

JUDICIAL RETENTION ELECTION AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Gary F. Cox

This act modifies campaign and financial reporting requirements by adding requirements governing judges standing for a retention election. This act requires judges to establish a campaign committee under certain circumstances, requires them to establish a separate account for campaign funds, and establishes the dates they must file and information they must provide on campaign finance reports. This act establishes notice requirements and penalties if judges fail to file their campaign reports.

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

AMENDS:

20A-7-702, as last amended by Chapter 221, Laws of Utah 2000

20A-11-103, as last amended by Chapter 17, Laws of Utah 2000

ENACTS:

20A-12-301, Utah Code Annotated 1953

20A-12-302, Utah Code Annotated 1953

20A-12-303, Utah Code Annotated 1953

20A-12-304, Utah Code Annotated 1953

20A-12-305, Utah Code Annotated 1953

20A-12-306, Utah Code Annotated 1953

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

Section 1. Section **20A-7-702** is amended to read:

20A-7-702. Voter information pamphlet -- Form -- Contents -- Distribution.

(1) The lieutenant governor shall ensure that all information submitted for publication in the voter information pamphlet is:

(a) printed and bound in a single pamphlet;

(b) printed in clear readable type, no less than ten-point, except that the text of any measure may be set forth in eight-point type; and

- (c) printed on a quality and weight of paper that best serves the voters.
- (2) The voter information pamphlet shall contain the following items in this order:
 - (a) a cover title page;
 - (b) an introduction to the pamphlet by the lieutenant governor;
 - (c) a table of contents;
 - (d) a list of all candidates for constitutional offices;
 - (e) a list of candidates for each legislative district;
 - (f) a 100-word statement of qualifications for each candidate for the office of governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate to the lieutenant governor's office before July 15 at 5 p.m.;
 - (g) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing, in the following order for each measure:
 - (i) a copy of the number and ballot title of the measure;
 - (ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;
 - (iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;
 - (iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;
 - (v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets; and
 - (vi) for each initiative qualified for the ballot, a copy of the measure as certified by the lieutenant governor;
 - (h) a description provided by the Judicial Council of the selection and retention process for judges [~~of courts of record~~], including, in the following order:
 - (i) a description of the judicial selection process;
 - (ii) a description of the judicial performance evaluation process;

- (iii) a description of the judicial retention election process;
- (iv) a list of the criteria and minimum standards of judicial performance evaluation;
- (v) the names of the judges standing for retention election; and
- (vi) for each judge:
 - (A) the counties in which the judge is subject to retention election;
 - (B) a short biography of professional qualifications and a recent photograph;
 - (C) for each standard of performance, a statement identifying whether or not the judge met the standard and, if not, the manner in which the judge failed to meet the standard;
 - (D) a statement identifying the cumulative number of public orders issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13 during the judge's current term and the immediately preceding term, and a statement of the basis for each order that the judge has received; and
 - (E) a statement identifying whether or not the judge was certified by the Judicial Council;
- (vii) (A) except as provided in Subsection (2)(h)(vii)(B), for each judge, in graphic format, the ~~[favorable response rating]~~ responses for each attorney, jury, and other survey question used by the Judicial Council for certification of judges, displayed in 1% increments ~~[and identifying the minimum standards of performance for each question]~~;
- (B) notwithstanding Subsection (2)(h)(vii)(A), if the sample size for the survey for a particular judge is too small to provide statistically reliable information in 1% increments, the survey results for that judge shall be reported as being above or below 70% and a statement by the surveyor explaining why the survey is statistically unreliable shall also be included;
- (i) an explanation of ballot marking procedures prepared by the Office of Legislative Research and General Counsel, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;
- (j) voter registration information;
- (k) a list of all county clerks' offices and phone numbers;
- (l) an index of subjects in alphabetical order; and
- (m) on the back cover page, a printed copy of the following statement signed by the

lieutenant governor:

"I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law. SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)

(signed) _____

Lieutenant Governor"

(3) The lieutenant governor shall:

(a) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state not more than 40 nor less than 15 days before the day fixed by law for the election;

(b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;

(c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and

(d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.

Section 2. Section **20A-11-103** is amended to read:

20A-11-103. Reports -- Form of submission.

(1) (a) (i) Ten days before a report from a state office candidate, legislative office candidate, state school board candidate, political party, political action committee, [~~or~~] political issues committee, or judge is due under this chapter, the lieutenant governor shall inform those candidates, judges, and entities by postal mail or, if requested by the candidate, judge, party, or committee, by electronic mail:

(A) that the report is due; and

(B) the date that the report is due.

(ii) In addition to the information required by Subsection (1)(a)(i) and in the same mailing, ten days before the interim reports for candidates or judges are due, the lieutenant governor shall inform the candidate or judge that if the report is not received in the lieutenant governor's office by 5 p.m. on the date that it is due, voters will be informed that the candidate or judge has been disqualified and any votes cast for the candidate or judge will not be counted.

(iii) In addition to the information required by Subsection (1)(a)(i) and in the same mailing, ten days before the interim reports or verified financial statements for entities that are due September 15 and before the regular general election are due, and ten days before summary reports or January 5 financial statements are due, the lieutenant governor shall inform the entity, candidate, judge, or officeholder that if the report is not received in the lieutenant governor's office by the date that it is due, the entity, candidate, judge, or officeholder may be guilty of a class B misdemeanor for failing to file the report or statement.

(b) Ten days before a report from a local school board candidate is due under this chapter, the county clerk shall inform the candidate by postal mail or, if requested, by electronic mail:

(i) that the report is due;

(ii) the date that the report is due; and

(iii) if the report is not received in the county clerk's office by 5 p.m. on the date that it is due, voters will be informed that the candidate has been disqualified and any votes cast for the candidate will not be counted.

(2) Persons or entities submitting reports required by this chapter may submit them:

(a) on paper, printed, typed, or legibly handwritten or hand printed;

(b) on a computer disk according to specifications established by the chief election officer that protect against fraudulent filings and secure the accuracy of the information contained on the computer disk;

(c) via fax; or

(d) via electronic mail according to specifications established by the chief election officer.

(3) A report is considered filed if:

(a) it is received in the chief election officer's office no later than 5:00 p.m. on the date that

it is due;

(b) it is received in the chief election officer's office with a postmark three days or more before the date that the report was due; or

(c) the candidate, judge, or entity has proof that the report was mailed, with appropriate postage and addressing, three days before the report was due.

Section 3. Section **20A-12-301** is enacted to read:

**Part 3. Campaign and Financial Reporting Requirements
for Judicial Retention Elections**

20A-12-301. Definitions.

As used in this part:

(1) (a) "Contribution" means any of the following when done for political purposes:

(i) a gift, subscription, donation, loan, advance, or deposit of money or anything of value given to the judge or the judge's personal campaign committee;

(ii) an express, legally enforceable contract, promise, or agreement to make a gift, subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or anything of value to the judge or the judge's personal campaign committee;

(iii) any transfer of funds from another reporting entity or a corporation to the judge or the judge's personal campaign committee;

(iv) compensation paid by any person or reporting entity other than the judge or the judge's personal campaign committee for personal services provided without charge to the judge or the judge's personal campaign committee; and

(v) goods or services provided to or for the benefit of the judge or the judge's personal campaign committee at less than fair market value.

(b) "Contribution" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of the judge or the judge's personal campaign committee; or

(ii) money lent to the judge or the judge's personal campaign committee by a financial institution in the ordinary course of business.

(2) (a) "Corporation" means a domestic or foreign, profit or nonprofit, business organization that is registered as a corporation or is authorized to do business in a state and makes any expenditure from corporate funds for political purposes.

(b) "Corporation" does not mean:

(i) a business organization's political action committee as defined in Section 20A-11-101 or political issues committee as defined in Section 20A-11-101; or

(ii) a business entity organized as a partnership or a sole proprietorship.

(3) "Detailed listing" means:

(a) for each contribution:

(i) the name and address of the individual or source making the contribution;

(ii) the amount or value of the contribution; and

(iii) the date the contribution was made; and

(b) for each expenditure:

(i) the amount of the expenditure;

(ii) the person or entity to whom it was disbursed;

(iii) the specific purpose, item, or service acquired by the expenditure; and

(iv) the date the expenditure was made.

(4) (a) "Expenditure" means:

(i) any disbursement from contributions or from the separate bank account required by this chapter;

(ii) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value made for political purposes;

(iii) an express, legally enforceable contract, promise, or agreement to make any purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value for political purposes;

(iv) compensation paid by a corporation or reporting entity for personal services rendered by a person without charge to the judge or the judge's personal campaign committee;

(v) a transfer of funds between the judge's personal campaign committee and another judge's

personal campaign committee; or

(vi) goods or services provided by the judge's personal campaign committee to or for the benefit of another judge for political purposes at less than fair market value.

(b) "Expenditure" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of the judge or judge's personal campaign committee; or

(ii) money lent to a judge's personal campaign committee by a financial institution in the ordinary course of business.

(5) "Individual" means a natural person.

(6) "Interim report" means a report identifying the contributions received and expenditures made since the last report.

(7) "Personal campaign committee" means the committee appointed by a judge to act for the judge as provided in this chapter.

(8) "Political purposes" means an act done with the intent or in a way to influence or tend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any judge standing for retention at any election.

(9) "Reporting entity" means a judge, judge's personal campaign committee, candidate, a candidate's personal campaign committee, an officeholder, and a party committee, a political action committee, and a political issues committee.

(10) "Summary report" means the year-end report containing the summary of a reporting entity's contributions and expenditures.

Section 4. Section **20A-12-302** is enacted to read:

20A-12-302. Campaign committee required.

(1) (a) When permitted to do so by the Code of Judicial Conduct promulgated by the Utah Supreme Court, and if the judge chooses to solicit contributions or make expenditures to promote his retention, the judge may establish no more than one retention election personal campaign committee, consisting of one or more persons, to receive contributions, make expenditures, and shall file reports connected with the judge's retention election campaign.

(b) A judge or person acting in concert with or with the knowledge of the judge may not receive any contributions or make any expenditures other than through the personal campaign committee established under this section.

(2) (a) The judge shall file with the lieutenant governor a signed written statement containing the name and address of each member and the secretary of the judge's personal campaign committee.

(b) The judge may change the membership of the personal campaign committee at any time by filing with the lieutenant governor a signed statement containing the name and address of any additional members and identifying any members that have been removed from the committee.

(c) The judge or the judge's personal campaign committee may not make any expenditures on behalf of the judge until the statement has been filed.

(3) (a) The judge's personal campaign committee may not make an expenditure of more than \$1,000 unless the judge or the secretary of the personal campaign committee authorizes the expenditure in writing.

(b) A judge or the judge's personal campaign committee may not make any expenditures prohibited by law.

(4) A judge's personal campaign committee is dissolved on the date that the summary report required by Section 20A-12-304 is filed.

Section 5. Section **20A-12-303** is enacted to read:

20A-12-303. Separate account for campaign funds.

(1) The judge or the judge's personal campaign committee shall deposit each contribution in one or more separate personal campaign accounts in a financial institution.

(2) The judge or the judge's personal campaign committee may not deposit or mingle any contributions received into a personal or business account.

Section 6. Section **20A-12-304** is enacted to read:

20A-12-304. Judicial retention election candidates -- Financial reporting requirements -- Year-end summary report.

(1) The judge's personal campaign committee shall file a summary report with the lieutenant governor by January 5 of the year after the regular general election year.

(2) (a) Each summary report shall include the following information as of December 31 of the last regular general election year:

- (i) a single figure equal to the total amount of contributions reported on the interim report;
 - (ii) a single figure equal to the total amount of expenditures reported on the interim report;
 - (iii) a detailed listing of each contribution received since the last summary report that has not been reported in detail on the interim report;
 - (iv) for each nonmonetary contribution, the fair market value of the contribution;
 - (v) a detailed listing of each expenditure made since the last summary report that has not been reported in detail on the interim report;
 - (vi) for each nonmonetary expenditure, the fair market value of the expenditure; and
 - (vii) the net balance for the year, consisting of all contributions minus all expenditures.
- (b) (i) For all single contributions of \$50 or less, an aggregate figure may be reported without a separate detailed listing.
- (ii) Two or more contributions from the same source for a total of more than \$50 may not be reported in the aggregate, but shall be reported in the detailed listing.

(3) The summary report shall contain a statement signed by the judge certifying that, to the best of the judge's knowledge, all contributions and all expenditures have been reported as of December 31 of the last regular general election year and that there are no financial obligations outstanding except as set forth in the report.

Section 7. Section **20A-12-305** is enacted to read:

20A-12-305. Judicial retention election candidates -- Financial reporting requirements
-- Interim report.

(1) The judge's personal campaign committee shall file an interim report with the lieutenant governor no later than 5 p.m. on the date seven days before the regular general election date.

(2) Each interim report shall include the following information:

- (a) a detailed listing of each contribution received since the last summary report;
- (b) for each nonmonetary contribution, the fair market value of the contribution;
- (c) a detailed listing of each expenditure made since the last summary report;

(d) for each nonmonetary expenditure, the fair market value of the expenditure; and
(e) a net balance for the year consisting of all contributions since the last summary report minus all expenditures since the last summary report.

(3) (a) For all individual contributions of \$50 or less, a single aggregate figure may be reported without separate detailed listings.

(b) Two or more contributions from the same source that have an aggregate total of more than \$50 may not be reported in the aggregate, but shall be reported separately.

(4) In preparing each interim report, all contributions and expenditures shall be reported as of five days before the required filing date of the report.

Section 8. Section **20A-12-306** is enacted to read:

20A-12-306. Judges -- Failure to file reports -- Penalties.

(1) (a) If a judge's personal campaign committee fails to file the interim report due before the regular general election, the lieutenant governor shall, after making a reasonable attempt to discover if the report was timely mailed, inform the county clerk and other appropriate election officials who:

(i) shall, if practicable, remove the name of the judge by blacking out the judge's name before the ballots are delivered to voters; or

(ii) shall, if removing the judge's name from the ballot is not practicable, inform the voters by any practicable method that the judge has been disqualified and that votes cast for the judge will not be counted; and

(iii) may not count any votes for that judge.

(b) Any judge who fails to file timely a financial statement required by this part is disqualified.

(c) Notwithstanding Subsections (1)(a) and (1)(b), a judge is not disqualified if:

(i) the candidate files the reports required by this section;

(ii) those reports are completed, detailing accurately and completely the information required by this part except for inadvertent omissions or insignificant errors or inaccuracies; and

(iii) those omissions, errors, or inaccuracies are corrected in an amended report or in the next

scheduled report.

(2) (a) Within 30 days after a deadline for the filing of a summary report, the lieutenant governor shall review each filed summary report to ensure that:

(i) each judge that is required to file a summary report has filed one; and

(ii) each summary report contains the information required by this part.

(b) If it appears that any judge has failed to file the summary report required by law, if it appears that a filed summary report does not conform to the law, or if the lieutenant governor has received a written complaint alleging a violation of the law or the falsity of any summary report, the lieutenant governor shall, within five days of discovery of a violation or receipt of a written complaint, notify the judge of the violation or written complaint and direct the judge to file a summary report correcting the problem.

(c) (i) It is unlawful for any judge to fail to file or amend a summary report within 14 days after receiving notice from the lieutenant governor under this section.

(ii) Each judge who violates Subsection (2)(c)(i) is guilty of a class B misdemeanor.

(iii) The lieutenant governor shall report all violations of Subsection (2)(c)(i) to the attorney general.