or per valid signature

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collected.

(ii) A person may pay another person to collect signatures for a candidate under this section based on an hourly rate, a lump sum, or another manner not prohibited under Subsection (3)(i)(i).

(4) (a) By 5 p.m. on the first Wednesday after the third Saturday in April, the lieutenant governor shall provide to the county clerks:

(i) a list of the names of all candidates for federal, constitutional, multi-county, and county offices who have received certifications under Subsection (3), along with instructions on how those names shall appear on the primary-election ballot in accordance with Section 20A-6-305; and

(ii) a list of unopposed candidates for elective office who have been nominated by a registered political party under Subsection (5)(c) and instruct the county clerks to exclude such candidates from the primary-election ballot.

(b) A candidate for lieutenant governor and a candidate for governor campaigning as joint-ticket running mates shall appear jointly on the primary-election ballot.

(c) After the county clerk receives the certified list from the lieutenant governor under Subsection (4)(a), the county clerk shall post or publish a primary election notice in substantially the following form:

"Notice is given that a primary election will be held Tuesday, June _____, _____(year), to nominate party candidates for the parties and candidates for nonpartisan State Board of Education and local school board positions listed on the primary ballot. The polling place for voting precinct _____ is _____. The polls will open at 7 a.m. and continue open until 8 p.m. of the same day. Attest: county clerk."

(5) (a) Candidates, other than presidential candidates, receiving the highest number of votes cast for each office at the regular primary election are nominated by their registered political party for that office or are nominated as a candidate for a nonpartisan State Board of Education or local school board position.

(b) If two or more candidates, other than presidential candidates, are to be elected to the office at the regular general election, those party candidates equal in number to positions to be filled who receive the highest number of votes at the regular primary election are the nominees of their party for those positions.

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(c) A candidate who is unopposed for an elective office in the regular primary election of a registered political party is nominated by the party for that office without appearing on the primary ballot. A candidate is "unopposed" if no ~~[person]~~ individual other than the candidate has received a certification under Subsection (3) for the regular primary election ballot of the candidate's registered political party for a particular elective office.

(6) (a) When a tie vote occurs in any primary election for any national, state, or other office that represents more than one county, the governor, lieutenant governor, and attorney general shall, at a public meeting called by the governor and in the presence of the candidates involved, select the nominee by lot cast in whatever manner the governor determines.

(b) When a tie vote occurs in any primary election for any county office, the district court judges of the district in which the county is located shall, at a public meeting called by the judges and in the presence of the candidates involved, select the nominee by lot cast in whatever manner the judges determine.

(7) The expense of providing all ballots, blanks, or other supplies to be used at any primary election provided for by this section, and all expenses necessarily incurred in the preparation for or the conduct of that primary election shall be paid out of the treasury of the county or state, in the same manner as for the regular general elections.

(8) An individual may not file a declaration of candidacy for a registered political party of which the individual is not a member, except to the extent that the registered political party permits otherwise under the registered political party's bylaws.

Section 2. Section **20A-9-405** is amended to read:

20A-9-405. Nomination petitions for regular primary elections.

(1) This section ~~[shall apply]~~ applies to the form and circulation of nomination petitions for regular primary elections described in Subsection 20A-9-403(3)(a).

(2) A candidate for elective office, and the agents of the candidate, may not circulate nomination petitions until the candidate has submitted a declaration of candidacy in accordance with Subsection 20A-9-202(1).

(3) The nomination petitions shall be in substantially the following form:

(a) the petition shall be printed on paper 8-1/2 inches long and 11 inches wide;

(b) the petition shall be ruled with a horizontal line 3/4 inch from the top, with the space above that line blank for purposes of binding;

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(c) the petition shall be headed by a caption stating the purpose of the petition and the name of the proposed candidate;

(d) the petition shall feature the word "Warning" followed by the following statement in no less than eight-point, single leaded type: "It is a class A misdemeanor for anyone to knowingly sign a certificate of nomination signature sheet with any name other than the [person's] individual's own name or more than once for the same candidate or if the [person] individual is not registered to vote in this state and does not intend to become registered to vote in this state before signatures are certified by a filing officer.";

(e) the petition shall feature 10 lines spaced one-half inch apart and consecutively numbered one through 10;

(f) the signature portion of the petition shall be divided into columns headed by the following titles:

- (i) Registered Voter's Printed Name;
- (ii) Signature of Registered Voter;
- (iii) Party Affiliation of Registered Voter;
- (iv) Birth Date or Age (Optional);
- (v) Street Address, City, Zip Code; and
- (vi) Date of Signature; and

(g) a photograph of the candidate may appear on the nomination petition.

(4) If one or more nomination petitions are bound together, a page shall be bound to the nomination petition(s) that features the following printed verification statement to be signed and dated by the petition circulator:

"Verification

State of Utah, County of ____

I, ____, of ____, hereby state under that:

I am a {} Utah resident and am at least 18 years old {} registered voter in Utah;

All the names that appear on the signature sheets bound to this page were, to the best of my knowledge, signed by the [persons] individuals who professed to be the [persons] individuals whose names appear on the signature sheets, and each of [them] the individuals signed the [person's] individual's name on the signature sheets in my presence;

I believe that each has printed and signed the [person's] individual's name and written

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the ~~[person's]~~ individual's street address correctly, and that each signer is registered to vote in Utah or will register to vote in Utah before the county clerk certifies the signatures on the signature sheet."

(5) The lieutenant governor shall prepare and make public model nomination petition forms and associated instructions.

(6) (a) A nomination petition circulator must be ~~{}~~ at least 18 years old and a resident of the state ~~{ a registered voter in the state }~~, but may affiliate with any political party.

(b) An individual may not collect signatures for a candidate under this section if the individual has been convicted of a violent crime or a crime of moral turpitude, as those terms are defined by the director of elections within the Office of the Lieutenant Governor, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(7) It is unlawful for any person to:]~~

~~[(a) knowingly sign the nomination petition sheet described in Subsection (3):]~~

~~[(i) with any name other than the person's own name;]~~

~~[(ii) more than once for the same candidate; or]~~

~~[(iii) if the person is not registered to vote in this state and does not intend to become registered to vote in this state prior to 5 p.m. on the final day in March;]~~

~~[(b) sign the verification of a certificate of nomination signature sheet described in Subsection (4) if the person:]~~

~~[(i) does not meet the residency requirements of Section 20A-2-105;]~~

~~[(ii) has not witnessed the signing by those persons whose names appear on the certificate of nomination signature sheet; or]~~

~~[(iii) knows that a person whose signature appears on the certificate of nomination signature sheet is not registered to vote in this state and does not intend to become registered to vote in this state;]~~

~~[(c) pay compensation to any person to sign a nomination petition; or]~~

~~[(d) pay compensation to any person to circulate a nomination petition, if the compensation is based directly on the number of signatures submitted to a filing officer rather than on the number of signatures verified or on some other basis.]~~

~~[(8) Any person violating Subsection (7) is guilty of a class A misdemeanor.]~~

~~[(9) Withdrawal of petition signatures shall not be permitted.]~~

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Section 3. Section **20A-9-408** is amended to read:

20A-9-408. Signature-gathering process to seek the nomination of a qualified political party.

(1) This section describes the requirements for a member of a qualified political party who is seeking the nomination of the qualified political party for an elective office through the signature-gathering process described in this section.

(2) Notwithstanding Subsection 20A-9-201(4)(a), the form of the declaration of candidacy for a member of a qualified political party who is nominated by, or who is seeking the nomination of, the qualified political party under this section shall be substantially as described in Section 20A-9-408.5.

(3) Notwithstanding Subsection 20A-9-202(1)(a), and except as provided in Subsection 20A-9-202(4), a member of a qualified political party who, under this section, is seeking the nomination of the qualified political party for an elective office that is to be filled at the next general election shall:

(a) within the period beginning on January 1 before the next regular general election and ending on the third Thursday in March of the same year, and before gathering signatures under this section, file with the filing officer on a form approved by the lieutenant governor a notice of intent to gather signatures for candidacy that includes:

(i) the name of the member who will attempt to become a candidate for a registered political party under this section;

(ii) the name of the registered political party for which the member is seeking nomination;

(iii) the office for which the member is seeking to become a candidate;

(iv) the address and telephone number of the member; and

(v) other information required by the lieutenant governor;

(b) file a declaration of candidacy, in person, with the filing officer on or after the second Friday in March and before 5 p.m. on the third Thursday in March before the next regular general election; and

(c) pay the filing fee.

(4) Notwithstanding Subsection 20A-9-202(2)(a), a member of a qualified political party who, under this section, is seeking the nomination of the qualified political party for the

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office of district attorney within a multicounty prosecution district that is to be filled at the next general election shall:

(a) on or after January 1 before the next regular general election, and before gathering signatures under this section, file with the filing officer on a form approved by the lieutenant governor a notice of intent to gather signatures for candidacy that includes:

(i) the name of the member who will attempt to become a candidate for a registered political party under this section;

(ii) the name of the registered political party for which the member is seeking nomination;

(iii) the office for which the member is seeking to become a candidate;

(iv) the address and telephone number of the member; and

(v) other information required by the lieutenant governor;

(b) file a declaration of candidacy, in person, with the filing officer on or after the second Friday in March and before 5 p.m. on the third Thursday in March before the next regular general election; and

(c) pay the filing fee.

(5) Notwithstanding Subsection 20A-9-202(3)(a)(iii), a lieutenant governor candidate who files as the joint-ticket running mate of an individual who is nominated by a qualified political party, under this section, for the office of governor shall submit a letter from the candidate for governor that names the lieutenant governor candidate as a joint-ticket running mate.

(6) The lieutenant governor shall ensure that the certification described in Subsection 20A-9-701(1) also includes the name of each candidate nominated by a qualified political party under this section.

(7) Notwithstanding Subsection 20A-9-701(2), the ballot shall, for each candidate who is nominated by a qualified political party under this section, designate the qualified political party that nominated the candidate.

(8) A member of a qualified political party may seek the nomination of the qualified political party for an elective office by:

(a) complying with the requirements described in this section; and

(b) collecting signatures, on a form approved by the lieutenant governor, during the

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period beginning on January 1 of an even-numbered year and ending 14 days before the day on which the qualified political party's convention for the office is held, in the following amounts:

(i) for a statewide race, 28,000 signatures of registered voters in the state who are permitted by the qualified political party to vote for the qualified political party's candidates in a primary election;

(ii) for a congressional district race, 7,000 signatures of registered voters who are residents of the congressional district and are permitted by the qualified political party to vote for the qualified political party's candidates in a primary election;

(iii) for a state Senate district race, 2,000 signatures of registered voters who are residents of the state Senate district and are permitted by the qualified political party to vote for the qualified political party's candidates in a primary election;

(iv) for a state House district race, 1,000 signatures of registered voters who are residents of the state House district and are permitted by the qualified political party to vote for the qualified political party's candidates in a primary election;

(v) for a State Board of Education race, the lesser of:

(A) 2,000 signatures of registered voters who are residents of the State Board of Education district and are permitted by the qualified political party to vote for the qualified political party's candidates in a primary election; or

(B) 3% of the registered voters of the qualified political party who are residents of the applicable State Board of Education district; and

(vi) for a county office race, signatures of 3% of the registered voters who are residents of the area permitted to vote for the county office and are permitted by the qualified political party to vote for the qualified political party's candidates in a primary election.

(9) (a) In order for a member of the qualified political party to qualify as a candidate for the qualified political party's nomination for an elective office under this section, the member shall:

(i) except as otherwise provided in Section 20A-9-411, collect the signatures on a form approved by the lieutenant governor, using the same circulation and verification requirements described in Sections 20A-7-204 and 20A-7-205; and

(ii) submit the signatures to the election officer no later than 14 days before the day on which the qualified political party holds its convention to select candidates, for the elective

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office, for the qualified political party's nomination.

(b) An individual may not gather signatures under this section until after the individual files a notice of intent to gather signatures for candidacy described in this section.

(c) An individual who files a notice of intent to gather signatures for candidacy, described in Subsection (3)(a) or (4)(a), is, beginning on the day on which the individual files the notice of intent to gather signatures for candidacy:

(i) required to comply with the reporting requirements that a candidate for office is required to comply with; and

(ii) subject to the same enforcement provisions, and civil and criminal penalties, that apply to a candidate for office in relation to the reporting requirements described in Subsection (9)(c)(i).

(d) Upon timely receipt of the signatures described in Subsections (8) and (9)(a), the election officer shall, no later than one day before the day on which the qualified political party holds the convention to select a nominee for the elective office to which the signature packets relate:

(i) check the name of each individual who completes the verification for a signature packet to determine whether each individual is a ~~{} resident of Utah~~ and is at least 18 years old ~~{ } registered voter in the state~~;

(ii) submit the name of each individual described in Subsection (9)(d)(i) who is not a ~~{} Utah resident~~ or who is not at least 18 years old ~~{ } registered voter in the state~~ to the attorney general and the county attorney;

(iii) determine whether each signer is a registered voter who is qualified to sign the petition, using the same method, described in Section 20A-7-206.3, used to verify a signature on a petition;

(iv) no sooner than February 20, certify whether each name is that of a registered voter who is qualified to sign the signature packet; and

(v) notify the qualified political party and the lieutenant governor of the name of each member of the qualified political party who qualifies as a nominee of the qualified political party, under this section, for the elective office to which the convention relates.

(e) Upon receipt of a notice of intent to gather signatures for candidacy described in this section, the lieutenant governor shall post the notice of intent to gather signatures for

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candidacy on the lieutenant governor's website in the same location that the lieutenant governor posts a declaration of candidacy.

(10) If a qualified political party restricts, based on party affiliation, the voters who are eligible to vote for the qualified political party's candidates in a primary election, the election officer shall determine a voter's party affiliation, for purposes of determining whether the individual is qualified to sign a nomination petition, based on the declaration of party affiliation made in the voter's most recent voter registration form that was signed by the voter.

(11) An individual who collects signatures for a candidate under this section shall, while collecting the signatures, wear or carry a hat, shirt, tag, sign, or other item that contains the following information, plainly visible to an individual from whom the signature gatherer is requesting a signature:

(a) the name of each individual on whose behalf the signature gatherer is collecting signatures; and

(b) the following information for each individual described in Subsection (11)(a):

(i) the party for which the individual is seeking nomination;

(ii) the office that the individual is seeking; and

(iii) if applicable, the district in which the individual is running for office.

(12) (a) A person may not pay ~~for an individual~~ another person to collect signatures for a candidate ~~for a nomination petition~~ under this section per signature collected or per valid signature collected.

(b) A person may pay another person to collect signatures for a candidate under this section based on an hourly rate, a lump sum, or another manner not prohibited under Subsection (12)(a).

(c) An individual may not collect signatures for a candidate under this section if the individual has been convicted of a violent crime or a crime of moral turpitude, as those terms are defined by the director of elections within the Office of the Lieutenant Governor, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 4. Section **20A-9-411** is amended to read:

20A-9-411. Signing multiple nomination petitions -- Removing signatures -- Unlawful conduct.

(1) An individual who signs a petition, described in Section 20A-9-403 or 20A-9-408,

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to nominate a candidate may not sign a petition to nominate another candidate for the same office.

(2) If an individual signs more than one petition in violation of Subsection (1), the election officer may only count the signature on the first petition that the election officer reviews for that office.

(3) (a) An individual who signs a petition, described in Section 20A-9-403 or 20A-9-408, to nominate a candidate may remove the individual's signature from the petition by submitting, to the filing officer who is required to verify the signatures on the petition, a written request that the individual's signature be removed.

(b) The filing officer shall comply with a request described in Subsection (3)(a) if the filing officer receives the request before the filing officer verifies the individual's signature.

(c) The filing officer may not comply with a request described in Subsection (3)(a) if:

(i) the filing officer receives the request after the deadline described in Subsection

(3)(b); or

(ii) the request does not comply with the requirements of this Subsection (3).

(d) The request described in Subsection (3)(a) shall include:

(i) the name of the individual;

(ii) the resident address at which the individual is registered to vote;

(iii) the name of the candidate from whose petition the individual desires the

individual's signature to be removed; and

(iv) the signature of the individual.

(4) An individual is guilty of a class A misdemeanor if the individual knowingly signs a petition, described in Section 20A-9-403 or 20A-9-408:

(a) with a name other than the individual's own name; or

(b) more than once for the same candidate.

(5) An individual is guilty of a class A misdemeanor if at the time that the individual signs a petition, described in Section 20A-9-403 or 20A-9-408, the individual:

(a) is not registered to vote in this state; and

(b) does not intend to become registered to vote in this state before the deadline for submitting signatures for the petition.

(6) An individual who signs the verification for a signature sheet for a petition,

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described in Section 20A-9-405 or 20A-9-408, is guilty of a class A misdemeanor if the individual:

~~{ (a) is not a registered voter in the state;~~

~~{ (b) did not witness the signing by the individuals whose names appear on the signature sheet; or~~

~~(c) knows that an individual whose signature appears on the signature sheet is not registered to vote in this state and does not intend to become registered to vote in this state.~~

~~(7) A person is guilty of a class A misdemeanor if the person:~~

~~(a) pays compensation to an individual to sign a nomination petition, described in Section 20A-9-403 or 20A-9-408; or~~

~~(b) pays compensation to a person to circulate a nomination petition;~~

~~(8) A person that circulates a nomination petition, described in Section 20A-9-403 or 20A-9-408, is guilty of a class A misdemeanor if the person intentionally misrepresents:~~

~~(a) the purpose of the petition;~~

~~(b) the name or political party of the candidate to be nominated by the petition;~~

~~(c) the office for which the candidate is seeking to be nominated by the petition; or~~

~~(d) that the candidate seeking nomination by the petition is or is not an incumbent of the office for which the candidate is seeking nomination by the petition.~~

~~(9) (a) An election officer shall impose a \$100 civil fine against a candidate if a person who is authorized by the candidate or the candidate's campaign to circulate a nomination petition for the candidate violates Subsection (8) in relation to the nomination petition.~~

~~(b) An election officer shall impose a separate fine under Subsection (9)(a) for each violation of Subsection (8);~~

Legislative Review Note

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The Utah Legislature's Joint Rule 4-2-402 requires legislative general counsel to place a legislative review note on legislation. The Legislative Management Committee has further

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~~directed legislative general counsel to include legal analysis in the legislative review note only if legislative general counsel determines there is a high probability that a court would declare the legislation to be unconstitutional under the Utah Constitution, the United States Constitution, or both. As explained in the legal analysis below, legislative general counsel has determined, based on applicable state and federal constitutional language and current interpretations of that language in state and federal court case law, that this legislation has a high probability of being declared unconstitutional by a court.~~

~~This bill, as stated in the third substitute, would prohibit a person from paying an individual to collect signatures for a candidate nomination petition. In addition, this bill would require a nomination petition circulator to be a registered voter in the state.~~

~~Prohibition on Paid Signature Collectors~~

~~The United States Supreme Court held that a Colorado law prohibiting initiative petition circulators from being paid was an unconstitutional limitation on political expression under the First and Fourteenth Amendments. Meyer v. Grant, 486 U.S. 414, 428 (1988). "Core political speech," as opposed to commercial speech, which involves a commercial transaction, is "interactive communication concerning political change." Id. at 421-22. Protection for political expression is "at its zenith" and is "subject to exacting scrutiny." Id. at 425. The Court identified two ways in which prohibiting payment to petition circulators restricts political expression: first, it "limits the size of the audience [the petition circulators] can reach," and second, "it makes it less likely that [petition circulators] will garner the number of signatures necessary to place the matter on the ballot." Id. at 422-23.~~

~~The Supreme Court and the Tenth Circuit have applied strict scrutiny to laws that restrict political speech. See Meyers, 486 U.S. at 423-424; Chandler v. City of Arvada, 292 F.3d 1236, 1241-42 (10th Cir. 2002) (striking down ordinance provisions prohibiting nonresidents from circulating initiative petitions). In Meyers, the Court concluded that the Colorado prohibition on payment to circulators "restrict[ed] access to the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication," and the fact that~~

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~~it left open other "avenues of communication, d[id] not relieve its burden on First Amendment expression." Id. at 424. Specifically, the state's interest in fraud detection was not enough to overcome the restriction on political exchange. Id. at 426.~~

~~Although the Colorado restriction on paying a petition circulator involved an initiative petition rather than a candidate petition, they are both examples of political expression in promoting public support for access to the ballot. See Buckley v. Am. Constitutional Law Found., 525 U.S. 182, 191 (1999) ("Initiative-petition circulators also resemble candidate-petition signature gatherers . . . for both seek ballot access."). The Supreme Court similarly stated that "[L]egislative restrictions on advocacy of the election or defeat of political candidates are wholly at odds with the guarantees of the First Amendment." Buckley v. Valeo, 424 U.S. 1, 50 (1976).~~

~~Based on this precedent, there is a high probability that a court would hold that prohibiting signature collectors for a candidate nomination petition from being paid restricts political speech and thus violates the First and Fourteenth Amendments.~~

Requirement that Circulators must be registered to vote in Utah

~~The United States Supreme Court held that a Colorado law requiring initiative petition circulators to be registered voters "impose[d] a burden on political expression that the State has failed to justify" and affirmed the Tenth Circuit's invalidation of the provision. Buckley v. Am. Constitutional Law Found., 525 U.S. 182, 195 (1999). Referring back to its holding in Meyer, the Court concluded that the registered voter requirement "decrease[d] the pool of potential circulators as certainly as that pool is decreased by the prohibition of payment to circulators Both provisions . . . cut down 'the size of the audience proponents can reach.'" Buckley, 525 U.S. at 194-95 (quoting Meyer, 486 U.S. at 422-23). Further, the Court upheld the Tenth Circuit's strict scrutiny analysis in failing to find justification for the limitation on political speech. Id. at 196-97. The ease of policing circulators who violated the law when gathering signatures was not sufficient justification for requiring them to be registered voters, and this state interest was better served by requiring circulators to submit an affidavit containing~~

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~~information to locate the circulator. Id. at 196.~~

~~Based on this precedent, there is a high probability that a court would hold that requiring a nomination petition circulator to be a registered voter in Utah impinges on political expression and thus violates the First and Fourteenth Amendments.~~

~~**Office of Legislative Research and General Counsel}**~~