

ELECTIONS REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: Deidre M. Henderson

LONG TITLE

General Description:

This bill changes processes related to elections.

Highlighted Provisions:

This bill:

- ▶ creates requirements for an election officer who receives an invalid absentee ballot;
- ▶ changes the time by which a county clerk is required to remove a deceased individual's name from the official register;
- ▶ makes changes to the process by which a paper ballot is adjudicated when a question arises regarding a vote recorded on the paper ballot;
- ▶ requires a county to pay return postage on an absentee ballot when conducting an election entirely by absentee ballot; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-2-305, as last amended by Laws of Utah 2012, Chapters 33 and 52

20A-3-302, as last amended by Laws of Utah 2015, Chapter 173



28 20A-3-305, as last amended by Laws of Utah 2016, Chapter 24
29 20A-4-104, as last amended by Laws of Utah 2006, Chapter 326
30 20A-4-105, as last amended by Laws of Utah 2013, Chapter 390

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

33 Section 1. Section 20A-2-305 is amended to read:

34 **20A-2-305. Removing names from the official register -- General requirements.**

35 (1) The county clerk may not remove a voter's name from the official register because
36 the voter has failed to vote in an election.

37 (2) The county clerk shall remove a voter's name from the official register if:

38 (a) the voter dies and the requirements of Subsection (3) are met;

39 (b) the county clerk, after complying with the requirements of Section 20A-2-306,
40 receives written confirmation from the voter that the voter no longer resides within the county
41 clerk's county;

42 (c) the county clerk has:

43 (i) obtained evidence that the voter's residence has changed;

44 (ii) mailed notice to the voter as required by Section 20A-2-306;

45 (iii) (A) received no response from the voter; or

46 (B) not received information that confirms the voter's residence; and

47 (iv) the voter has failed to vote or appear to vote in an election during the period
48 beginning on the date of the notice described in Section 20A-2-306 and ending on the day after
49 the date of the second regular general election occurring after the date of the notice;

50 (d) the voter requests, in writing, that the voter's name be removed from the official
51 register;

52 (e) the county clerk receives a returned voter identification card, determines that there
53 was no clerical error causing the card to be returned, and has no further information to contact
54 the voter;

55 (f) the county clerk receives notice that a voter has been convicted of any felony or a
56 misdemeanor for an offense under this title and the voter's right to vote has not been restored as
57 provided in Section 20A-2-101.3 or 20A-2-101.5; or

58 (g) the county clerk receives notice that a voter has registered to vote in another state

59 after the day on which the voter registered to vote in this state.

60 (3) The county clerk shall remove a voter's name from the [~~registration list within 21~~
61 ~~days of receipt of~~] official register within five business days after the day on which the county
62 clerk receives confirmation from the Department of Health's Bureau of Vital Records that [a]
63 the voter is deceased.

64 Section 2. Section **20A-3-302** is amended to read:

65 **20A-3-302. Conducting entire election by absentee ballot.**

66 (1) (a) Notwithstanding Section [17B-1-306](#), an election officer may administer an
67 election entirely by absentee ballot.

68 (b) An election officer who administers an election entirely by absentee ballot, except
69 for an election conducted under Section [20A-7-609.5](#), shall, before the following dates, notify
70 the lieutenant governor that the election will be administered entirely by absentee ballot:

71 (i) February 1 of an even-numbered year if the election is a regular general election; or

72 (ii) May 1 of an odd-numbered year if the election is a municipal general election.

73 (2) If the election officer decides to administer an election entirely by absentee ballot,
74 the election officer shall mail to each registered voter within that voting precinct:

75 (a) an absentee ballot;

76 (b) for an election administered by a county clerk, information regarding the location
77 and hours of operation of any election day voting center at which the voter may vote;

78 (c) a [~~courtesy~~] business reply mail envelope;

79 (d) instructions for returning the ballot that include an express notice about any
80 relevant deadlines that the voter must meet in order for the voter's vote to be counted; and

81 (e) for an election administered by an election officer other than a county clerk, if the
82 election officer does not operate a polling location or an election day voting center, a warning,
83 on a separate page of colored paper in bold face print, indicating that if the voter fails to follow
84 the instructions included with the absentee ballot, the voter will be unable to vote in that
85 election because there will be no polling place in the voting precinct on the day of the election.

86 (3) A voter who votes by absentee ballot under this section is not required to apply for
87 an absentee ballot as required by this part.

88 (4) An election officer who administers an election entirely by absentee ballot shall:

89 (a) (i) obtain, in person, the signatures of each voter within that voting precinct before

90 the election; or

91 (ii) obtain the signature of each voter within the voting precinct from the county clerk;

92 and

93 (b) maintain the signatures on file in the election officer's office.

94 (5) (a) Upon receiving the returned absentee ballots, the election officer shall compare
95 the signature on each absentee ballot with the voter's signature that is maintained on file and
96 verify that the signatures are the same.

97 (b) If the election officer questions the authenticity of the signature on the absentee
98 ballot, the election officer shall immediately contact the voter to verify the signature.

99 (c) If the election ~~[official]~~ officer determines that the signature on the absentee ballot
100 does not match the voter's signature that is maintained on file, the election officer shall mail the
101 voter a notice that:

102 (i) informs the voter that the voter's signature is in question;

103 (ii) informs the voter of how the voter may resolve the issue;

104 (iii) includes an affidavit that the voter shall sign and return to the election officer
105 attesting that the voter voted the absentee ballot;

106 (iv) requires the voter to provide the voter's:

107 (A) name and date of birth; and

108 (B) driver license number or the last four digits of the voter's social security number;

109 and

110 (v) informs the voter that by signing the absentee voter affidavit, the voter authorizes
111 the lieutenant governor's and county clerk's use of the applicant's signature on the affidavit for
112 voter identification purposes.

113 (d) A voter who receives a notice under Subsection (5)(c) shall return the affidavit
114 described in Subsection (5)(c)(iii) to the election officer.

115 (e) An election officer who receives a signed affidavit under Subsection (5)(d) shall
116 immediately:

117 (i) scan the signature on the affidavit electronically and keep the signature on file in the
118 statewide voter registration database developed under Section [20A-2-109](#); and

119 ~~[(i) unless the absentee ballot application deadline described in Section [20A-3-304](#) has~~
120 ~~passed, immediately send another absentee ballot and other voting materials as required by this~~

121 section to the voter; and]

122 [~~(ii) disqualify the initial absentee ballot.~~]

123 (ii) if the canvass has not concluded, count the voter's ballot.

124 (f) An election officer may not count the ballot of a voter to whom the election officer
125 sends the notice described in Subsection (5)(c) if the election officer does not receive a signed
126 affidavit from the voter under Subsection (5)(d) or is not otherwise able to establish contact
127 with the voter to confirm the voter's identity.

128 (6) A county that administers an election entirely by absentee ballot:

129 (a) shall provide at least one election day voting center in accordance with Title 20A,
130 Chapter 3, Part 7, Election Day Voting Center;

131 (b) shall ensure that an election day voting center operated by the county has at least
132 one voting device that is accessible, in accordance with the Help America Vote Act of 2002,
133 Pub. L. No. 107-252, for individuals with disabilities; [~~and~~]

134 (c) is [~~not~~] required to pay return postage for an absentee ballot[-]; and

135 (d) is subject to an audit conducted under Subsection (7).

136 (7) (a) The lieutenant governor shall:

137 (i) develop procedures for conducting an audit of affidavit signatures on ballots cast in
138 an election conducted under this section; and

139 (ii) after each primary, general, or special election conducted under this section, select
140 a number of ballots, in varying jurisdictions, to audit in accordance with the procedures
141 developed under Subsection (7)(a)(i).

142 (b) The lieutenant governor shall post the results of an audit conducted under this
143 Subsection (7) on the lieutenant governor's website.

144 Section 3. Section **20A-3-305** is amended to read:

145 **20A-3-305. Mailing of ballot to voter -- Enclose self-addressed envelope --**
146 **Affidavit.**

147 (1) (a) Upon timely receipt of an absentee voter application properly filled out and
148 signed less than 30 days before the election, the election officer shall either:

149 (i) give the applicant an official absentee ballot and envelope to vote in the office; or

150 (ii) mail an official absentee ballot, postage paid, to the absentee voter and enclose an
151 envelope printed as required in Subsection (2).

152 (b) No later than 21 days before election day, the election officer shall mail an official
153 absentee ballot, postage paid, to all absentee voters, other than to a uniformed-service voter or
154 an overseas voter, who have submitted a properly filled out and signed absentee voter
155 application before the day on which the ballots are mailed and enclose an envelope printed as
156 required by Subsection (2).

157 (2) The election officer shall ensure that:

158 (a) the name, official title, and post office address of the election officer is printed on
159 the front of the envelope; and

160 (b) the following is printed on the back of the envelope:

161 ~~[(b)]~~ (i) a printed affidavit in substantially the following form [~~is printed on the back of~~
162 ~~the envelope~~]:

163 "County of _____ State of _____

164 I, _____, solemnly swear that: I am a qualified resident voter of the _____ voting precinct
165 in _____ County, Utah and that I am entitled to vote in that voting precinct at the next election.

166 I am not a convicted felon currently incarcerated for commission of a felony.

167 _____
168 Signature of Absentee Voter"; and

169 (ii) a warning that the affidavit must be signed by the individual to whom the ballot
170 was sent and that the ballot will not be counted if the signature on the affidavit does not match
171 the signature on file with the election officer of the individual to whom the ballot was sent.

172 (3) If the election officer determines that the absentee voter is required to show valid
173 voter identification, the election officer shall:

174 (a) issue the voter a provisional ballot in accordance with Section 20A-3-105.5;

175 (b) instruct the voter to include a copy of the voter's valid voter identification with the
176 return ballot;

177 (c) provide the voter clear instructions on how to vote a provisional ballot; and

178 (d) comply with the requirements of Subsection (2).

179 Section 4. Section 20A-4-104 is amended to read:

180 **20A-4-104. Counting ballots electronically.**

181 (1) (a) Before beginning to count [~~ballot sheets~~] ballots using automatic tabulating
182 equipment, the election officer shall test the automatic tabulating equipment to ensure that it

183 will accurately count the votes cast for all offices and all measures.

184 (b) The election officer shall publish public notice of the time and place of the test at
185 least 48 hours before the test in one or more daily or weekly newspapers of general circulation
186 published in the county, municipality, or jurisdiction where the equipment is used.

187 (c) The election officer shall conduct the test by processing a preaudited group of
188 [~~ballot sheets~~] ballots.

189 (d) The election officer shall ensure that:

190 (i) a predetermined number of valid votes for each candidate and measure are recorded
191 on the [~~ballot sheets~~] ballots;

192 (ii) for each office, one or more ballot sheets have votes in excess of the number
193 allowed by law in order to test the ability of the automatic tabulating equipment to reject those
194 votes; and

195 (iii) a different number of valid votes are assigned to each candidate for an office, and
196 for and against each measure.

197 (e) If any error is detected, the election officer shall determine the cause of the error
198 and correct it.

199 (f) The election officer shall ensure that:

200 (i) the automatic tabulating equipment produces an errorless count before beginning
201 the actual counting; and

202 (ii) the automatic tabulating equipment passes the same test at the end of the count
203 before the election returns are approved as official.

204 (2) (a) The election officer or his designee shall supervise and direct all proceedings at
205 the counting center.

206 (b) (i) Proceedings at the counting center are public and may be observed by interested
207 persons.

208 (ii) Only those persons authorized to participate in the count may touch any ballot[;
209 ~~ballot sheet,~~] or return.

210 (c) The election officer shall deputize and administer an oath or affirmation to all
211 persons who are engaged in processing and counting the ballots that they will faithfully
212 perform their assigned duties.

213 (d) (i) Counting poll watchers appointed as provided in Section [20A-3-201](#) may

214 observe the testing of equipment and actual counting of the [~~ballot sheets~~] ballots.

215 (ii) Those counting poll watchers may make independent tests of the equipment before
216 or after the vote count as long as the testing does not interfere in any way with the official
217 tabulation of the [~~ballot sheets~~] ballots.

218 (3) If any ballot [~~sheet~~] is damaged or defective so that it cannot properly be counted
219 by the automatic tabulating equipment, the election officer shall ensure that two counting
220 judges jointly:

221 (a) [~~cause~~] create a true duplicate copy of the ballot [~~sheet to be made~~] with an
222 identifying serial number;

223 (b) substitute the duplicate ballot for the damaged or defective ballot [~~sheet~~];

224 (c) label the duplicate ballot [~~card~~] "duplicate"; and

225 (d) record the duplicate [~~ballot sheet's~~] ballot's serial number on the damaged or
226 defective ballot [~~sheet~~].

227 (4) The election officer may:

228 (a) conduct an unofficial count before conducting the official count in order to provide
229 early unofficial returns to the public;

230 (b) release unofficial returns from time to time after the polls close; and

231 (c) report the progress of the count for each candidate during the actual counting of
232 ballots.

233 (5) The election officer shall review and evaluate the provisional ballot envelopes and
234 prepare any valid provisional ballots for counting as provided in Section [20A-4-107](#).

235 (6) (a) The election officer or his designee shall:

236 (i) separate, count, and tabulate any ballots containing valid write-in votes; and

237 (ii) complete the standard form provided by the clerk for recording valid write-in votes.

238 (b) In counting the write-in votes, if, by casting a valid write-in vote, a voter has cast
239 more votes for an office than that voter is entitled to vote for that office, the poll workers shall
240 count the valid write-in vote as being the obvious intent of the voter.

241 (7) (a) The election officer shall certify the return printed by the automatic tabulating
242 equipment, to which have been added write-in and absentee votes, as the official return of each
243 voting precinct.

244 (b) Upon completion of the count, the election officer shall make official returns open

245 to the public.

246 (8) If for any reason it becomes impracticable to count all or a part of the [~~ballot sheets~~]
247 ballots with tabulating equipment, the election officer may direct that they be counted manually
248 according to the procedures and requirements of this part.

249 (9) After the count is completed, the election officer shall seal and retain the programs,
250 test materials, and ballots as provided in Section 20A-4-202.

251 Section 5. Section **20A-4-105** is amended to read:

252 **20A-4-105. Standards and requirements for evaluating voter's ballot choices.**

253 [~~(1) Each person counting ballots shall apply the standards and requirements of this~~
254 ~~section to resolve any questions that arise as ballots are counted.~~]

255 (1) (a) An election officer shall ensure that when a question arises regarding a vote
256 recorded on a paper ballot, two counting judges jointly adjudicate the ballot in accordance with
257 the requirements of this section.

258 (b) If the counting judges disagree on the disposition of a vote recorded on a ballot that
259 is adjudicated under this section, the counting judges may not count the vote.

260 (2) Except as provided in Subsection (11), if a voter marks more names than there are
261 [~~persons~~] individuals to be elected to an office, or if [~~for any reason it is impossible to~~
262 ~~determine the choice of any voter for any office to be filled, the counter may not count that~~
263 ~~voter's ballot for that office.~~] the counting judges cannot determine a voter's choice for an
264 office, the counting judges may not count the voter's vote for that office.

265 (3) The [~~counter~~] counting judges shall count a defective or incomplete mark on [~~any~~]
266 a paper ballot if:

267 (a) [~~it~~] the defective or incomplete mark is in the proper place; and

268 (b) there is no other mark or cross on the [~~paper~~] ballot indicating the voter's intent to
269 vote other than as indicated by the incomplete or defective mark.

270 (4) (a) When [~~the~~] a voter has marked [~~the~~] a ballot so that it appears that the voter has
271 voted more than one straight ticket, the [~~election~~] counting judges may not count any votes on
272 the ballot for party candidates.

273 (b) The [~~election~~] counting judges shall count the remainder of the ballot if [~~it~~] the
274 remainder of the ballot is voted correctly.

275 (5) [~~A counter~~] The counting judges may not reject a ballot marked by the voter

276 because of marks on the ballot other than those marks allowed by this section unless the
277 extraneous marks on a ballot [~~or group of ballots~~] show an intent by [~~a person or group to mark~~
278 ~~their ballots so that their ballots~~] an individual to mark the individual's ballot so that the
279 individual's ballot can be identified.

280 (6) (a) In counting the ballots, the [~~counters~~] counting judges shall give full
281 consideration to the intent of the voter.

282 (b) The [~~counters~~] counting judges may not invalidate a ballot because of mechanical
283 [~~and~~] or technical defects in voting or failure on the part of the voter to follow strictly the rules
284 for balloting required by Chapter 3, Voting.

285 (7) The [~~counters~~] counting judges may not reject a ballot because of [~~any~~] an error in:

286 (a) stamping or writing [~~any~~] an official endorsement; or

287 (b) delivering the wrong ballots to [~~any~~] a polling place.

288 (8) The [~~counter~~] counting judges may not count [~~any~~] a paper ballot that does not have
289 the official endorsement by an election officer.

290 (9) The [~~counter~~] counting judges may not count [~~any~~] a ballot proposition vote or
291 candidate vote for which the voter is not [^u]legally entitled to vote[^u], as [~~used~~] defined in
292 Section [20A-4-107](#).

293 (10) If the [~~counter discovers~~] counting judges discover that the name of a candidate
294 [~~voted for~~] is misspelled on a ballot, or that the initial letters of a candidate's given name are
295 transposed or omitted in [~~part or altogether, the counter~~] whole or in part on a ballot, the
296 counting judges shall count [~~the~~] a voter's vote for [~~that~~] the candidate if it is apparent that the
297 voter intended to vote for [~~that~~] the candidate.

298 (11) The [~~counter~~] counting judges shall count a vote for the president and the vice
299 president of any political party as a vote for the presidential electors selected by the political
300 party.

301 (12) In counting the valid write-in votes, if, by casting a valid write-in vote, a voter has
302 cast more votes for an office than that voter is entitled to vote for that office, the counting
303 judges shall count the valid write-in vote as being the obvious intent of the voter.