

1 **VOTER CHALLENGE AMENDMENTS**

2 2009 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Neil A. Hansen**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **Committee Note:**

9 The Government Operations Interim Committee recommended this bill.

10 **General Description:**

11 This bill modifies provisions of the Election Code relating to the procedures for
12 challenging a person's eligibility to vote.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ provides the grounds upon which a person's right to vote in an election may be
16 challenged during or before an election;
- 17 ▶ requires that written challenges to a person's right to vote in an election be filed in
18 advance of the election and provides procedures for filing and resolving the
19 challenges before the date of the election;
- 20 ▶ requires the election officer to notify each person whose right to vote in the election
21 has been challenged in writing and permits the person who has been challenged to
22 provide information in response to the challenge;
- 23 ▶ requires that written challenges be submitted under oath and be subject to criminal
24 penalties for false statements;
- 25 ▶ provides that an election officer's determination regarding a challenge to a person's
26 right to vote is subject to judicial appeal;
- 27 ▶ requires all documents filed in relation to a written challenge to be public records;



28 ▶ clarifies language relating to challenges to a person's right to vote at the polling
29 place; and

30 ▶ makes technical changes.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 ENACTS:

37 **20A-3-202.3**, Utah Code Annotated 1953

38 **20A-3-202.5**, Utah Code Annotated 1953

39 REPEALS AND REENACTS:

40 **20A-3-202**, as last amended by Laws of Utah 2007, Chapter 75



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

43 Section 1. Section **20A-3-202** is repealed and reenacted to read:

44 **20A-3-202. Challenges to a voter's eligibility -- Grounds for challenge --**

45 **Procedures.**

46 (1) A person's right to vote may be challenged on any of the following grounds:

47 (a) the voter is not the person whose name appears in the official register and under
48 which name the right to vote is claimed;

49 (b) the voter is not a resident of Utah;

50 (c) the voter is not a citizen of the United States;

51 (d) the voter has not or will not have resided in Utah for 30 days immediately before
52 the date of the election;

53 (e) the voter does not live in the voting precinct;

54 (f) the voter does not live within the geographic boundaries of the entity holding the
55 election;

56 (g) the voter's principal place of residence is not in the voting precinct claimed;

57 (h) the voter's principal place of residence is not in the geographic boundaries of the
58 election area;

- 59 (i) the voter has already voted in the election;
 60 (j) the voter is not at least 18 years of age;
 61 (k) the voter is a convicted felon and the voter's right to vote in an election has not
 62 been restored under Section 20A-2-101.5; or
 63 (1) in a regular primary election or in the Western States Presidential Primary, the voter
 64 does not meet the political party affiliation requirements for the ballot the voter seeks to vote.
 65 (2) A person who challenges a person's eligibility to vote at an election shall do so
 66 according to the procedures and requirements of:
 67 (a) Section 20A-3-202.3, for challenges issued in writing before the date of an election;
 68 or
 69 (b) Section 20A-3-202.5, for challenges issued in person at the time of voting.
 70 Section 2. Section **20A-3-202.3** is enacted to read:
 71 **20A-3-202.3. Challenges to a voter's eligibility in writing -- Procedure -- Form of**
 72 **challenge.**
 73 (1) (a) A person may challenge the right to vote of any person whose name appears on
 74 the official register by filing with the election officer, during regular business hours and not
 75 later than 30 days before the date that early voting commences, a written statement that:
 76 (i) lists the name and address of the person filing the challenge;
 77 (ii) for each voter who is challenged:
 78 (A) identifies the name of the challenged voter;
 79 (B) lists the last known address or telephone number of the challenged voter;
 80 (C) provides the basis for the challenge, as provided under Section 20A-3-202; and
 81 (D) provides facts and circumstances supporting the factual basis provided; and
 82 (iii) includes a signed affidavit, subject to penalties of perjury, swearing that, to the
 83 filer's personal knowledge and belief, having exercised due diligence to personally verify the
 84 evidence presented, each challenged voter either is not qualified to vote or does not reside at
 85 the address listed on the challenged voter's registration record.
 86 (b) The challenge may not be based on unsupported allegations or allegations by
 87 anonymous third parties.
 88 (c) The election officer may provide a form for challenges filed under this section, if
 89 the form meets the requirements of this section.

90 (2) (a) If the challenge is not in the proper form or if the factual basis for the challenge
91 does not meet the standards for a challenge as provided in this section, the election officer may
92 dismiss the challenge and notify the filer in writing of the reasons for the dismissal.

93 (b) A challenge is not in the proper form if it is incomplete on its face.

94 (3) Upon receipt of a challenge that meets the requirements for filing under this
95 section, the election officer shall, within 72 hours of receipt of the challenge:

96 (a) publish a copy of the challenge and the affidavit on the election officer's web site;
97 and

98 (b) attempt to notify each challenged voter:

99 (i) that a challenge has been filed against the challenged voter;

100 (ii) of the bases for the challenge, which may include providing a copy of the challenge
101 and affidavit to the challenged voter; and

102 (iii) that the challenged voter may submit information, a sworn statement, or other
103 evidence supporting the challenged voter's right to vote in the election to the election officer no
104 later than 15 days before the date that early voting commences.

105 (4) (a) Before the date that early voting commences, the election officer shall determine
106 whether each challenged voter is eligible to vote.

107 (b) (i) The filer of the challenge has the burden to prove, by clear and convincing
108 evidence, that the basis for challenging the voter's right to vote is valid.

109 (ii) The election officer shall resolve the challenge based on the available facts and
110 information submitted, which may include voter registration records and other documents or
111 information available to the election officer.

112 (5) A person who files a challenge under the requirements of this section is subject to
113 criminal penalties for false statements as provided under Sections 76-8-503 and 76-8-504 and
114 any other applicable criminal provision.

115 (6) A decision of the election officer regarding a person's eligibility to vote may be
116 appealed to the district court having jurisdiction over the location where the challenge was
117 filed.

118 (7) A challenged voter may register to vote or change the location of the voter's voter
119 registration, if otherwise entitled to do so under the law.

120 (8) All documents pertaining to a voter challenge are public records.

121 Section 3. Section **20A-3-202.5** is enacted to read:

122 **20A-3-202.5. Challenges to a voter's eligibility at time of voting -- Procedure.**

123 (1) When any voter applies for a ballot or when a voter offers a ballot for deposit in the
124 ballot box, a poll worker or any other person may challenge the voter's right to vote in that
125 voting precinct or in that election by orally stating the challenged voter's name and the grounds
126 for the challenge, as provided under Section 20A-3-202.

127 (2) The poll worker shall record any challenge in the official register and on the
128 challenge sheets in the pollbook, including:

129 (a) the name of the challenged voter;

130 (b) the name of the person making the challenge; and

131 (c) the grounds asserted for the challenge.

132 (3) If a voter's right to vote is challenged under this section, the poll worker shall
133 follow the procedures and requirements of Section 20A-3-105.5.

Legislative Review Note

as of 11-20-08 12:11 PM

Office of Legislative Research and General Counsel

H.B. 49 - Voter Challenge Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs for individuals, businesses, or local governments. Enactment may generate savings to counties, however the amount is unquantifiable at this time.
