

LEGISLATIVE BILL 571

Approved by the Governor May 26, 1999

Introduced by Government, Military and Veterans Affairs Committee:
Schimek, 27, Chairperson; Cudaback, 36; Janssen, 15; Kremer, 34;
Quandahl, 31; Schmitt, 41; Vrtiska, 1

AN ACT relating to elections; to amend sections 19-3051, 32-607, 32-808, 32-810, 32-813, 32-815, 32-938, 32-947, 32-1005, 32-1007, 32-1008, and 32-1033, Reissue Revised Statutes of Nebraska; to change provisions relating to ballot arrangement, certification of candidates, certificates of registration, absentee voting, and write-in campaigns and voting; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 19-3051, Reissue Revised Statutes of Nebraska, is amended to read:

19-3051. The municipal clerk shall prepare and have printed, at the cost of the municipality, all ballots, forms, and supplies that may be necessary to be used to enable absent electors to so cast their ballots and shall adapt as nearly as possible all forms therefor that were prepared by the Secretary of State for the preceding state election. The ballots furnished to such electors shall be prepared and printed as other official ballots and shall be made available not less than fifteen days prior to the election. ~~Voters who meet one or more of the requirements specified in section 32-938~~ A registered voter may vote an absentee ballot as provided by the Election Act, except that the ballots will not be available until fifteen days prior to the election. All absentee ballots which have been returned shall be counted on election day as provided in the Election Act, and the canvass board shall count all absentee ballots returned not later than the second day after the election.

Sec. 2. Section 32-607, Reissue Revised Statutes of Nebraska, is amended to read:

32-607. All candidate filing forms shall contain the following statement: I hereby swear that I will abide by the laws of the State of Nebraska regarding the results of the primary and general elections, that I am a registered voter and qualified to be elected, and that I will serve if elected. Candidate filing forms shall be filed with the following filing officers:

(1) For candidates for national, state, or congressional office, directors of public power and irrigation districts, directors of reclamation districts, directors of natural resources districts, members at large of the boards of educational service units, members of governing boards of community colleges, delegates to national conventions, and other offices filled by election held in more than one county and judges desiring retention, in the office of the Secretary of State; ~~Candidate filing forms for such officers shall be accompanied by a certificate of registration obtained by the candidate under section 32-316;~~

(2) For officers elected within a county, in the office of the election commissioner or county clerk. If the candidate is not a resident of the county, he or she shall submit a certificate of registration obtained under section 32-316 with the candidate filing form;

(3) For representatives from the county in which they reside on the boards of educational service units, in the office of the election commissioner or county clerk;

(4) For officers in school districts which include land in adjoining counties, in the office of the election commissioner or county clerk of the county in which the greatest number of registered voters entitled to vote for the officers reside. If the candidate is not a resident of the county, he or she shall submit a certificate of registration obtained under section 32-316 with the candidate filing form; and

(5) For city or village officers, in the office of the city or village clerk, except that in the case of joint elections, the filing may be either in the office of the election commissioner or county clerk or in the office of the city or village clerk with deputized personnel. When the city or village clerk is deputized to take filings, he or she shall return all filings to the office of the election commissioner or county clerk by the end of the next business day following the filing deadline.

Sec. 3. Section 32-808, Reissue Revised Statutes of Nebraska, is

amended to read:

32-808. (1) Absentee ballots and applications shall be ready for delivery to registered voters at least thirty-five days prior to each statewide primary or general election and at least fifteen days prior to all other elections.

(2) Notwithstanding subsection (1) of this section, upon request for a ballot, an absentee ballot shall be forwarded to each voter meeting the criteria of section 32-939 at least forty-five days prior to any election. The election commissioner or county clerk shall not forward any absentee ballot or special absentee ballot if the election to which such ballot pertains has already been held. If the absentee ballot has not been printed in sufficient time to meet the requirements of this subsection, the election commissioner or county clerk shall issue a special absentee ballot at least fifty-seven days prior to an election to each voter meeting the criteria of section 32-939 upon the written request by such voter requesting the special absentee ballot. A complete list of the nominated candidates and issues to be voted upon by a voter meeting the criteria of such section shall be included with the special absentee ballot by the election commissioner or county clerk. A notice shall be sent with the primary election ballot stating that the absentee voter must request a general election ballot unless such voter has requested both the primary and general election ballots. If the voter has requested both ballots, a notice shall be sent with the primary election ballot stating that the general election ballot will be sent to the same address unless otherwise notified.

(3) For purposes of this section, a special absentee ballot shall mean a ballot prescribed by the Secretary of State which contains the titles of all offices being contested at such election and shall permit the voter to vote by writing in the names of the specific candidates or the decision on any issue.

(4) The election commissioner or county clerk shall publish in a newspaper of general circulation in the county an application form to be used by registered voters in making an application for an absentee ballot after the ballots become available. ~~The application form shall be prescribed by the Secretary of State and shall include the reasons a registered voter is permitted to vote absentee as enumerated in section 32-938.~~ The publication of the application for an absentee ballot shall not be required if the election is held by mail pursuant to sections 32-952 to 32-959.

Sec. 4. Section 32-810, Reissue Revised Statutes of Nebraska, is amended to read:

32-810. (1) The election commissioner or county clerk shall place the names of all partisan candidates certified to him or her by the Secretary of State and of those partisan candidates filing in his or her office on a primary election ballot headed with the political party designation. The names of each nonpartisan candidate certified by the Secretary of State and of each nonpartisan candidate filing in the office of the election commissioner or county clerk shall be placed on the primary election ballot headed by the words Nonpartisan Ticket.

(2) If any office is not subject to the upcoming election, the office shall be omitted from the ballot and the remaining offices shall move up so that the same relative order is preserved. The order of any offices may be altered to allow for the best utilization of ballot space in order to avoid printing a second ballot when one ballot would be sufficient if a punch card or optical-scan ballot is used. All proposals on the ballot submitted by a political subdivision shall follow all offices on the ballot for such political subdivision.

(3) The election commissioner or county clerk shall follow the order of precincts or wards as set out in the official abstract book on file in his or her office in preparing the official ballots. At the primary election, on the first set of ballots for the first precinct or ward shall be the names of candidates filing by date and hour as certified by the Secretary of State and for local candidates the names of candidates shall be listed in the order of filing by date and hour with the election commissioner or county clerk. When there are more candidates than vacancies for the same office, the names of all partisan and nonpartisan candidates at a primary election shall be rotated precinct by precinct in each office division in the order in which the precincts are set out in the official abstract book. In making the changes of position, the printer shall take the line of type at the head of each office division and place it at the bottom of that division, shoving up the column so that the name that was second shall be first after the change.

Sec. 5. Section 32-813, Reissue Revised Statutes of Nebraska, is amended to read:

32-813. (1) The names of all candidates and all proposals to be

voted upon at the general election shall be arranged upon the ballot in parts separated from each other by bold lines in the order the offices and proposals are set forth in this section. If any office is not subject to the upcoming election, the office shall be omitted from the ballot and the remaining offices shall move up so that the same relative order is preserved. The order of any offices may be altered to allow for the best utilization of ballot space in order to avoid printing a second ballot when one ballot would be sufficient if a punch card or optical-scan ballot is used. All proposals on the ballot shall remain separate from the offices, and the proposals shall follow all offices on the ballot.

(2) ~~All proposals submitted by initiative or referendum and proposals for constitutional amendments shall be placed on a separate ballot when a paper ballot is used which requires that the ballot after being voted be folded before being deposited in a ballot box. When a punch card or optical-scan ballot is used which requires a ballot envelope, jacket, or sleeve in which the ballot after being voted is placed before being deposited in a ballot box, initiative or referendum proposals and constitutional amendments may be placed on either side of the ballot and shall be separated from other offices or issues by a bold line. Initiative or referendum proposals and constitutional amendments so arranged shall constitute a separate ballot. Proposals for constitutional amendments proposed by the legislature shall be placed on the ballot as provided in sections 49-201 to 49-211.~~

~~(3)~~ If the election is in a year in which a President of the United States is to be elected, the names and spaces for voting for candidates for President and Vice President shall be entitled Presidential Ticket in boldface type. The names of candidates for President and Vice President for each political party shall be grouped together, and each group shall be enclosed with brackets with the political party name to the right and one square or oval to the left in which the voter indicates his or her choice. The names of candidates for President and Vice President who have successfully petitioned on the ballot for the general election shall be grouped together with the candidates appearing on the same petition being grouped together, and each group shall be enclosed with brackets with the words "By Petition" to the right and one square or oval to the left in which the voter indicates his or her choice.

~~(4)~~ (3) The names and spaces for voting for candidates for United States Senator if any are to be elected shall be entitled United States Senatorial Ticket in boldface type.

~~(5)~~ (4) The names and spaces for voting for candidates for Representatives in Congress shall be entitled Congressional Ticket in boldface type. Above the candidates' names, the office shall be designated For Representative in Congress District.

~~(6)~~ (5) The names and spaces for voting for candidates for the various state officers shall be entitled State Ticket in boldface type. Each set of candidates shall be separated by lines across the column, and above each set of candidates shall be designated the office for which they are candidates, arranged in the order prescribed by the Secretary of State. The candidates for Governor and Lieutenant Governor of each political party receiving the highest number of votes in the primary election shall be grouped together. Each group shall be enclosed with brackets with the political party name to the right and one square or oval to the left in which the voter indicates his or her choice for Governor and Lieutenant Governor jointly. The candidates for Governor and Lieutenant Governor who have successfully petitioned on the general election ballot shall be grouped together with the candidates appearing on the same petition being grouped together. Each group shall be enclosed with brackets with the words "By Petition" to the right and one square or oval to the left in which the voter indicates his or her choice for Governor and Lieutenant Governor jointly. Beneath the names of the candidates for Governor and Lieutenant Governor nominated at a primary election by political party and beneath the names of all candidates for Governor and Lieutenant Governor placed on the general election ballot by petition, two write-in lines shall be provided in which the registered voter may write the names of the candidates of his or her choice. The lines shall be enclosed with the brackets with one square or oval to the left in which the registered voter shall mark his or her choice. The name appearing on the top line shall be considered to be the candidate for Governor, and the name appearing on the second line shall be considered to be the candidate for Lieutenant Governor.

~~(7)~~ (6) The names and spaces for voting for nonpartisan candidates shall be entitled Nonpartisan Ticket in boldface type. The names of all nonpartisan candidates shall appear in the order listed in this subsection,

except that when using a punch card or optical-scan ballot, the order of offices may be altered to allow for the best utilization of ballot space to avoid printing a second ballot when one ballot would be sufficient:

- (a) Legislature;
- (b) State Board of Education;
- (c) Board of Regents of the University of Nebraska;
- (d) Chief Justice of the Supreme Court;
- (e) Judge of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Judge of the Nebraska Workers' Compensation Court;
- (h) Judge of the District Court;
- (i) Judge of the Separate Juvenile Court;
- (j) Judge of the County Court; and
- (k) County officers in the order prescribed by the election commissioner or county clerk.

~~(8)~~ (7) The names and spaces for voting for the various county offices and for measures submitted to the county vote only or in only a part of the county shall be entitled County Ticket in boldface type. If the election commissioner or county clerk deems it advisable, the measures may be submitted on a separate ballot if using a paper ballot or on either side of a punch card or optical-scan ballot if the ballot is placed in a ballot envelope, jacket, or sleeve before being deposited in a ballot box.

~~(9)~~ (8) The candidates for office in the precinct only or in the city or village only shall be printed on the ballot, except that if the election commissioner or county clerk deems it advisable, candidates for these offices may be submitted on a separate ballot if using a paper ballot or on either side of a punch card or optical-scan ballot if the ballot is placed in a ballot envelope, jacket, or sleeve before being deposited in a ballot box.

(9) All proposals submitted by initiative or referendum and proposals for constitutional amendments shall be placed on a separate ballot when a paper ballot is used which requires that the ballot after being voted be folded before being deposited in a ballot box. When an optical-scan ballot is used which requires a ballot envelope, jacket, or sleeve in which the ballot after being voted is placed before being deposited in a ballot box, initiative or referendum proposals and proposals for constitutional amendments may be placed on either side of the ballot, shall be separated by a bold line, and shall follow all other offices placed on the same side of the ballot. Initiative or referendum proposals and constitutional amendments so arranged shall constitute a separate ballot. Proposals for constitutional amendments proposed by the Legislature shall be placed on the ballot as provided in sections 49-201 to 49-211.

Sec. 6. Section 32-815, Reissue Revised Statutes of Nebraska, is amended to read:

32-815. (1) The names of candidates for each partisan elective office shall be arranged on the ballot of the general election so that the political party polling the highest number of votes at the last general election for Governor will have the name of its nominee immediately beneath the name of the office for which the candidate was nominated, the political party polling the second highest number of votes will have the second place, the political party having the third highest number of votes will have the third place, and continuing with the political parties in descending order of number of votes, leaving those candidates whose names appear upon the ballot by petition to appear beneath all other candidates placed there by nomination. For each office for which there are more candidates than vacancies and there are two or more nominees of the same political party, the election commissioner or county clerk shall rotate the names of such candidates on the official ballot. In printing the ballots for the various election districts, the positions of the names shall be changed in each office division for each election district. In making the change of position, the printer shall take the line of type at the head of each division and place it at the bottom of that division, shoving up the column so that the name that was second shall be first after the change.

(2) The name of the person receiving the highest number of votes at a primary election as the candidate of a political party for an office shall be placed on the official ballot except as otherwise provided in the Election Act. No person shall be certified as a candidate of any political party for such office by the Secretary of State, election commissioner, or county clerk unless the person receives a number of votes at least equal to five percent of the total vote ballots cast for such office at the primary election for by registered voters affiliated with that political party in the district which the office serves and meets the requirements for the office.

Sec. 7. Section 32-938, Reissue Revised Statutes of Nebraska, is

amended to read:

32-938. (1) A registered voter shall be permitted to vote absentee ~~for any one of the following reasons:~~

~~(a) The registered voter expects to be absent from his or her county at the time the election is to be held;~~

~~(b) The registered voter is physically unable to go to the polling place;~~

~~(c) The registered voter will be unable to go to the polling place on the day of the election due to his or her hospitalization for medical or surgical treatment;~~

~~(d) The registered voter cannot go to the polling place on the day of the election because of the tenets of his or her religion;~~

~~(e) The registered voter will be unable to go to the polling place on the day of the election because he or she is confined by public order under the laws of this state or of the United States;~~

~~(f) The registered voter is legally blind;~~

~~(g) The registered voter has requested that his or her residence address remain confidential under section 32-331; or~~

~~(h) The registered voter is unable to go to the precinct polling place during the hours the precinct polling place is open by requesting an absentee ballot pursuant to section 32-941 or 32-943.~~

(2) Any person excluded from voting under section 32-313 or 32-314 and any shall not be allowed to receive an absentee ballot. Any person who fails to register to vote by the voter registration deadline shall not be allowed to vote under this section, except that any recently discharged federal service or overseas employee who was unable to register to vote by the voter registration deadline may vote pursuant to section 32-940 receive an absentee ballot except as provided in section 32-940 or 32-941.

Sec. 8. Section 32-947, Reissue Revised Statutes of Nebraska, is amended to read:

32-947. (1) Upon receipt of an application or other request for an absentee ballot, the election commissioner or county clerk shall deliver to the applicant in person or by mail, postage paid, an absentee ballot if he or she finds that the applicant is a registered voter and is entitled to vote an absentee ballot as applied for or requested. The election commissioner or county clerk or any employee of the election commissioner or county clerk shall write his or her customary signature on the absentee ballot.

(2) An unsealed identification envelope shall be delivered with the ballot, and upon the ~~face~~ back of the envelope shall be printed a form substantially as follows:

ABSENTEE VOTER'S IDENTIFICATION

I, the undersigned voter, declare under penalty of election falsification that the enclosed ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked, enclosed in the identification envelope, and sealed in such envelope.

My voting residence in Nebraska is, (street and number or rural route and number) of, (city, village, or township) Nebraska. I am a registered voter of the State of Nebraska.

~~(Applicant must check the true statement concerning his or her reason for voting an absentee ballot.)~~

~~...I will be absent from the county at the time of the election.~~

~~...I am physically unable to go to the polling place.~~

~~...I will be unable to go to the polling place on the day of election because of hospitalization.~~

~~...I cannot go to the polling place on the day of the election because of the tenets of my religion.~~

~~...I will be unable to go to the polling place on the day of election because of confinement by public order.~~

~~...I am legally blind.~~

~~...I have requested that my residence address remain confidential pursuant to law.~~

~~...I am unable to go to the precinct polling place during the hours the precinct polling place is open.~~

~~...I am a Nebraska resident and (a) a member of the armed forces of the United States or a spouse or dependent of such member, (b) a citizen temporarily residing outside of the United States or of the District of Columbia, or (c) an overseas citizen.~~

The primary election ballot, if any, within this envelope is a primary election ballot of the party.

Ballots contained in this envelope are for the (primary, general, or special) election to be held on the day of 19.. 20.. .

I request absentee general election ballots be sent to me yes
.... no.

I hereby declare, under penalty of election falsification, that the statements above are true to the best of my knowledge.

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

.....
(Signature of Voter)

(3) If the absentee ballot and identification envelope are delivered by mail or picked up at the office to be returned by mail, the election commissioner or county clerk shall include with the ballot ~~and the an~~ identification envelope ~~an unsealed return envelope~~ upon the face of which shall be printed the official title and post office address of the election commissioner or county clerk. ~~The return envelope shall be of such size that the identification envelope can be conveniently placed within it for returning such identification envelope.~~ The election commissioner or county clerk shall include written instructions on marking and returning the absentee ballot, including notice that failure to sign the identification envelope and include his or her address on the identification envelope will result in the ballot not being counted.

Sec. 9. Section 32-1005, Reissue Revised Statutes of Nebraska, is amended to read:

32-1005. ~~(1) Except as provided in subsection (2) of this section, if a first or generally recognized name and last name of a person If the last name or a reasonably close spelling of the last name of a person engaged in or pursuing a write-in campaign pursuant to section 32-615 is written or printed on a line provided for that purpose and the square or oval to the left of such line has been marked with a cross or other clear, intelligible mark, the vote shall be valid and the ballot shall be counted. Except as provided in section 32-1007, a write-in vote for a person who is not engaged in or pursuing a write-in campaign pursuant to section 32-615 shall not be counted.~~

~~(2) If punch card ballots are being used, the first or generally recognized name and last name of a person and the office for which the write-in candidate has been selected shall be written or printed on a line provided for that purpose on the ballot jacket or envelope. If the office designation has been omitted, the counting board shall make the following notation on the ballot jacket or envelope: Write-in Rejected, no office designation.~~

Sec. 10. Section 32-1007, Reissue Revised Statutes of Nebraska, is amended to read:

32-1007. For members of a village board of trustees, township officers, or members of the school board of Class I or II school districts, if a first or generally recognized name and last name of a person is written or printed on a line provided for that purpose and the square or oval to the left of such line has been marked with a cross or other clear, intelligible mark, the vote shall be valid and the ballot shall be counted. If only the last name of a person is written in the write-in space on the ballot or ballot jacket and there is more than one person in the county having the same last name, the counting board shall reject the ballot for that office unless the last name is reasonably close to the proper spelling of the last name of a candidate engaged in or pursuing a write-in campaign pursuant to section 32-615. The counting board shall make the following notation on the rejected ballot: Rejected for the office of, no first or generally recognized name.

Sec. 11. Section 32-1008, Reissue Revised Statutes of Nebraska, is amended to read:

32-1008. If the write-in vote in the county for any particular office referred to in section 32-1007 totals less than five percent of the vote for such office in the county and the election commissioner or county clerk believes that such vote will not impact the outcome of the election, the number of write-in votes for that office may be counted and listed together as one total.

Sec. 12. Section 32-1033, Reissue Revised Statutes of Nebraska, is amended to read:

32-1033. The election commissioner or county clerk shall, within forty days after the election, prepare, sign, and deliver a certificate of nomination or a certificate of election to each person whom the county canvassing board has declared to have received the highest vote for county, city, or village offices. No person shall be issued a certificate of nomination as a candidate of a political party unless such person has received a number of votes at least equal to five percent of the total vote ballots cast for the office at the primary election for that party by registered

voters affiliated with that political party in the district which the office for which he or she is a candidate serves. The certificate shall be substantially as follows:

State of Nebraska. At an election held on the day of ~~19..~~ 20.., was elected to the office of for the term of years from the day of ~~19..~~ 20.. (or when filling a vacancy, for the residue of the term ending on the day of ~~19..~~ 20..). Given at this day of ~~19..~~ 20.. .

Sec. 13. Original sections 19-3051, 32-607, 32-808, 32-810, 32-813, 32-815, 32-938, 32-947, 32-1005, 32-1007, 32-1008, and 32-1033, Reissue Revised Statutes of Nebraska, are repealed.