

HB0100S01 compared with HB0100

~~deleted text~~ shows text that was in HB0100 but was deleted in HB0100S01.

inserted text shows text that was not in HB0100 but was inserted into HB0100S01.

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Representative David E. Lifferth proposes the following substitute bill:

CANDIDATE DISCLOSURE AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David E. Lifferth

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to a candidate's disclosure requirements.

Highlighted Provisions:

This bill:

- ▶ requires a candidate to make certain disclosures relating to criminal convictions, pending criminal charges, protection orders, and bankruptcy;
- ▶ imposes a fine and requires public notification for a violation of the provisions of this bill; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

HB0100S01 compared with HB0100

None

Utah Code Sections Affected:

AMENDS:

20A-9-201, as last amended by Laws of Utah 2014, Chapter 17

20A-9-203, as last amended by Laws of Utah 2014, Chapter 38

ENACTS:

20A-9-207, Utah Code Annotated 1953

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

Section 1. Section **20A-9-201** is amended to read:

20A-9-201. Declarations of candidacy -- Candidacy for more than one office or of more than one political party prohibited with exceptions -- General filing and form requirements -- Affidavit of impecuniosity.

(1) Before filing a declaration of candidacy for election to any office, a person shall:

(a) be a United States citizen;

(b) meet the legal requirements of that office; and

(c) if seeking a registered political party's nomination as a candidate for elective office, designate that registered political party as their preferred party affiliation on their declaration of candidacy.

(2) (a) Except as provided in Subsection (2)(b), a person may not:

(i) file a declaration of candidacy for, or be a candidate for, more than one office in Utah during any election year; or

(ii) appear on the ballot as the candidate of more than one political party.

(b) (i) A person may file a declaration of candidacy for, or be a candidate for, president or vice president of the United States and another office, if the person resigns the person's candidacy for the other office after the person is officially nominated for president or vice president of the United States.

(ii) A person may file a declaration of candidacy for, or be a candidate for, more than one justice court judge office.

(iii) A person may file a declaration of candidacy for lieutenant governor even if the person filed a declaration of candidacy for another office in the same election year if the person

HB0100S01 compared with HB0100

withdraws as a candidate for the other office in accordance with Subsection 20A-9-202(6) before filing the declaration of candidacy for lieutenant governor.

(3) (a) (i) Except for presidential candidates, before the filing officer may accept any declaration of candidacy, the filing officer shall:

(A) read to the prospective candidate the constitutional and statutory qualification requirements for the office that the candidate is seeking; and

(B) require the candidate to state whether [~~or not~~] the candidate meets those requirements.

(ii) Before accepting a declaration of candidacy for the office of county attorney, the county clerk shall ensure that the person filing that declaration of candidacy is:

(A) a United States citizen;

(B) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar;

(C) a registered voter in the county in which the person is seeking office; and

(D) a current resident of the county in which the person is seeking office and either has been a resident of that county for at least one year or was appointed and is currently serving as county attorney and became a resident of the county within 30 days after appointment to the office.

(iii) Before accepting a declaration of candidacy for the office of district attorney, the county clerk shall ensure that, as of the date of the election, the person filing that declaration of candidacy is:

(A) a United States citizen;

(B) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar;

(C) a registered voter in the prosecution district in which the person is seeking office; and

(D) a current resident of the prosecution district in which the person is seeking office and either will have been a resident of that prosecution district for at least one year as of the date of the election or was appointed and is currently serving as district attorney and became a resident of the prosecution district within 30 days after [~~receiving appointment~~] the day on which the person was appointed to the office of district attorney.

HB0100S01 compared with HB0100

(iv) Before accepting a declaration of candidacy for the office of county sheriff, the county clerk shall ensure that the person filing the declaration of candidacy:

(A) as of the date of filing:

(I) is a United States citizen;

(II) is a registered voter in the county in which the person seeks office;

(III) (Aa) has successfully met the standards and training requirements established for law enforcement officers under Title 53, Chapter 6, Part 2, Peace Officer Training and Certification Act; or

(Bb) has met the waiver requirements in Section 53-6-206; and

(IV) is qualified to be certified as a law enforcement officer, as defined in Section 53-13-103; and

(B) as of the date of the election, shall have been a resident of the county in which the person seeks office for at least one year.

(v) Before accepting a declaration of candidacy for the office of governor, lieutenant governor, state auditor, state treasurer, attorney general, state legislator, or State Board of Education member, the filing officer shall ensure:

(A) that the person filing the declaration of candidacy also files the financial disclosure required by Section 20A-11-1603; and

(B) if the filing officer is not the lieutenant governor, that the financial disclosure is provided to the lieutenant governor according to the procedures and requirements of Section 20A-11-1603.

(b) If the prospective candidate states that the qualification requirements for the office are not met, the filing officer may not accept the prospective candidate's declaration of candidacy.

(c) If the candidate meets the requirements of Subsection (3)(a) and states that the requirements of candidacy are met, the filing officer shall:

(i) inform the candidate that:

(A) the candidate's name will appear on the ballot as it is written on the declaration of candidacy;

(B) the candidate may be required to comply with state or local campaign finance disclosure laws; [~~and~~]

HB0100S01 compared with HB0100

(C) the candidate is required to file a financial statement before the candidate's political convention under:

(I) Section 20A-11-204 for a candidate for constitutional office;

(II) Section 20A-11-303 for a candidate for the Legislature; or

(III) local campaign finance disclosure laws, if applicable; and

(D) a candidate, other than a presidential or vice presidential candidate, is required to file the candidate filing disclosure form described in Section 20A-9-207;

(ii) except for a presidential candidate, provide the candidate with a copy of the current campaign financial disclosure laws for the office the candidate is seeking and inform the candidate that failure to comply will result in disqualification as a candidate and removal of the candidate's name from the ballot;

(iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide Electronic Voter Information Website Program and inform the candidate of the submission deadline under Subsection 20A-7-801(4)(a);

(iv) provide the candidate with a copy of the pledge of fair campaign practices described under Section 20A-9-206 and inform the candidate that:

(A) signing the pledge is voluntary; and

(B) signed pledges shall be filed with the filing officer;

(v) accept the candidate's declaration of candidacy; and

(vi) if the candidate has filed for a partisan office, provide a certified copy of the declaration of candidacy to the chair of the county or state political party of which the candidate is a member.

(d) If the candidate elects to sign the pledge of fair campaign practices, the filing officer shall:

(i) accept the candidate's pledge; and

(ii) if the candidate has filed for a partisan office, provide a certified copy of the candidate's pledge to the chair of the county or state political party of which the candidate is a member.

(4) (a) Except for presidential candidates, the form of the declaration of candidacy shall be substantially as follows:

"State of Utah, County of _____

HB0100S01 compared with HB0100

I, _____, declare my candidacy for the office of _____, seeking the nomination of the _____ party, which is my preferred political party affiliation. I do solemnly swear that: I will meet the qualifications to hold the office, both legally and constitutionally, if selected; I reside at _____ in the City or Town of _____, Utah, Zip Code _____ Phone No. _____; I will not knowingly violate any law governing campaigns and elections; I will file all campaign financial disclosure reports as required by law; and I understand that failure to do so will result in my disqualification as a candidate for this office and removal of my name from the ballot. The mailing address that I designate for receiving official election notices is _____.

Subscribed and sworn before me this _____(month\day\year).

Notary Public (or other officer qualified to administer oath.)"

(b) An agent designated to file a declaration of candidacy under Section 20A-9-202 may not sign the form described in Subsection (4)(a).

(5) (a) Except for presidential candidates, the fee for filing a declaration of candidacy is:

(i) \$50 for candidates for the local school district board; and

(ii) \$50 plus 1/8 of 1% of the total salary for the full term of office legally paid to the person holding the office for all other federal, state, and county offices.

(b) Except for presidential candidates, the filing officer shall refund the filing fee to any candidate:

(i) who is disqualified; or

(ii) who the filing officer determines has filed improperly.

(c) (i) The county clerk shall immediately pay to the county treasurer all fees received from candidates.

(ii) The lieutenant governor shall:

(A) apportion to and pay to the county treasurers of the various counties all fees received for filing of nomination certificates or acceptances; and

(B) ensure that each county receives that proportion of the total amount paid to the lieutenant governor from the congressional district that the total vote of that county for all candidates for representative in Congress bears to the total vote of all counties within the

HB0100S01 compared with HB0100

congressional district for all candidates for representative in Congress.

(d) (i) A person who is unable to pay the filing fee may file a declaration of candidacy without payment of the filing fee upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed with the filing officer and, if requested by the filing officer, a financial statement filed at the time the affidavit is submitted.

(ii) A person who is able to pay the filing fee may not claim impecuniosity.

(iii) (A) False statements made on an affidavit of impecuniosity or a financial statement filed under this section shall be subject to the criminal penalties provided under Sections 76-8-503 and 76-8-504 and any other applicable criminal provision.

(B) Conviction of a criminal offense under Subsection (5)(d)(iii)(A) shall be considered an offense under this title for the purposes of assessing the penalties provided in Subsection 20A-1-609(2).

(iv) The filing officer shall ensure that the affidavit of impecuniosity is printed in substantially the following form:

"Affidavit of Impecuniosity

Individual Name _____

_____ Address _____

Phone Number _____

I, _____ (name), do solemnly [swear] [affirm], under penalty of law for false statements, that, owing to my poverty, I am unable to pay the filing fee required by law.

Date _____ Signature _____

Affiant

Subscribed and sworn to before me on _____ (month\day\year)

(signature)

Name and Title of Officer Authorized to Administer Oath _____"

(v) The filing officer shall provide to a person who requests an affidavit of impecuniosity a statement printed in substantially the following form, which may be included on the affidavit of impecuniosity:

"Filing a false statement is a criminal offense. In accordance with Section 20A-1-609, a

HB0100S01 compared with HB0100

candidate who is found guilty of filing a false statement, in addition to being subject to criminal penalties, will be removed from the ballot."

(vi) The filing officer may request that a person who makes a claim of impecuniosity under this Subsection (5)(d) file a financial statement on a form prepared by the election official.

(6) (a) If there is no legislative appropriation for the Western States Presidential Primary election, as provided in Part 8, Western States Presidential Primary, a candidate for president of the United States who is affiliated with a registered political party and chooses to participate in the regular primary election shall:

(i) file a declaration of candidacy, in person or via a designated agent, with the lieutenant governor:

(A) on a form developed and provided by the lieutenant governor; and

(B) on or after the second Friday in March and before 5 p.m. on the third Thursday in March before the next regular primary election;

(ii) identify the registered political party whose nomination the candidate is seeking;

(iii) provide a letter from the registered political party certifying that the candidate may participate as a candidate for that party in that party's presidential primary election; and

(iv) pay the filing fee of \$500.

(b) An agent designated to file a declaration of candidacy may not sign the form described in Subsection (6)(a)(i)(A).

(7) Any person who fails to file a declaration of candidacy or certificate of nomination within the time provided in this chapter is ineligible for nomination to office.

(8) A declaration of candidacy filed under this section may not be amended or modified after the final date established for filing a declaration of candidacy.

Section 2. Section **20A-9-203** is amended to read:

20A-9-203. Declarations of candidacy -- Municipal general elections.

(1) (a) (i) A person may become a candidate for any municipal office if:

(A) the person is a registered voter; and

(B) (I) the person has resided within the municipality in which that person seeks to hold elective office for the 12 consecutive months immediately before the date of the election;

or

HB0100S01 compared with HB0100

(II) if the territory in which the person resides was annexed into the municipality, the person has resided within the annexed territory or the municipality the 12 consecutive months immediately before the date of the election.

(ii) For purposes of determining whether a person meets the residency requirement of Subsection (1)(a)(i)(B)(I) in a municipality that was incorporated less than 12 months before the election, the municipality shall be considered to have been incorporated 12 months before the date of the election.

(b) In addition to the requirements of Subsection (1)(a), each candidate for a municipal council position shall, if elected from a district, be a resident of the council district from which elected.

(c) In accordance with Utah Constitution Article IV, Section 6, any mentally incompetent person, any person convicted of a felony, or any person convicted of treason or a crime against the elective franchise may not hold office in this state until the right to hold elective office is restored under Section 20A-2-101.3 or 20A-2-101.5.

(2) (a) A person seeking to become a candidate for a municipal office shall:

(i) file a declaration of candidacy, in person with the city recorder or town clerk, during the office hours described in Section 10-3-301 and not later than the close of those office hours, between June 1 and June 7 of any odd-numbered year; and

(ii) pay the filing fee, if one is required by municipal ordinance.

(b) Any resident of a municipality may nominate a candidate for a municipal office by:

(i) filing a nomination petition with the city recorder or town clerk during the office hours described in Section 10-3-301 and not later than the close of those office hours, between June 1 and June 7 of any odd-numbered year; and

(ii) paying the filing fee, if one is required by municipal ordinance.

(3) (a) Before the filing officer may accept any declaration of candidacy or nomination petition, the filing officer shall:

(i) read to the prospective candidate or person filing the petition the constitutional and statutory qualification requirements for the office that the candidate is seeking; and

(ii) require the candidate or person filing the petition to state whether the candidate meets those requirements.

(b) If the prospective candidate does not meet the qualification requirements for the

HB0100S01 compared with HB0100

office, the filing officer may not accept the declaration of candidacy or nomination petition.

(c) If it appears that the prospective candidate meets the requirements of candidacy, the filing officer shall:

(i) inform the candidate that the candidate's name will appear on the ballot as it is written on the declaration of candidacy;

(ii) provide the candidate with a copy of the current campaign financial disclosure laws for the office the candidate is seeking and inform the candidate that failure to comply will result in disqualification as a candidate and removal of the candidate's name from the ballot;

(iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide Electronic Voter Information Website Program and inform the candidate of the submission deadline under Subsection 20A-7-801(4)(a);

(iv) provide the candidate with a copy of the pledge of fair campaign practices described under Section 20A-9-206 and inform the candidate that:

(A) signing the pledge is voluntary; and

(B) signed pledges shall be filed with the filing officer; [~~and~~]

(v) inform the candidate that the candidate is required to file the candidate filing disclosure form described in Section 20A-9-207; and

[~~(v)~~] (vi) accept the declaration of candidacy or nomination petition.

(d) If the candidate elects to sign the pledge of fair campaign practices, the filing officer shall:

(i) accept the candidate's pledge; and

(ii) if the candidate has filed for a partisan office, provide a certified copy of the candidate's pledge to the chair of the county or state political party of which the candidate is a member.

(4) Notwithstanding the requirement in Subsection (2)(a)(i) to file a declaration of candidacy in person, a person may designate an agent to file the form described in Subsection (5) in person with the city recorder or town clerk if:

(a) the person is located outside the state during the filing period because:

(i) of employment with the state or the United States; or

(ii) the person is a member of:

(A) the active or reserve components of the Army, Navy, Air Force, Marine Corps, or

HB0100S01 compared with HB0100

Coast Guard of the United States who is on active duty;

(B) the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(C) the National Guard on activated status;

(b) the person makes the declaration of candidacy described in Subsection (5) to a person qualified to administer an oath;

(c) the person communicates with the city recorder or town clerk using an electronic device that allows the person and the city recorder or town clerk to see and hear each other; and

(d) the person provides the city recorder or town clerk with an email address to which the filing officer may send the copies described in Subsection (3).

(5) (a) The declaration of candidacy shall substantially comply with the following form:

"I, (print name) _____, being first sworn, say that I reside at _____ Street, City of _____, County of _____, state of Utah, Zip Code _____, Telephone Number (if any) _____; that I am a registered voter; and that I am a candidate for the office of _____ (stating the term). I will meet the legal qualifications required of candidates for this office. I will file all campaign financial disclosure reports as required by law and I understand that failure to do so will result in my disqualification as a candidate for this office and removal of my name from the ballot. I request that my name be printed upon the applicable official ballots. (Signed)

Subscribed and sworn to (or affirmed) before me by _____ on this _____ (month\day\year).

(Signed) _____ (Clerk or other officer qualified to administer oath)"

(b) An agent designated to file a declaration of candidacy under Subsection (4) may not sign the form described in Subsection (5)(a).

(6) (a) A registered voter may be nominated for municipal office by submitting a petition signed, with a holographic signature, by:

(i) 25 residents of the municipality who are at least 18 years old; or

(ii) 20% of the residents of the municipality who are at least 18 years old.

(b) (i) The petition shall substantially conform to the following form:

HB0100S01 compared with HB0100

"NOMINATION PETITION

The undersigned residents of (name of municipality) being 18 years old or older nominate (name of nominee) to the office of ____ for the (two or four-year term, whichever is applicable)."

(ii) The remainder of the petition shall contain lines and columns for the signatures of persons signing the petition and their addresses and telephone numbers.

(7) If the declaration of candidacy or nomination petition fails to state whether the nomination is for the two or four-year term, the clerk shall consider the nomination to be for the four-year term.

(8) (a) The clerk shall verify with the county clerk that all candidates are registered voters.

(b) Any candidate who is not registered to vote is disqualified and the clerk may not print the candidate's name on the ballot.

(9) Immediately after expiration of the period for filing a declaration of candidacy, the clerk shall:

(a) cause the names of the candidates as they will appear on the ballot to be published:

(i) in at least two successive publications of a newspaper with general circulation in the municipality; and

(ii) as required in Section 45-1-101; and

(b) notify the lieutenant governor of the names of the candidates as they will appear on the ballot.

(10) A declaration of candidacy or nomination petition filed under this section may not be amended after the expiration of the period for filing a declaration of candidacy.

(11) (a) A declaration of candidacy or nomination petition filed under this section is valid unless a written objection is filed with the clerk within five days after the last day for filing.

(b) If an objection is made, the clerk shall:

(i) mail or personally deliver notice of the objection to the affected candidate immediately; and

(ii) decide any objection within 48 hours after it is filed.

(c) If the clerk sustains the objection, the candidate may correct the problem by

HB0100S01 compared with HB0100

amending the declaration or petition within three days after the objection is sustained or by filing a new declaration within three days after the objection is sustained.

(d) (i) The clerk's decision upon objections to form is final.

(ii) The clerk's decision upon substantive matters is reviewable by a district court if prompt application is made to the district court.

(iii) The decision of the district court is final unless the Supreme Court, in the exercise of its discretion, agrees to review the lower court decision.

(12) Any person who filed a declaration of candidacy and was nominated, and any person who was nominated by a nomination petition, may, any time up to 23 days before the election, withdraw the nomination by filing a written affidavit with the clerk.

Section 3. Section **20A-9-207** is enacted to read:

20A-9-207. Candidate filing disclosure form.

(1) Within seven days after the day on which a candidate, other than a presidential or vice presidential candidate, files a declaration of candidacy, the candidate shall file with the filing officer a candidate filing disclosure form that includes the information described in Subsection (2).

(2) Except as provided in Subsection (3), the candidate filing disclosure form shall require the candidate to:

(a) indicate whether the candidate has ever been convicted of a felony and, for each felony conviction:

(i) give a description of the felony;

(ii) state the date of conviction;

(iii) state the jurisdiction of the conviction; and

(iv) state whether the candidate's civil rights have been restored;

(b) indicate whether the candidate has ever been convicted of a class A or class B misdemeanor and, for each class A or class B misdemeanor conviction:

(i) give a description of the misdemeanor;

(ii) state the date of conviction;

(iii) state the jurisdiction of the conviction; and

(iv) state whether the candidate's civil rights have been restored;

(c) indicate whether there are any criminal charges for a felony, a class A

HB0100S01 compared with HB0100

misdemeanor, or a class B misdemeanor pending against the candidate and, for each pending criminal charge for a felony, a class A misdemeanor, or a class B misdemeanor:

(i) give a description of the charge; and

(ii) state the jurisdiction where the charge is pending;

(d) indicate whether a protection order has ever been issued against the candidate and, for each protection order issued:

(i) state the reason for the protection order;

(ii) state the beginning and ending dates of the protection order;

(iii) identify the court that issued the protection order; and

(iv) indicate whether the protection order was ever extended and the reason for the extension; and

(e) indicate whether the candidate has ~~ever~~ filed for bankruptcy ~~+~~ within five years before the day on which the candidate files the candidate filing disclosure form and, for each filing, state the date and jurisdiction of the filing.

(3) (a) A candidate who completes a candidacy filing disclosure form is not required to disclose a felony or misdemeanor, or any information relating to a felony or misdemeanor, that has been expunged.

(b) A candidate is not required to disclose a protection order, or any information relating to a protection order, that was issued without the candidate receiving notice and an opportunity to be heard before the protection order was issued.

(4) The lieutenant governor shall:

(a) impose a \$100 fine on a state office candidate who fails to timely file a complete and accurate candidate filing disclosure form;

(b) deposit a fine collected under Subsection (4)(a) into the General Fund as a dedicated credit to pay for the costs of administering the provisions of this section; and

(c) report the fine on the lieutenant governor's website, in the location where reports relating to each candidate are available for public access.

(5) The election official shall:

(a) impose a \$100 fine on a candidate, who is not a state office candidate, who fails to timely file a complete and accurate candidate filing disclosure form; and

(b) report the fine on the election official's website.

HB0100S01 compared with HB0100

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Legislative Review Note

~~as of 1-2-15 12:26 PM~~

~~Office of Legislative Research and General Counsel}~~