

Senator Craig L. Taylor proposes to substitute the following bill:

FELON VOTING RESTRICTIONS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Carl R. Saunders

AN ACT RELATING TO VOTING; PROHIBITING CERTAIN FELONS FROM VOTING OR REGISTERING TO VOTE IN UTAH ELECTIONS; PROVIDING FOR RESTORATION OF FELON'S VOTING RIGHTS; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

20A-2-101, as last amended by Chapter 2, Laws of Utah 1994

20A-2-104, as last amended by Chapter 183, Laws of Utah 1997

20A-2-109, as enacted by Chapter 152, Laws of Utah 1995

20A-3-202, as last amended by Chapter 183, Laws of Utah 1997

76-3-201, as last amended by Chapters 40, 79, 241 and 241, Laws of Utah 1996

77-27-5, as last amended by Chapter 100, Laws of Utah 1996

ENACTS:

20A-2-101.5, Utah Code Annotated 1953

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

Section 1. Section **20A-2-101** is amended to read:

20A-2-101. Eligibility for registration.

(1) Except as provided in Subsection (2), any person may apply to register to vote in an election who:

(a) is a citizen of the United States;

(b) has been a resident of Utah for at least the 30 days immediately before the election; and

(c) will be at least 18 years old on the day of the election.

(2) (a) (i) A person who is involuntarily confined or incarcerated in a jail, prison, or other facility within a voting precinct is not a resident of that voting precinct and may not register to vote in that voting precinct unless the person was a resident of that voting precinct before the confinement or incarceration.

[(b)] (ii) A person who is involuntarily confined or incarcerated in a jail or prison is resident of the voting precinct in which the person resided before the confinement or incarceration.

(b) A person who has been convicted of a felony whose right to vote has not been restored as provided by law may not register to vote.

(3) Any person who is eligible or qualified to vote may register and vote in a regular general election, a regular primary election, a municipal general election, a municipal primary election, a statewide special election, a local special election, a special district election, and a bond election unless that person resides outside the geographic boundaries of the entity in which the election is held.

Section 2. Section **20A-2-101.5** is enacted to read:

20A-2-101.5. Convicted felons -- Restoration of right to vote.

A convicted felon may register to vote and vote in elections if:

(1) the felon's right to vote was restored by the sentencing judge under Section 76-3-201;

(2) the felon's right to vote was restored by the Board of Pardons and Parole under Section 77-27-5;

(3) the felon has successfully completed the term of incarceration to which the felon was sentenced;

(4) the felon has successfully completed the term of probation and the court's jurisdiction has ceased because the case has terminated; or

(5) the felon has successfully completed the term of parole and the board's jurisdiction has ceased because the case has terminated.

Section 3. Section **20A-2-104** is amended to read:

20A-2-104. Voter registration form.

(1) Every person applying to be registered shall complete a registration form printed in substantially the following form:

UTAH ELECTION REGISTRATION FORM

Name of Voter _____

First Middle Last

Driver License or Identification Card Number (optional) _____

Date of Birth _____

Street Address of Principal Place of Residence _____

City County State Zip Code

Telephone Number (optional) _____

Last four digits of Social Security Number (optional) _____

Place of Birth _____

Last former address at which I was registered to vote (if known) _____

City County State Zip Code

Voting Precinct (if known)

Political Party (optional) _____

I do swear (or affirm), subject to penalty of law for false statements, that the information contained in this form is true, and that I am a citizen of the United States and a resident of the state of Utah, residing at the above address. I will be at least 18 years old and will have resided in Utah for 30 days immediately before the next election. I am not a convicted felon, or, if I am a convicted felon, my right to vote was restored by the sentencing judge, the Board of Pardons and Parole, or through the completion of my term of incarceration, probation, or parole.

Signed and sworn _____

Voter's Signature

Date _____, 19 _____.

NOTICE: IN ORDER TO VOTE, YOUR NAME MUST APPEAR IN THE OFFICIAL REGISTER.

FOR OFFICIAL USE ONLY

Voting Precinct _____

Voting I.D. Number _____

1 -----

2 (2) The county clerk shall retain a copy in a permanent countywide alphabetical file, which
3 may be electronic or some other recognized system.

4 (3) (a) Each county clerk shall retain lists of currently registered voters.

5 (b) (i) Voter registration lists are public information and shall be made available for the
6 public to view in the clerk's office.

7 (ii) The lieutenant governor shall maintain a list of registered voters in electronic form.

8 (iii) If there are any discrepancies between the two lists, the county clerk's list is the
9 official list.

10 (c) The lieutenant governor and the county clerks may charge individuals who wish to
11 obtain a copy of the list of registered voters.

12 (i) Any registered voter may submit a written request to the county clerk to have their
13 voter registration record secured.

14 (ii) After receipt of a written request, the county clerk and the lieutenant governor may not
15 provide that voter's information on the lists that are sold to the public.

16 Section 4. Section **20A-2-109** is amended to read:

17 **20A-2-109. Statewide voter registration data base -- Lieutenant governor to create**
18 **-- Counties to provide information.**

19 (1) (a) The lieutenant governor shall develop a statewide voter registration data base.

20 ~~[(2)]~~ (b) Each county clerk shall provide the lieutenant governor with the county's voter
21 registration and other data requested by the lieutenant governor in the form required by the
22 lieutenant governor.

23 (2) (a) The lieutenant governor shall maintain a current list of all convicted felons in Utah
24 whose voting rights have not been restored as provided by law.

25 (b) (i) The Administrator of the Courts shall provide the lieutenant governor's office with
26 a list of the name and last-known address of:

27 (A) each person convicted of a felony in a Utah state court; and

28 (B) each person convicted of a felony whose right to vote was restored by the sentencing
29 judge.

30 (ii) The lieutenant governor shall establish the frequency of receipt of the information and
31 the method of transmitting the information after consultation with the Administrator of the Courts.

1 (c) (i) The Department of Corrections shall provide the lieutenant governor's office with
2 a list of the name of each convicted felon that is no longer subject to the jurisdiction of the
3 department because the person has been:

4 (A) released from incarceration and is not placed on parole;

5 (B) released from probation because the felon has successfully completed his term of
6 probation; or

7 (C) released from parole because the felon has successfully completed his term of parole.

8 (ii) The Department of Corrections shall also provide the lieutenant governor's office with
9 a list of the name of each convicted felon whose right to vote has been restored by the Board of
10 Pardons and Parole.

11 (iii) The lieutenant governor shall establish the frequency of receipt of the information and
12 the method of transmitting the information after consultation with the Department of Corrections.

13 Section 5. Section **20A-3-202** is amended to read:

14 **20A-3-202. Challenges -- Recorded in official register and in pollbook.**

15 (1) (a) When any person applies for a ballot or when a person offers a ballot for deposit
16 in the ballot box, the person's right to vote in that voting precinct and in that election may be orally
17 challenged by an election judge or any challenger orally stating the challenged voter's name and
18 the basis for the challenge.

19 (b) A person may challenge another person's right to vote by alleging that:

20 (i) the voter is not the person whose name appears in the official register and under which
21 name the right to vote is claimed;

22 (ii) the voter is not a resident of Utah;

23 (iii) the voter is not a citizen of the United States;

24 (iv) the voter has not or will not have resided in Utah for 30 days immediately before the
25 date of the election;

26 (v) the voter does not live in the voting precinct;

27 (vi) the voter does not live within the geographic boundaries of the entity holding the
28 election;

29 (vii) the voter's principal place of residence is not in the voting precinct;

30 (viii) the voter's principal place of residence is not in the geographic boundaries of the
31 election area;

1 (ix) the voter has voted before in the election;

2 (x) the voter is not at least 18 years old; [or]

3 (xi) the voter is involuntarily confined or incarcerated in jail or prison and was not a
4 resident of the entity holding the election before the voter was confined or incarcerated[-]; or

5 (xii) the voter is a convicted felon and has not had their right to vote restored as provided
6 by law.

7 (2) (a) The election judges shall give the voter a ballot and allow the voter to vote if:

8 (i) the person challenged signs a written affidavit certifying that he meets all the
9 requirements for voting; and

10 (ii) the election judge determines that the person challenged is registered to vote.

11 (b) The election judges may not give the voter a ballot or allow the voter to vote if:

12 (i) the person challenged refuses to sign the written affidavit; or

13 (ii) the election judge determines that the person challenged is not registered to vote.

14 (c) (i) It is unlawful for any person to sign an affidavit certifying that he meets all the
15 requirements for voting when that person knows he does not meet at least one of those
16 requirements.

17 (ii) Any person who violates this Subsection (c) is guilty of a class B misdemeanor.

18 (3) (a) Any person may challenge the right to vote of any person whose name appears on
19 the posting list by filing a written signed statement identifying the challenged voter's name and the
20 basis for the challenge with the county clerk on the Friday before the election during regular
21 business hours.

22 (b) The person challenging a person's right to vote shall allege one or more of the grounds
23 established in Subsection (1)(b) as the basis for the challenge.

24 (c) The county clerk shall:

25 (i) carefully preserve the written challenges;

26 (ii) write in the appropriate official register opposite the name of any person for whom the
27 county clerk received a written challenge, the words "To be challenged"; and

28 (iii) transmit the written challenges to election judges of that voting precinct.

29 (d) On election day, the election judges shall raise the written challenge with the voter
30 before giving the voter a ballot.

31 (e) If the person challenged takes an oath before any of the election judges that the grounds

1 of the challenge are false, the judges shall allow the person to vote.

2 (f) If the person applying to vote does not meet the legal requirements to vote, or refuses
3 to take the oath, the election judges may not deliver a ballot to him.

4 (4) The election judges shall record all challenges in the official register and on the
5 challenge sheets in the pollbook.

6 (5) If the person challenged under Subsection (3) voted an absentee ballot, the county clerk
7 shall submit the name of the voter and the challenge to the voter to the county attorney, or the
8 district attorney in counties with a prosecution district, for investigation and prosecution for voter
9 fraud.

10 Section 6. Section **76-3-201** is amended to read:

11 **76-3-201. Sentences or combination of sentences allowed -- Civil penalties --**

12 **Restitution -- Hearing -- Definitions.**

13 (1) As used in this section:

14 (a) "Conviction" includes a:

15 (i) judgment of guilt; and

16 (ii) plea of guilty.

17 (b) "Criminal activities" means any offense of which the defendant is convicted or any
18 other criminal conduct for which the defendant admits responsibility to the sentencing court with
19 or without an admission of committing the criminal conduct.

20 (c) "Pecuniary damages" means all special damages, but not general damages, which a
21 person could recover against the defendant in a civil action arising out of the facts or events
22 constituting the defendant's criminal activities and includes the money equivalent of property
23 taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical
24 expenses.

25 (d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a
26 victim, including the accrual of interest from the time of sentencing, insured damages, and
27 payment for expenses to a governmental entity for extradition or transportation and as further
28 defined in Subsection (4)(c).

29 (e) (i) "Victim" means any person whom the court determines has suffered pecuniary
30 damages as a result of the defendant's criminal activities.

31 (ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

1 (2) (a) Within the limits prescribed by this chapter, a court may sentence a person
2 convicted of an offense to any one of the following sentences or combination of them:

3 [(a)] (i) to pay a fine;

4 [(b)] (ii) to removal or disqualification from public or private office;

5 [(c)] (iii) to probation unless otherwise specifically provided by law;

6 [(d)] (iv) to imprisonment;

7 [(e)] (v) to life imprisonment;

8 [(f)] (vi) on or after April 27, 1992, to life in prison without parole; or

9 [(g)] (vii) to death.

10 (b) A court may restore a convicted felon's right to vote if:

11 (i) the court sentences the felon to probation; and

12 (ii) the court believes that the restoration of the right to vote will assist in the felon's
13 rehabilitation.

14 (3) (a) This chapter does not deprive a court of authority conferred by law to:

15 (i) forfeit property;

16 (ii) dissolve a corporation;

17 (iii) suspend or cancel a license;

18 (iv) permit removal of a person from office;

19 (v) cite for contempt; or

20 (vi) impose any other civil penalty.

21 (b) A civil penalty may be included in a sentence.

22 (4) (a) (i) When a person is convicted of criminal activity that has resulted in pecuniary
23 damages, in addition to any other sentence it may impose, the court shall order that the defendant
24 make restitution to victims of crime as provided in this subsection, or for conduct for which the
25 defendant has agreed to make restitution as part of a plea agreement. For purposes of restitution,
26 a victim has the meaning as defined in Section 77-38-2 and family member has the meaning as
27 defined in Section 77-37-2.

28 (ii) In determining whether restitution is appropriate, the court shall follow the criteria and
29 procedures as provided in Subsections (4)(c) and (4)(d).

30 (iii) If the court finds the defendant owes restitution, the clerk of the court shall enter an
31 order of complete restitution as defined in Subsection (8)(b) on the civil judgment docket and

1 provide notice of the order to the parties.

2 (iv) The order is considered a legal judgment enforceable under the Utah Rules of Civil
3 Procedure, and the person in whose favor the restitution order is entered may seek enforcement
4 of the restitution order in accordance with the Utah Rules of Civil Procedure. In addition, the
5 Department of Corrections may, on behalf of the person in whose favor the restitution order is
6 entered, enforce the restitution order as judgment creditor under the Utah Rules of Civil Procedure.

7 (v) If the defendant fails to obey a court order for payment of restitution and the victim or
8 department elects to pursue collection of the order by civil process, the victim shall be entitled to
9 recover reasonable attorney's fees.

10 (vi) A judgment ordering restitution constitutes a lien when recorded in a judgment docket
11 and shall have the same effect and is subject to the same rules as a judgment for money in a civil
12 action. Interest shall accrue on the amount ordered from the time of sentencing.

13 (vii) The Department of Corrections shall make rules permitting the restitution payments
14 to be credited to principal first and the remainder of payments credited to interest in accordance
15 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

16 (b) (i) If a defendant has been extradited to this state under Title 77, Chapter 30,
17 Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county
18 to which he has been returned, the court may, in addition to any other sentence it may impose,
19 order that the defendant make restitution for costs expended by any governmental entity for the
20 extradition.

21 (ii) In determining whether restitution is appropriate, the court shall consider the criteria
22 in Subsection (4)(c).

23 (c) In determining restitution, the court shall determine complete restitution and
24 court-ordered restitution.

25 (i) Complete restitution means the restitution necessary to compensate a victim for all
26 losses caused by the defendant.

27 (ii) Court-ordered restitution means the restitution the court having criminal jurisdiction
28 orders the defendant to pay as a part of the criminal sentence at the time of sentencing.

29 (iii) Complete restitution and court-ordered restitution shall be determined as provided in
30 Subsection (8).

31 (d) (i) If the court determines that restitution is appropriate or inappropriate under this

1 subsection, the court shall make the reasons for the decision a part of the court record.

2 (ii) In any civil action brought by a victim to enforce the judgment, the defendant shall be
3 entitled to offset any amounts that have been paid as part of court-ordered restitution to the victim.

4 (iii) A judgment ordering restitution constitutes a lien when recorded in a judgment docket
5 and shall have the same effect and is subject to the same rules as a judgment for money in a civil
6 action. Interest shall accrue on the amount ordered from the time of sentencing.

7 (iv) The Department of Corrections shall make rules permitting the restitution payments
8 to be credited to principal first and the remainder of payments credited to interest in accordance
9 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

10 (e) If the defendant objects to the imposition, amount, or distribution of the restitution, the
11 court shall at the time of sentencing allow the defendant a full hearing on the issue.

12 (5) (a) In addition to any other sentence the court may impose, the court shall order the
13 defendant to pay restitution of governmental transportation expenses if the defendant was:

14 (i) transported pursuant to court order from one county to another within the state at
15 governmental expense to resolve pending criminal charges;

16 (ii) charged with a felony or a class A, B, or C misdemeanor; and

17 (iii) convicted of a crime.

18 (b) The court may not order the defendant to pay restitution of governmental transportation
19 expenses if any of the following apply:

20 (i) the defendant is charged with an infraction or on a subsequent failure to appear a
21 warrant is issued for an infraction; or

22 (ii) the defendant was not transported pursuant to a court order.

23 (c) (i) Restitution of governmental transportation expenses under Subsection (a)(i) shall
24 be calculated according to the following schedule:

25 (A) \$75 for up to 100 miles a defendant is transported;

26 (B) \$125 for 100 up to 200 miles a defendant is transported; and

27 (C) \$250 for 200 miles or more a defendant is transported.

28 (ii) The schedule of restitution under Subsection (c)(i) applies to each defendant
29 transported regardless of the number of defendants actually transported in a single trip.

30 (6) (a) If a statute under which the defendant was convicted mandates that one of three
31 stated minimum terms shall be imposed, the court shall order imposition of the term of middle

1 severity unless there are circumstances in aggravation or mitigation of the crime.

2 (b) Prior to or at the time of sentencing, either party may submit a statement identifying
3 circumstances in aggravation or mitigation or presenting additional facts. If the statement is in
4 writing, it shall be filed with the court and served on the opposing party at least four days prior to
5 the time set for sentencing.

6 (c) In determining whether there are circumstances that justify imposition of the highest
7 or lowest term, the court may consider the record in the case, the probation officer's report, other
8 reports, including reports received under Section 76-3-404, statements in aggravation or mitigation
9 submitted by the prosecution or the defendant, and any further evidence introduced at the
10 sentencing hearing.

11 (d) The court shall set forth on the record the facts supporting and reasons for imposing
12 the upper or lower term.

13 (e) The court in determining a just sentence shall consider sentencing guidelines regarding
14 aggravation and mitigation promulgated by the Commission on Criminal and Juvenile Justice.

15 (7) If during the commission of a crime described as child kidnaping, rape of a child,
16 object rape of a child, sodomy upon a child, or sexual abuse of a child, the defendant causes
17 substantial bodily injury to the child, and if the charge is set forth in the information or indictment
18 and admitted by the defendant, or found true by a judge or jury at trial, the defendant shall be
19 sentenced to the highest minimum term in state prison. This subsection takes precedence over any
20 conflicting provision of law.

21 (8) (a) For the purpose of determining restitution for an offense, the offense shall include
22 any criminal conduct admitted by the defendant to the sentencing court or to which the defendant
23 agrees to pay restitution. A victim of an offense, that involves as an element a scheme, a
24 conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's
25 criminal conduct in the course of the scheme, conspiracy, or pattern.

26 (b) In determining the monetary sum and other conditions for complete restitution, the
27 court shall consider all relevant facts, including:

28 (i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction
29 of property of a victim of the offense;

30 (ii) the cost of necessary medical and related professional services and devices relating to
31 physical, psychiatric, and psychological care, including nonmedical care and treatment rendered

1 in accordance with a method of healing recognized by the law of the place of treatment; the cost
2 of necessary physical and occupational therapy and rehabilitation; and the income lost by the
3 victim as a result of the offense if the offense resulted in bodily injury to a victim; and

4 (iii) the cost of necessary funeral and related services if the offense resulted in the death
5 of a victim.

6 (c) In determining the monetary sum and other conditions for court-ordered restitution, the
7 court shall consider the factors listed in Subsection (b) and:

8 (i) the financial resources of the defendant and the burden that payment of restitution will
9 impose, with regard to the other obligations of the defendant;

10 (ii) the ability of the defendant to pay restitution on an installment basis or on other
11 conditions to be fixed by the court;

12 (iii) the rehabilitative effect on the defendant of the payment of restitution and the method
13 of payment; and

14 (iv) other circumstances which the court determines make restitution inappropriate.

15 (d) The court may decline to make an order or may defer entering an order of restitution
16 if the court determines that the complication and prolongation of the sentencing process, as a result
17 of considering an order of restitution under this subsection, substantially outweighs the need to
18 provide restitution to the victim.

19 Section 7. Section **77-27-5** is amended to read:

20 **77-27-5. Board of Pardons and Parole authority.**

21 (1) (a) The Board of Pardons and Parole shall determine by majority decision when and
22 under what conditions, subject to this chapter and other laws of the state, persons committed to
23 serve sentences in class A misdemeanor cases at penal or correctional facilities which are under
24 the jurisdiction of the Department of Corrections, and all felony cases except treason or
25 impeachment or as otherwise limited by law, may be released upon parole, pardoned, restitution
26 ordered, or have their fines, forfeitures, or restitution remitted, or their sentences commuted or
27 terminated.

28 (b) The board may sit together or in panels to conduct hearings. The chair shall appoint
29 members to the panels in any combination and in accordance with rules promulgated by the board,
30 except in hearings involving commutation and pardons. The chair may participate on any panel
31 and when doing so is chair of the panel. The chair of the board may designate the chair for any

1 other panel.

2 (c) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole,
3 pardon, or commutation granted or sentence terminated, except after a full hearing before the board
4 or the board's appointed examiner in open session. Any action taken under this subsection other
5 than by a majority of the board shall be affirmed by a majority of the board.

6 (d) A commutation or pardon may be granted only after a full hearing before the board.

7 (e) The board shall determine restitution in an amount that does not exceed complete
8 restitution if determined by the court in accordance with Section 76-3-201.

9 (f) The board may restore a convicted felon's right to vote if:

10 (i) the board releases the felon on parole, pardons the felon, or terminates the felon's
11 sentence; and

12 (ii) the board believes that the restoration of the right to vote will assist in the felon's
13 rehabilitation.

14 (2) (a) In the case of original parole grant hearings, rehearings, and parole revocation
15 hearings, timely prior notice of the time and place of the hearing shall be given to the defendant,
16 the county or district attorney's office responsible for prosecution of the case, the sentencing court,
17 law enforcement officials responsible for the defendant's arrest and conviction, and whenever
18 possible, the victim or the victim's family.

19 (b) Notice to the victim, his representative, or his family shall include information
20 provided in Section 77-27-9.5, and any related rules made by the board under that section. This
21 information shall be provided in terms that are reasonable for the lay person to understand.

22 (3) Decisions of the board in cases involving paroles, pardons, commutations or
23 terminations of sentence, restitution, or remission of fines or forfeitures are final and are not
24 subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a civil
25 judgment, including restitution as provided in Section 77-27-6.

26 (4) This chapter may not be construed as a denial of or limitation of the governor's power
27 to grant respite or reprieves in all cases of convictions for offenses against the state, except treason
28 or conviction on impeachment. However, respites or reprieves may not extend beyond the next
29 session of the Board of Pardons and Parole and the board, at that session, shall continue or
30 terminate the respite or reprieve, or it may commute the punishment, or pardon the offense as
31 provided. In the case of conviction for treason, the governor may suspend execution of the

1 sentence until the case is reported to the Legislature at its next session. The Legislature shall then
2 either pardon or commute the sentence, or direct its execution.

3 (5) In determining when, where, and under what conditions offenders serving sentences
4 may be paroled, pardoned, have restitution ordered, or have their fines or forfeitures remitted, or
5 their sentences commuted or terminated, the board shall consider whether the persons have made
6 or are prepared to make restitution as ascertained in accordance with the standards and procedures
7 of Section 76-3-201, as a condition of any parole, pardon, remission of fines or forfeitures, or
8 commutation or termination of sentence.

9 (6) In determining whether parole may be terminated, the board shall consider the offense
10 committed by the parolee, the parole period as provided in Section 76-3-202, and in accordance
11 with Section 77-27-13.

12 **Section 8. Effective date.**

13 This act takes effect on the January 1 of the year after the approval by the voters of the state
14 of a proposition to amend the Utah Constitution Article IV permitting this statute.