

1 **VOTE BY MAIL REVISIONS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brad M. Daw**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill changes processes related to conducting an election entirely by mail.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ creates requirements for an election officer who receives an invalid absentee ballot;
- 13 ▶ changes the time by which a county clerk is required to remove a deceased
- 14 individual's name from the official register;
- 15 ▶ makes changes to the process by which a paper ballot is adjudicated when a
- 16 question arises regarding a vote recorded on the paper ballot; and
- 17 ▶ makes technical corrections.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **20A-2-305**, as last amended by Laws of Utah 2012, Chapters 33 and 52

25 **20A-3-302**, as last amended by Laws of Utah 2015, Chapter 173

26 **20A-4-104**, as last amended by Laws of Utah 2006, Chapter 326

27 **20A-4-105**, as last amended by Laws of Utah 2013, Chapter 390



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

Section 1. Section **20A-2-305** is amended to read:

20A-2-305. Removing names from the official register -- General requirements.

(1) The county clerk may not remove a voter's name from the official register because the voter has failed to vote in an election.

(2) The county clerk shall remove a voter's name from the official register if:

(a) the voter dies and the requirements of Subsection (3) are met;

(b) the county clerk, after complying with the requirements of Section [20A-2-306](#), receives written confirmation from the voter that the voter no longer resides within the county clerk's county;

(c) the county clerk has:

(i) obtained evidence that the voter's residence has changed;

(ii) mailed notice to the voter as required by Section [20A-2-306](#);

(iii) (A) received no response from the voter; or

(B) not received information that confirms the voter's residence; and

(iv) the voter has failed to vote or appear to vote in an election during the period beginning on the date of the notice described in Section [20A-2-306](#) and ending on the day after the date of the second regular general election occurring after the date of the notice;

(d) the voter requests, in writing, that the voter's name be removed from the official register;

(e) the county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter;

(f) the county clerk receives notice that a voter has been convicted of any felony or a misdemeanor for an offense under this title and the voter's right to vote has not been restored as provided in Section [20A-2-101.3](#) or [20A-2-101.5](#); or

(g) the county clerk receives notice that a voter has registered to vote in another state after the day on which the voter registered to vote in this state.

(3) The county clerk shall remove a voter's name from the ~~[registration list within 21 days of receipt of]~~ list of registered voters within five business days after the day on which the

59 county clerk receives confirmation from the Department of Health's Bureau of Vital Records
60 that a voter is deceased.

61 Section 2. Section **20A-3-302** is amended to read:

62 **20A-3-302. Conducting entire election by absentee ballot.**

63 (1) Notwithstanding Section **17B-1-306**, an election officer may administer an election
64 entirely by absentee ballot.

65 (2) If the election officer decides to administer an election entirely by absentee ballot,
66 the election officer shall mail to each registered voter within that voting precinct:

67 (a) an absentee ballot;

68 (b) for an election administered by a county clerk, information regarding the location
69 and hours of operation of any election day voting center at which the voter may vote;

70 (c) a courtesy reply mail envelope;

71 (d) instructions for returning the ballot that include an express notice about any
72 relevant deadlines that the voter must meet in order for the voter's vote to be counted; and

73 (e) for an election administered by an election officer other than a county clerk, if the
74 election officer does not operate a polling location or an election day voting center, a warning,
75 on a separate page of colored paper in bold face print, indicating that if the voter fails to follow
76 the instructions included with the absentee ballot, the voter will be unable to vote in that
77 election because there will be no polling place in the voting precinct on the day of the election.

78 (3) A voter who votes by absentee ballot under this section is not required to apply for
79 an absentee ballot as required by this part.

80 (4) An election officer who administers an election entirely by absentee ballot shall:

81 (a) (i) obtain, in person, the signatures of each voter within that voting precinct before
82 the election; or

83 (ii) obtain the signature of each voter within the voting precinct from the county clerk;
84 and

85 (b) maintain the signatures on file in the election officer's office.

86 (5) (a) Upon receiving the returned absentee ballots, the election officer shall compare
87 the signature on each absentee ballot with the voter's signature that is maintained on file and
88 verify that the signatures are the same.

89 (b) If the election officer questions the authenticity of the signature on the absentee

90 ballot, the election officer shall immediately contact the voter to verify the signature.

91 (c) If the election ~~[official]~~ officer determines that the signature on the absentee ballot
92 does not match the voter's signature that is maintained on file, the election officer shall mail the
93 voter a notice that:

94 (i) informs the voter that the voter's signature is in question;

95 (ii) contains the following statement: "It is unlawful for an individual to willfully
96 falsify an absentee voter affidavit. An individual who willfully falsifies an absentee voter
97 affidavit is guilty of perjury and may be prosecuted and punished under state law.";

98 (iii) informs the voter of how the voter may resolve the issue;

99 (iv) includes an affidavit that the voter may sign and return to the election officer
100 attesting that the voter did not willfully falsify the absentee voter affidavit; and

101 (v) informs the voter that by signing the absentee voter affidavit, the voter authorizes
102 the lieutenant governor's and county clerk's use of the applicant's signature on the affidavit for
103 voter identification purposes.

104 (d) A voter who receives a notice under Subsection (5)(c) shall return the affidavit
105 described in Subsection (5)(c)(iv) to the election officer.

106 (e) An election officer who receives a signed affidavit under Subsection (5)(d) shall
107 immediately:

108 (i) scan the signature on the affidavit electronically and keep the signature on file in the
109 statewide voter registration database developed under Section [20A-2-109](#);

110 [~~(i)~~] (ii) unless the absentee ballot application deadline described in Section [20A-3-304](#)
111 has passed, [~~immediately~~] send another absentee ballot and other voting materials as required
112 by this section to the voter; and

113 [~~(i)~~] (iii) disqualify the initial absentee ballot.

114 (f) An election officer who sends the notice described in Subsection (5)(c), but does
115 not receive a signed affidavit under Subsection (5)(d), shall forward information pertaining to
116 the absentee ballot to the county prosecutor of the county in which the voter resides.

117 (g) An election officer may not send a voter another absentee ballot under this
118 Subsection (5) unless the election officer receives the affidavit described in Subsection (5)(d).

119 (6) A county that administers an election entirely by absentee ballot:

120 (a) shall provide at least one election day voting center in accordance with Title 20A,

121 Chapter 3, Part 7, Election Day Voting Center;

122 (b) shall ensure that an election day voting center operated by the county has at least
123 one voting device that is accessible, in accordance with the Help America Vote Act of 2002,
124 Pub. L. No. 107-252, for individuals with disabilities; and

125 (c) ~~[is not required to]~~ shall pay return postage for an absentee ballot.

126 Section 3. Section **20A-4-104** is amended to read:

127 **20A-4-104. Counting ballots electronically.**

128 (1) (a) Before beginning to count ballot sheets using automatic tabulating equipment,
129 the election officer shall test the automatic tabulating equipment to ensure that it will
130 accurately count the votes cast for all offices and all measures.

131 (b) The election officer shall publish public notice of the time and place of the test at
132 least 48 hours before the test in one or more daily or weekly newspapers of general circulation
133 published in the county, municipality, or jurisdiction where the equipment is used.

134 (c) The election officer shall conduct the test by processing a preaudited group of ballot
135 sheets.

136 (d) The election officer shall ensure that:

137 (i) a predetermined number of valid votes for each candidate and measure are recorded
138 on the ballot sheets;

139 (ii) for each office, one or more ballot sheets have votes in excess of the number
140 allowed by law in order to test the ability of the automatic tabulating equipment to reject those
141 votes; and

142 (iii) a different number of valid votes are assigned to each candidate for an office, and
143 for and against each measure.

144 (e) If any error is detected, the election officer shall determine the cause of the error
145 and correct it.

146 (f) The election officer shall ensure that:

147 (i) the automatic tabulating equipment produces an errorless count before beginning
148 the actual counting; and

149 (ii) the automatic tabulating equipment passes the same test at the end of the count
150 before the election returns are approved as official.

151 (2) (a) The election officer or his designee shall supervise and direct all proceedings at

152 the counting center.

153 (b) (i) Proceedings at the counting center are public and may be observed by interested
154 persons.

155 (ii) Only those persons authorized to participate in the count may touch any ballot,
156 ballot sheet, or return.

157 (c) The election officer shall deputize and administer an oath or affirmation to all
158 persons who are engaged in processing and counting the ballots that they will faithfully
159 perform their assigned duties.

160 (d) (i) Counting poll watchers appointed as provided in Section 20A-3-201 may
161 observe the testing of equipment and actual counting of the ballot sheets.

162 (ii) Those counting poll watchers may make independent tests of the equipment before
163 or after the vote count as long as the testing does not interfere in any way with the official
164 tabulation of the ballot sheets.

165 (3) If any ballot sheet is damaged or defective so that it cannot properly be counted by
166 the automatic tabulating equipment, the election officer shall ensure that two counting judges
167 jointly:

168 (a) [~~cause~~] create a true duplicate copy of the ballot sheet [~~to be made~~] with an
169 identifying serial number;

170 (b) substitute the duplicate ballot sheet for the damaged or defective ballot sheet;

171 (c) label the duplicate ballot [~~card~~] sheet "duplicate"; and

172 (d) record the duplicate ballot sheet's serial number on the damaged or defective ballot
173 sheet.

174 (4) The election officer may:

175 (a) conduct an unofficial count before conducting the official count in order to provide
176 early unofficial returns to the public;

177 (b) release unofficial returns from time to time after the polls close; and

178 (c) report the progress of the count for each candidate during the actual counting of
179 ballots.

180 (5) The election officer shall review and evaluate the provisional ballot envelopes and
181 prepare any valid provisional ballots for counting as provided in Section 20A-4-107.

182 (6) (a) The election officer or his designee shall:

183 (i) separate, count, and tabulate any ballots containing valid write-in votes; and
184 (ii) complete the standard form provided by the clerk for recording valid write-in votes.

185 (b) In counting the write-in votes, if, by casting a valid write-in vote, a voter has cast
186 more votes for an office than that voter is entitled to vote for that office, the poll workers shall
187 count the valid write-in vote as being the obvious intent of the voter.

188 (7) (a) The election officer shall certify the return printed by the automatic tabulating
189 equipment, to which have been added write-in and absentee votes, as the official return of each
190 voting precinct.

191 (b) Upon completion of the count, the election officer shall make official returns open
192 to the public.

193 (8) If for any reason it becomes impracticable to count all or a part of the ballot sheets
194 with tabulating equipment, the election officer may direct that they be counted manually
195 according to the procedures and requirements of this part.

196 (9) After the count is completed, the election officer shall seal and retain the programs,
197 test materials, and ballots as provided in Section [20A-4-202](#).

198 Section 4. Section **20A-4-105** is amended to read:

199 **20A-4-105. Standards and requirements for evaluating voter's ballot choices.**

200 ~~[(1) Each person counting ballots shall apply the standards and requirements of this~~
201 ~~section to resolve any questions that arise as ballots are counted.]~~

202 (1) (a) An election officer shall ensure that when a question arises regarding a vote
203 recorded on a paper ballot, two counting judges jointly adjudicate the ballot in accordance with
204 the requirements of this section.

205 (b) If the counting judges disagree on the disposition of a vote recorded on a ballot that
206 is adjudicated under this section, the counting judges may not count the vote.

207 (2) Except as provided in Subsection (11), if a voter marks more names than there are
208 persons to be elected to an office, or if for any reason it is impossible to determine the choice
209 of any voter for any office to be filled, the ~~[counter]~~ counting judges may not count that voter's
210 ballot for that office.

211 (3) The ~~[counter]~~ counting judges shall count a defective or incomplete mark on any
212 paper ballot if:

213 (a) ~~[it]~~ the defective or incomplete mark is in the proper place; and

214 (b) there is no other mark or cross on the [~~paper~~] ballot indicating the voter's intent to
215 vote other than as indicated by the incomplete or defective mark.

216 (4) (a) When the voter has marked the ballot so that it appears that the voter has voted
217 more than one straight ticket, the [~~election~~] counting judges may not count any votes for party
218 candidates.

219 (b) The [~~election~~] counting judges shall count the remainder of the ballot if [~~it~~] the
220 ballot is voted correctly.

221 (5) [~~A counter~~] The counting judges may not reject a ballot marked by the voter
222 because of marks on the ballot other than those marks allowed by this section unless the
223 extraneous marks on a ballot or group of ballots show an intent by a person or group to mark
224 [~~their~~] the person's ballot or the group's ballots so that [~~their~~] the person's ballot or the group's
225 ballots can be identified.

226 (6) (a) In counting the ballots, the [~~counters~~] counting judges shall give full
227 consideration to the intent of the voter.

228 (b) The [~~counters~~] counting judges may not invalidate a ballot because of mechanical
229 [~~and~~] or technical defects in voting or failure on the part of the voter to follow strictly the rules
230 for balloting required by Chapter 3, Voting.

231 (7) The [~~counters~~] counting judges may not reject a ballot because of [~~any~~] an error in:

232 (a) stamping or writing [~~any~~] an official endorsement; or

233 (b) delivering the wrong ballots to [~~any~~] a polling place.

234 (8) The [~~counter~~] counting judges may not count [~~any~~] a paper ballot that does not have
235 the official endorsement by an election officer.

236 (9) The [~~counter~~] counting judges may not count [~~any~~] a ballot proposition vote or
237 candidate vote for which the voter is not [^u]legally entitled to vote[^u], as [~~used~~] defined in
238 Section [20A-4-107](#).

239 (10) If the [~~counter discovers~~] counting judges discover that the name of a candidate
240 voted for is misspelled or that the initial letters of a candidate's given name are transposed or
241 omitted in part or altogether, the [~~counter~~] counting judges shall count the voter's vote for [~~that~~]
242 the candidate if it is apparent that the voter intended to vote for [~~that~~] the candidate.

243 (11) The [~~counter~~] counting judges shall count a vote for the president and the vice
244 president of any political party as a vote for the presidential electors selected by the political

245 party.

246 (12) In counting the valid write-in votes, if, by casting a valid write-in vote, a voter has
247 cast more votes for an office than that voter is entitled to vote for that office, the counting
248 judges shall count the valid write-in vote as being the obvious intent of the voter.

Legislative Review Note
Office of Legislative Research and General Counsel