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**PROVISIONAL BALLOT AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Parley G. Hellewell**

House Sponsor: Douglas C. Aagard

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**LONG TITLE**

**General Description:**

This bill amends the provisional ballot requirements under the Election Code.

**Highlighted Provisions:**

This bill:

- ▶ provides that a voter whose identity or right to vote is challenged shall be issued a provisional ballot and be permitted to vote;
- ▶ removes the procedure requiring an affidavit to be signed in order to obtain a ballot when a voter's identity or right to vote is challenged;
- ▶ removes criminal penalties associated with the affidavit requirement;
- ▶ provides a criminal penalty for knowingly providing false information when voting using a provisional ballot; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 20A-3-104.5**, as last amended by Chapter 159, Laws of Utah 2003
- 20A-3-105.5**, as last amended by Chapters 34, 117 and 131, Laws of Utah 2003
- 20A-3-202**, as last amended by Chapter 105, Laws of Utah 2005
- 20A-6-105**, as last amended by Chapter 219, Laws of Utah 2004

30 ENACTS:

31 **20A-3-506**, Utah Code Annotated 1953

32

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

34 Section 1. Section **20A-3-104.5** is amended to read:

35 **20A-3-104.5. Voting -- Regular primary election.**

36 (1) (a) Any registered voter desiring to vote at the regular primary election shall give  
37 his name, the name of the registered political party whose ballot the voter wishes to vote, and,  
38 if requested, his residence, to one of the election judges.

39 (b) If an election judge does not know the ~~[person]~~ voter requesting a ballot and has  
40 reason to doubt that ~~[person's]~~ voter's identity, the judge shall:

41 (i) request that the voter present identification; or

42 (ii) have the voter identified by a known registered voter of the district.

43 (c) ~~[If the voter is challenged as provided in Section 20A-3-202, the]~~ The election  
44 judge shall [provide a ballot to the voter if the voter takes an oath that the grounds of the  
45 challenge are false.] follow the procedures and requirements of Section 20A-3-105.5 if:

46 (i) the election judge is not satisfied that the voter has been properly identified; or

47 (ii) the voter's right to vote is challenged under Section 20A-3-202.

48 (2) (a) (i) ~~[When]~~ If the voter is properly identified, the election judge in charge of the  
49 official register shall check the official register to determine:

50 (A) whether or not the person is registered to vote; and

51 (B) whether or not the person's party affiliation designation in the official register  
52 allows the voter to vote the ballot that the voter requested.

53 (ii) If the official register does not affirmatively identify the voter as being affiliated  
54 with a registered political party or if the official register identifies the voter as being  
55 "unaffiliated," the voter shall be considered to be "unaffiliated."

56 (b) (i) ~~[Hf]~~ Except as provided in Subsection (2)(b)(ii), if the voter's name is not found  
57 on the official register ~~[and, if],~~ the judge shall follow the procedures and requirements of

58 Section 20A-3-105.5.

59 (ii) (A) If it is not unduly disruptive of the election process, the election judge shall  
60 attempt to contact the county clerk's office to request oral verification of the voter's registration.

61 ~~(ii)~~ (B) If oral verification is received from the county clerk's office, the judge shall:

62 (I) record the verification on the official register[;];

63 (II) determine the voter's party affiliation and the ballot that the voter is qualified to  
64 vote[;]; and

65 (III) perform the other administrative steps required by Subsection (3).

66 (c) (i) Except as provided in Subsection (2)(c)(ii), if the voter's political party  
67 affiliation listed in the official register does not allow the voter to vote the ballot that the voter  
68 requested, the election judge shall inform the voter of that fact and inform the voter of the  
69 ballot or ballots that the voter's party affiliation does allow the voter to vote.

70 (ii) (A) If the voter is listed in the official register as "unaffiliated," or if the official  
71 register does not affirmatively identify the voter as either "unaffiliated" or affiliated with a  
72 registered political party, and the voter, as an "unaffiliated" voter, is not authorized to vote the  
73 ballot that the voter requests, the election judge shall ask the voter if the voter wishes to vote  
74 another registered political party ballot that the voter, as "unaffiliated," is authorized to vote, or  
75 remain "unaffiliated."

76 (B) If the voter wishes to vote another registered political party ballot that the  
77 unaffiliated voter is authorized to vote, the election judge shall proceed as required by  
78 Subsection (3).

79 (C) If the voter wishes to remain unaffiliated and does not wish to vote another ballot  
80 that unaffiliated voters are authorized to vote, the election judge shall instruct the voter that the  
81 voter may not vote.

82 (iii) For the primary elections held in 2004, 2006, and 2008 only:

83 (A) If the voter is listed in the official register as "unaffiliated," or if the official  
84 register does not affirmatively identify the voter as either "unaffiliated" or "affiliated" with a  
85 registered political party, the election judge shall ask the voter if the voter wishes to affiliate

86 with a registered political party, or remain "unaffiliated."

87 (B) If the voter wishes to affiliate with the registered political party whose ballot the  
88 voter requested, the election judge shall direct the voter to complete the change of party  
89 affiliation form and proceed as required by Subsection (3).

90 (C) If the voter wishes to remain unaffiliated and wishes to vote another registered  
91 political party ballot that the unaffiliated voter is authorized to vote, the election judge shall  
92 proceed as required by Subsection (3).

93 (D) If the voter wishes to remain unaffiliated and does not wish to vote another ballot  
94 that unaffiliated voters are authorized to vote, the election judge shall instruct the voter that the  
95 voter may not vote.

96 (3) If the election judge determines that the voter is registered and eligible, under  
97 Subsection (2), to vote the ballot that the voter requested:

98 (a) the election judge in charge of the official register shall:

99 (i) write the ballot number and the name of the registered political party whose ballot  
100 the voter voted opposite the name of the voter in the official register; and

101 (ii) direct the voter to sign his name in the election column in the official register;

102 (b) another judge shall list the ballot number and voter's name in the pollbook; and

103 (c) the election judge having charge of the ballots shall:

104 (i) endorse his initials on the stub;

105 (ii) check the name of the voter on the pollbook list with the number of the stub;

106 (iii) hand the voter the ballot for the registered political party that the voter requested  
107 and for which the voter is authorized to vote; and

108 (iv) allow the voter to enter the voting booth.

109 (4) Whenever the election officer is required to furnish more than one kind of official  
110 ballot to the voting precinct, the election judges of that voting precinct shall give the registered  
111 voter the kind of ballot that the voter is qualified to vote.

112 Section 2. Section **20A-3-105.5** is amended to read:

113 **20A-3-105.5. Manner of voting -- Provisional ballot.**

114 (1) The election judges shall follow the procedures and requirements of this section  
115 when:

116 (a) the person's right to vote is challenged as provided in Section 20A-3-202; [~~or~~]

117 (b) the person's name is not found on the official register[-]; or

118 (c) the election judge is not satisfied that the voter has been properly identified.

119 (2) When faced with one of the circumstances outlined in Subsection (1)(a) or (1)(b),  
120 the election judge shall:

121 (a) request that the person provide proof of identity and proof of residence; and

122 (b) review the proof of identity and proof of residence provided by the person.

123 (3) If the election judge is satisfied that the person has established the person's identity  
124 and residence in the voting precinct:

125 (a) the election judge in charge of the official register shall:

126 (i) record in the official register the type of source documents that established the  
127 person's proof of identity and proof of residence;

128 (ii) write the provisional ballot envelope number opposite the name of the voter in the  
129 official register; and

130 (iii) direct the voter to sign his name in the election column in the official register;

131 (b) another judge shall list the ballot number and voter's name in the pollbook; and

132 (c) the election judge having charge of the ballots shall:

133 (i) endorse his initials on the stub;

134 (ii) check the name of the voter on the pollbook list with the number of the stub;

135 (iii) give the voter a ballot and a provisional ballot envelope; and

136 (iv) allow the voter to enter the voting booth.

137 (4) If the election judge is not satisfied that the voter has provided sufficient proof of  
138 identity and proof of residence:

139 (a) the election judge in charge of the official register shall:

140 (i) record in the official register that the voter did not provide adequate proof of  
141 identity and proof of residence;

142 (ii) write the provisional ballot envelope number opposite the name of the voter in the  
143 official register; and

144 (iii) direct the voter to sign his name in the election column in the official register;

145 (b) another judge shall list the ballot number and voter's name in the pollbook; and

146 (c) the election judge having charge of the ballots shall:

147 (i) endorse his initials on the stub;

148 (ii) check the name of the voter on the pollbook list with the number of the stub;

149 (iii) give the voter a ballot and a provisional ballot envelope; and

150 (iv) allow the voter to enter the voting booth.

151 (5) Whenever the election officer is required to furnish more than one kind of official  
152 ballot to a voting precinct, the election judges of that voting precinct shall give the registered  
153 voter the kind of ballot that the voter is qualified to vote.

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

155 **20A-3-202. Challenges -- Recorded in official register and in pollbook.**

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

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

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

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

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

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

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

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

- 170 (vii) the voter's principal place of residence is not in the voting precinct;
- 171 (viii) the voter's principal place of residence is not in the geographic boundaries of the
- 172 election area;
- 173 (ix) the voter has voted before in the election;
- 174 (x) the voter is not at least 18 years old;
- 175 (xi) the voter is involuntarily confined or incarcerated in jail or prison and was not a
- 176 resident of the entity holding the election before the voter was confined or incarcerated;
- 177 (xii) the voter is a convicted felon and is incarcerated for the commission of a felony;
- 178 or
- 179 (xiii) in a regular primary election, the voter does not meet the political party affiliation
- 180 criteria established by the political party whose ballot the voter seeks to vote.
- 181 ~~[(2) (a) The election judges shall give the voter a ballot and allow the voter to vote if:]~~
- 182 ~~[(i) the person challenged signs a written affidavit certifying that he meets all the~~
- 183 ~~requirements for voting; and]~~
- 184 ~~[(ii) the election judge determines that the person challenged is registered to vote and,~~
- 185 ~~in a regular primary election, meets the political party affiliation criteria established by the~~
- 186 ~~political party whose ballot the voter seeks to vote.]~~
- 187 ~~[(b) The election judges may not give the voter a ballot or allow the voter to vote if:]~~
- 188 ~~[(i) the person challenged refuses to sign the written affidavit; or]~~
- 189 ~~[(ii) in a regular primary election, the election judge determines that the person~~
- 190 ~~challenged does not meet the political party affiliation criteria established by the political party~~
- 191 ~~whose ballot the voter seeks to vote and is unwilling or unable to take the steps authorized by~~
- 192 ~~law to comply with those criteria.]~~
- 193 ~~[(c) (i) It is unlawful for any person to sign an affidavit certifying that he meets all the~~
- 194 ~~requirements for voting when that person knows he does not meet at least one of those~~
- 195 ~~requirements.]~~
- 196 ~~[(ii) Any person who violates this Subsection (2)(c) is guilty of a class B~~
- 197 ~~misdemeanor.]~~

198           ~~[(3)]~~ (2) (a) Any person may challenge the right to vote of any person whose name  
199 appears on the posting list by filing a written signed statement identifying the challenged  
200 voter's name and the basis for the challenge with the county clerk on the Friday before the  
201 election during regular business hours.

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

204           (c) The county clerk shall:

205           (i) carefully preserve the written challenges;

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

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

209           (d) ~~[On election day, the]~~ The election judges shall raise the written challenge with the  
210 voter ~~[before giving the voter a ballot]~~ when the voter requests a ballot.

211           ~~[(e) If the person challenged takes an oath before any of the election judges that the  
212 grounds of the challenge are false, the judges shall allow the person to vote.]~~

213           ~~[(f) If the person applying to vote does not meet the legal requirements to vote, or  
214 refuses to take the oath, the election judges may not deliver a ballot to him.]~~

215           ~~[(4)]~~ (3) The election judges shall record all challenges in the official register and on  
216 the challenge sheets in the pollbook.

217           ~~[(5) If the person challenged under Subsection (3) voted an absentee ballot, the county  
218 clerk shall submit the name of the voter and the challenge to the voter to the county attorney, or  
219 the district attorney in counties with a prosecution district, for investigation and prosecution for  
220 voter fraud.]~~

221           (4) If a person's right to vote is challenged under this section, the election judge shall  
222 follow the procedures and requirements of Section 20A-3-105.5.

223           Section 4. Section **20A-3-506** is enacted to read:

224           **20A-3-506. False information on provisional ballot envelope.**

225           (1) A person may not wilfully falsify information on a provisional ballot envelope.



226 (2) A person who violates this section is guilty of a class B misdemeanor.

227 Section 5. Section **20A-6-105** is amended to read:

228 **20A-6-105. Provisional ballot envelopes.**

229 (1) Each election officer shall ensure that provisional ballot envelopes are printed in  
230 substantially the following form:

231 "AFFIRMATION

232 Are you a citizen of the United States of America? Yes No

233 Will you be 18 years old on or before election day? Yes No

234 If you checked "no" in response to either of the two above questions, do not complete this  
235 form.

236 Name of Voter \_\_\_\_\_

237 First Middle Last

238 Driver License or Identification Card Number \_\_\_\_\_

239 State of Issuance of Driver License or Identification Card Number \_\_\_\_\_

240 Date of Birth \_\_\_\_\_

241 Street Address of Principal Place of Residence

242 \_\_\_\_\_

243 City County State Zip Code

244 Telephone Number (optional) \_\_\_\_\_

245 Last four digits of Social Security Number \_\_\_\_\_

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

247 \_\_\_\_\_

248 City County State Zip Code

249 Voting Precinct (if known)

250 \_\_\_\_\_

251 I, (please print your full name) \_\_\_\_\_ do solemnly swear or

252 affirm:

253 1. that I am currently registered to vote in \_\_\_\_\_, County, Utah;

254 that I have not moved out of the county since the date of the original registration; that I have  
255 not voted in this election in any other precinct; and that I request that I be permitted to vote in  
256 this election in this precinct;

257 2. that on or about \_\_\_\_\_ (Date), I completed a voter registration  
258 application at \_\_\_\_\_ (please indicate the office at which you  
259 completed the voter registration application, for example, Human Services, Driver License,  
260 etc., or, if you filled out a mail-in registration form, please indicate.);

261 3. that I have previously registered to vote in \_\_\_\_\_, County, Utah; that  
262 I have not resided outside of that county since completing that registration; and that I am  
263 entitled to vote today; and

264 4. subject to penalty of law for false statements, that the information contained in this  
265 form is true, and that I am a citizen of the United States and a resident of Utah, residing at the  
266 above address; and that I am at least 18 years old and have resided in Utah for the 30 days  
267 immediately before this election.

268 Signed \_\_\_\_\_

269 Dated \_\_\_\_\_

270 In accordance with Section 20A-3-506, wilfully providing false information above is a  
271 class B misdemeanor under Utah law and is punishable by imprisonment and by fine".

272 "CITIZENSHIP AFFIDAVIT

273 Name:

274 Name at birth, if different:

275 Place of birth:

276 Date of birth:

277 Date and place of naturalization (if applicable):

278 I hereby swear and affirm, under penalties for voting fraud set forth below, that I am a  
279 citizen and that to the best of my knowledge and belief the information above is true and  
280 correct.

281 \_\_\_\_\_

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Signature of Applicant

In accordance with Section 20A-2-401, the penalty for willfully causing, procuring, or allowing yourself to be registered to vote if you know you are not entitled to register to vote is up to one year in jail and a fine of up to \$2,500."

(2) The provisional ballot envelope shall include:

(a) a unique number;

(b) a detachable part that includes the unique number; and

(c) a telephone number, internet address, or other indicator of a means, in accordance with Section 20A-6-105.5, where the voter can find out if the provisional ballot was counted.