

Representative Neil A. Hansen proposes the following substitute bill:

VOTER CHALLENGE AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Neil A. Hansen

Senate Sponsor: Karen W. Morgan

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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



26 ▶ provides requirements for challenging a person's right to vote at the polling place;

27 and

28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 ENACTS:

35 **20A-3-202.3**, Utah Code Annotated 1953

36 **20A-3-202.5**, Utah Code Annotated 1953

37 REPEALS AND REENACTS:

38 **20A-3-202**, as last amended by Laws of Utah 2007, Chapter 75



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

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 Section **20A-3-202** is repealed and reenacted to read:

42 **20A-3-202. Challenges to a voter's eligibility -- Grounds for challenge --**

43 **Procedures.**

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

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

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

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

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

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

52 (f) the voter's principal place of residence is not in the geographic boundaries of the
53 election area;

54 (g) the voter has already voted in the election;

55 (h) the voter is not at least 18 years of age;

56 (i) the voter is a convicted felon and the voter's right to vote in an election has not been

57 restored under Section 20A-2-101.5; or

58 (j) in a regular primary election or in the Western States Presidential Primary, the voter
59 does not meet the political party affiliation requirements for the ballot the voter seeks to vote.

60 (2) A person who challenges a person's eligibility to vote at an election shall do so
61 according to the procedures and requirements of:

62 (a) Section 20A-3-202.3, for challenges issued in writing before the date of an election;

63 or

64 (b) Section 20A-3-202.5, for challenges issued in person at the time of voting.

65 Section 2. Section **20A-3-202.3** is enacted to read:

66 **20A-3-202.3. Challenges to a voter's eligibility in writing -- Procedure -- Form of**
67 **challenge.**

68 (1) (a) A person may challenge the right to vote of any person whose name appears on
69 the official register by filing with the election officer, during regular business hours and not
70 later than 15 days before the date that early voting commences, a written statement that:

71 (i) lists the name and address of the person filing the challenge;

72 (ii) for each voter who is challenged:

73 (A) identifies the name of the challenged voter;

74 (B) lists the last known address or telephone number of the challenged voter;

75 (C) provides the basis for the challenge, as provided under Section 20A-3-202; and

76 (D) provides facts and circumstances supporting the factual basis provided; and

77 (iii) includes a signed affidavit, subject to penalties of perjury, swearing that, to the
78 filer's personal knowledge and belief, having exercised due diligence to personally verify the
79 evidence presented, the basis for the challenge under Subsection 20A-3-202(1) for each
80 challenged voter is valid.

81 (b) The challenge may not be based on unsupported allegations or allegations by
82 anonymous third parties.

83 (c) The election officer may provide a form for challenges filed under this section, if
84 the form meets the requirements of this section.

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

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

89 (3) Upon receipt of a challenge that meets the requirements for filing under this
90 section, the election officer shall, at least 12 days before the date the early voting commences,
91 attempt to notify each challenged voter:

92 (a) that a challenge has been filed against the challenged voter and the voter challenged
93 may be required to cast a provisional ballot at the time of voting;

94 (b) of the bases for the challenge, which may include providing a copy of the challenge
95 and affidavit to the challenged voter; and

96 (c) that the challenged voter may submit information, a sworn statement, or other
97 evidence supporting the challenged voter's right to vote in the election to the election officer no
98 later than seven days before the date that early voting commences.

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

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

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

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

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

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

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

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

116 **20A-3-202.5. Challenges to a voter's eligibility at time of voting -- Procedure.**

117 (1) (a) A poll worker or any other person who lives in the voting precinct may
118 challenge a voter's right to vote in that voting precinct or in that election if:

119 (i) both the person challenging and the voter being challenged are present at the polling
120 place at time the challenge is made; and

121 (ii) the challenge is made when the voter being challenged, applies for a ballot.

122 (b) The challenge shall be made by orally stating the challenged voter's name and the
123 grounds for the challenge, as provided under Subsection 20A-3-202(1).

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

126 (a) the name of the challenged voter;

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

128 (c) the grounds asserted for the challenge.

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

H.B. 49 1st Sub. (Buff) - 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 and/or benefits for individuals, businesses, or local governments. Enactment may generate savings to counties, however the amount is unquantifiable at this time.
