

Effective 5/13/2014

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

20A-1-801 Title.

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

Enacted by Chapter 254, 2014 General Session

20A-1-802 Definitions.

As used in this part:

- (1) "Bad faith" means that a person files a petition described in Subsection 20A-1-803(1):
 - (a) under circumstances where a reasonable person would not believe that the allegations are true; or
 - (b)
 - (i) within 60 days before an election that the candidate to which the petition relates will appear on the ballot; and
 - (ii) under circumstances where a reasonable person would not believe that the allegations constitute a significant violation of a provision of this title.
- (2) "Defendant" means each person against whom an allegation is made in the verified petition described in Subsection 20A-1-803(1).
- (3) "Receiving official" means:
 - (a) the lieutenant governor, unless the verified petition described in Section 20A-1-803 alleges a violation by the governor, the lieutenant governor, or an employee of the lieutenant governor's office; or
 - (b) the attorney general, if the verified petition described in Section 20A-1-803 alleges a violation by the governor, the lieutenant governor, or an employee of the lieutenant governor's office.
- (4) "Reviewing official" means:
 - (a) except as provided in Subsection (4)(b), the receiving official; or
 - (b) the reviewing official appointed under Subsection 20A-1-803(3)(a), if the receiving official appoints another individual as the reviewing official under Subsection 20A-1-803(3)(a).
- (5) "Significant violation" means:
 - (a) a violation that, if known by voters before the election, may have resulted in a candidate, other than the candidate certified as having won the election, winning the election; or
 - (b) a violation that, had the violation not occurred, may have resulted in a candidate, other than the candidate certified as having won the election, winning the election.

Enacted by Chapter 254, 2014 General Session

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

- (1) A registered voter may file a verified petition alleging a violation of any provision of this title, if the registered voter:
 - (a) has information relating to the alleged violation;
 - (b) the allegation is against a candidate for whom the registered voter had the right to vote, a personal campaign committee of that candidate, or a member of a personal campaign committee of that candidate.

- (2) The registered voter described in Subsection (1) shall file the verified petition with the receiving official.
- (3) If the receiving official determines, in writing, that the receiving official has a conflict of interest in relation to taking an action required in this part, the receiving official shall:
 - (a) designate as the reviewing official an individual who does not have a conflict of interest, in the following order of precedence:
 - (i) the attorney general;
 - (ii) the state auditor;
 - (iii) the state treasurer; or
 - (iv) the governor; and
 - (b) forward the petition to the reviewing official for further action.
- (4)
 - (a) The reviewing official shall gather information and determine whether, in the discretion of the reviewing official, a special investigation is necessary.
 - (b) In making the determination described in Subsection (4)(a), the reviewing official may consider the following:
 - (i) whether, based on the information available to the reviewing official, the reviewing official is able to determine that a violation did not occur;
 - (ii) the seriousness of the alleged violation;
 - (iii) whether the alleged violation was intentional or accidental;
 - (iv) whether the alleged violation could be resolved informally;
 - (v) whether the petition is frivolous or filed for the purpose of harassment;
 - (vi) whether the alleged violation should be addressed in, or is being adequately addressed in, another forum, including a criminal investigation or proceeding;
 - (vii) whether additional investigation, as part of a civil proceeding in relation to the petition, is desirable;
 - (viii) the likelihood that an action, based on the allegations, is likely to be successful; or
 - (ix) other criteria relevant to making the determination.
- (5) If the reviewing official determines that a special investigation is necessary, the reviewing official shall:
 - (a) except as provided in Subsection (5)(b), refer the information to the attorney general, who shall appoint special counsel; or
 - (b) if the verified petition alleges that the attorney general violated a provision of this title, or if the reviewing official determines that the Office of the Attorney General has a conflict of interest in relation to the verified petition, appoint a person who is not an employee of the Office of the Attorney General as special counsel, in accordance with Title 63G, Chapter 6a, Utah Procurement Code.
- (6) The special counsel:
 - (a) shall review the petition and any evidence relative to determining whether a defendant committed a violation of a provision of this title;
 - (b) may interview individuals or gather additional evidence relative to determining whether a defendant committed a violation of a provision of this title;
 - (c) shall advise the reviewing official whether, in the opinion of the special counsel, sufficient evidence exists to establish that a defendant committed a significant violation of a provision of this title; and
 - (d) shall, within three days after the day on which the special counsel complies with Subsection (6)(c), prepare and provide to the reviewing official a document that:

- (i) states whether, in the opinion of the special counsel, sufficient evidence exists to establish that a defendant committed at least one significant violation of a provision of this title; and
 - (ii) if the special counsel is of the opinion that sufficient evidence exists to establish that a defendant committed at least one significant violation of a provision of this title:
 - (A) states the name of each defendant for which, in the opinion of the special counsel, sufficient evidence exists to establish that the defendant committed at least one significant violation of a provision of this title;
 - (B) states each provision of this title for which, in the opinion of the special counsel, sufficient evidence exists to establish that the defendant violated; and
 - (C) may not include a description of the evidence supporting the opinion of the special counsel.
- (7) The reviewing official shall:
- (a) within three days after the day on which the reviewing official receives the document described in Subsection (6)(d), post a conspicuous link to the document on the home page of the reviewing official's website; and
 - (b) within seven days after the day on which the special counsel complies with Subsection (6)(c):
 - (i) determine whether, in the opinion of the reviewing official, sufficient evidence exists to establish that a defendant committed a significant violation of a provision of this title; and
 - (ii) if the reviewing official is of the opinion that sufficient evidence exists to establish that a defendant committed at least one significant violation of a provision of this title, direct the special counsel to file a civil action and serve summons in accordance with the Utah Rules of Civil Procedure:
 - (A) against each defendant for whom the reviewing official determines that sufficient evidence exists that the defendant committed a significant violation of this title; and
 - (B) that includes each significant violation for which the reviewing official determines that sufficient evidence exists.
- (8)
- (a) The purpose of the civil action described in Subsection (7)(b)(ii) is to determine whether a defendant committed a significant violation of a provision of this title.
 - (b) For a civil action described in Subsection (7)(b)(ii), the complaint may include an allegation of any violation of a provision of this title by a defendant, regardless of whether the violation is alleged in the petition.
 - (c) The special counsel may amend the complaint at any time after the complaint is filed, including by adding allegations to the complaint or amending allegations already made in the complaint, if the court determines that the amendment will not violate the due process rights of the defendant against whom the added or amended allegation is made.
- (9)
- (a) An action brought under this section shall:
 - (i) be heard without a jury, with the court determining all issues of fact and issues of law; and
 - (ii) have precedence over any other civil actions.
 - (b) The court shall schedule discovery and hearings, and shall otherwise conduct proceedings relating to an action brought under this section, in an expedited manner while preserving the rights of the parties and the integrity of the proceedings.

Enacted by Chapter 254, 2014 General Session

20A-1-804 Judgment and findings -- Appeal -- Criminal prosecution not affected by judgment.

- (1)
 - (a) Except as provided in Subsection (2), if the court finds that the candidate whose right to office is being challenged, the candidate's personal campaign committee, or a member of the candidate's personal campaign committee has committed a significant violation of any provision of this title, the judge shall enter an order:
 - (i) declaring void the election of the candidate to that office;
 - (ii) ousting and excluding the candidate from office; and
 - (iii) declaring the office vacant.
 - (b) A vacancy created by an order described in Subsection (1)(a) shall be filled as provided in this chapter.
- (2)
 - (a) As it relates to a candidate for either house of the Legislature, if the court finds that the candidate, the candidate's personal campaign committee, or a member of the candidate's personal campaign committee has committed a significant violation of any provision of this title, the court shall:
 - (i) prepare and sign written findings of fact and conclusions of law relating to the violation; and
 - (ii) without issuing an order, transmit those findings and conclusions to the reviewing official.
 - (b) The reviewing official shall transmit the judge's findings and conclusions to the house of the Legislature for which the person is a candidate.
- (3)
 - (a) A party may appeal the determination of the court in the same manner as appeals may be taken in civil actions.
 - (b) A judge may not issue an injunction suspending or staying the proceeding unless:
 - (i) application is made to the court or to the presiding judge of the court;
 - (ii) all parties receive notice of the application and the time for the hearing; and
 - (iii) the judge conducts a hearing.
- (4) Any judgment or findings and conclusions issued as provided in this section may not be construed to bar or affect in any way any criminal prosecution of any candidate or other person.

Renumbered and Amended by Chapter 254, 2014 General Session

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

- (1) If judgment is in favor of the plaintiff in a civil action brought under this part, the special counsel may petition the judge to recover the reviewing official's taxable costs and attorney fees against the person whose right to the office is contested.
- (2) The judge may not award costs or attorney fees to the defendant, unless it appears that the petitioner filed the petition in bad faith.
- (3) Nothing in this section may be construed to prohibit any other civil or criminal actions or remedies against alleged violators.
- (4) In the event a witness asserts a privilege against self-incrimination, the special counsel may request a person described in Subsections 77-22b-1(1)(a)(i) through (iii) to compel testimony and the production of evidence from the witness pursuant to Title 77, Chapter 22b, Grants of Immunity.

Enacted by Chapter 254, 2014 General Session

20A-1-806 Special counsel on appeal.

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

Enacted by Chapter 254, 2014 General Session

20A-1-807 Compensation of special counsel.

- (1) The special counsel authorized by this chapter shall receive reasonable compensation for the special counsel's services.
- (2) The compensation shall be audited by the reviewing official and paid out of the state treasury upon the written statement of the reviewing official that:
 - (a) the appointment has been made;
 - (b) the person appointed has faithfully performed the duties of special counsel; and
 - (c) the special counsel's bill is accurate and correct.
- (3) Compensation for special counsel shall be audited and paid in the same manner as other claims against the state are audited and paid.

Renumbered and Amended by Chapter 254, 2014 General Session

20A-1-808 Transition clause.

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

Renumbered and Amended by Chapter 254, 2014 General Session