

## LEGISLATIVE BILL 449

Approved by the Governor May 11, 2011

Introduced by Nelson, 6; Lautenbaugh, 18.

FOR AN ACT relating to the Election Act; to amend sections 32-208, 32-305, 32-312, 32-615, 32-616, 32-811, 32-903, 32-947, 32-948, 32-1203, 32-1303, and 32-1306, Reissue Revised Statutes of Nebraska, and section 32-606, Revised Statutes Cumulative Supplement, 2010; to change provisions relating to election commissioners, deputy registrars, voter registration, filing for office, nominations without opposition, creation of precincts, procedures for voting early, payment of costs of elections, recall petitions, and recall elections; and to repeal the original sections.

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

Section 1. Section 32-208, Reissue Revised Statutes of Nebraska, is amended to read:

32-208 The election commissioner in counties having a population of more than one hundred thousand inhabitants shall be a registered voter, a resident of such county for at least one year, and of good moral character and integrity and capacity. No person who is a candidate for any elective office or is a deputy, clerk, or employee of any person who is a candidate for any elective office shall be eligible for the office of election commissioner. The election commissioner shall not hold any other elective office ~~and shall not be eligible to any elective office or to or~~ become a candidate for an elective office during his or her term of office or within six months after leaving office. An election commissioner may be appointed to an elective office during his or her term of office as election commissioner, and acceptance of such appointment shall be deemed to be his or her resignation from the office of election commissioner.

Sec. 2. Section 32-305, Reissue Revised Statutes of Nebraska, is amended to read:

32-305 (1) Any registered voter may apply to the election commissioner or county clerk to be appointed as a deputy registrar for the purpose of registering voters. The application form shall be prescribed by the election commissioner, county clerk, or Secretary of State. The election commissioner or county clerk shall make training available for deputy registrars in the county he or she serves. The deputy registrar shall notify the election commissioner or county clerk of the location and time of proposed voter registration and the names and party affiliations of the deputy registrars. ~~at least seventy-two hours prior to required publication deadlines.~~ The election commissioner or county clerk, at his or her discretion, may approve or disapprove the deputy registrar's plans for voter registration and shall notify the deputy registrar of such decision.

(2) Any person appointed as a deputy registrar shall attend a training session conducted by an election commissioner or county clerk. A person who attends and successfully completes a training session after January 1, 1995, shall be qualified as a deputy registrar for any county in the state and shall receive a certificate verifying successful completion of the training and indicating his or her qualification as a deputy registrar to conduct registration in any county in the state.

(3) Before entering upon his or her duties, the deputy registrar shall take and subscribe to the following oath:

You do solemnly swear that you will support the Constitution of the United States and the Constitution of Nebraska and will faithfully and impartially perform the duties of the office of deputy registrar according to law and to the best of your ability.

(4) ~~Deputy registrars trained after January 1, 1995, shall not be required to attend another training session~~ In order to remain qualified to conduct voter registration as a deputy registrar in any county in this state, a deputy registrar shall complete a training session at least once every three years unless the Secretary of State determines that substantial changes have occurred in the voter registration process requiring additional training. The training session may vary in length but shall not exceed four hours. The Secretary of State shall inspect and review all training programs, procedures, and practices to assure that they relate to the position of a deputy registrar and his or her duties.

(5) Any deputy registrar who violates any registration procedure, rule, regulation, or guideline may have his or her status as a deputy registrar revoked by the election commissioner, county clerk, or Secretary of

State.

Sec. 3. Section 32-312, Reissue Revised Statutes of Nebraska, is amended to read:

32-312 The registration application prescribed by the Secretary of State pursuant to section 32-311.01 shall provide the instructional statements and request the information from the applicant as provided in this section.

CITIZENSHIP—"Are you a citizen of the United States of America?" with boxes to check to indicate whether the applicant is or is not a citizen of the United States.

AGE—"Are you at least eighteen years of age or will you be eighteen years of age on or before the first Tuesday following the first Monday of November of this year?" with boxes to check to indicate whether or not the applicant will be eighteen years of age or older on election day.

WARNING—"If you checked 'no' in response to either of these questions, do not complete this application."

NAME—the name of the applicant giving the first and last name in full, the middle name in full or the middle initial, and the maiden name of the applicant, if applicable.

RESIDENCE—the name and number of the street, avenue, or other location of the dwelling where the applicant resides if there is a number. If the registrant resides in a hotel, apartment, tenement house, or institution, such additional information shall be included as will give the exact location of such registrant's place of residence. If the registrant lives in an incorporated or unincorporated area not identified by the use of roads, road names, or house numbers, the registrant shall state the section, township, and range of his or her residence and the corporate name of the school district as described in section 79-405 in which he or she is located.

POSTAL ADDRESS—the address at which the applicant receives mail if different from the residence address.

ADDRESS OF LAST REGISTRATION—the name and number of the street, avenue, or other location of the dwelling from which the applicant last registered.

TELEPHONE NUMBERS—the telephone number of the applicant at work and at home. At the request of the applicant, a designation shall be made that the telephone number is an unlisted number, and such designation shall preclude the listing of the applicant's telephone number on any list of voter registrations.

EMAIL ADDRESS—an email address of the applicant. At the request of the applicant, a designation shall be made that the email address is private, and such designation shall preclude the listing of the applicant's email address on any list of voter registrations.

DRIVER'S LICENSE NUMBER OR LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER—if the applicant has a Nebraska driver's license, the license number, and if the applicant does not have a Nebraska driver's license, the last four digits of the applicant's social security number.

DATE OF APPLICATION FOR REGISTRATION—the month, day, and year when the applicant presented himself or herself for registration or when the applicant completed and signed the registration application if the application was submitted by mail or delivered to the election official by the applicant's personal messenger or personal agent.

PLACE OF BIRTH—show the state, country, kingdom, empire, or dominion where the applicant was born.

DATE OF BIRTH—show the date of the applicant's birth. The applicant shall be at least eighteen years of age or attain eighteen years of age on or before the first Tuesday after the first Monday in November to have the right to register and vote in any election in the present calendar year.

REGISTRATION TAKEN BY—show the signature of the authorized official or staff member accepting the application pursuant to section 32-309 or 32-310 or at least one of the deputy registrars taking the application pursuant to section 32-306, if applicable.

PARTY AFFILIATION—show the party affiliation of the applicant as Democrat, Republican, or Other ..... or show no party affiliation as Nonpartisan. (Note: If you wish to vote in both partisan and nonpartisan primary elections for state and local offices, you must indicate a political party affiliation on the registration application. If you register without a political party affiliation (nonpartisan), you will receive only the nonpartisan ballots for state and local offices at primary elections. If you register without a political party affiliation, you may vote in partisan primary elections for congressional offices.)

OTHER—information the Secretary of State determines will assist in the proper and accurate registration of the voter.

Immediately following the spaces for inserting information as

provided in this section, the following statement shall be printed:

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(1) I live in the State of Nebraska at the address provided in this application;

(2) I have not been convicted of a felony or, if convicted, it has been at least two years since I completed my sentence for the felony, including any parole term;

(3) I have not been officially found to be non compos mentis (mentally incompetent); and

(4) I am a citizen of the United States.

Any registrant who signs this application knowing that any of the information in the application is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to five years imprisonment, a fine of up to ten thousand dollars, or both.

APPLICANT'S SIGNATURE--require the applicant to affix his or her signature to the application.

Sec. 4. Section 32-606, Revised Statutes Cumulative Supplement, 2010, is amended to read:

32-606 (1) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent, the deadline filing period for filing the candidate filing form shall be between December 1 and February 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office by between December 1 and March 1 prior to the date of the primary election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(2) Any candidate for a township office in a county under township organization, the board of trustees of a village, the board of directors of a reclamation district, the county weed district board, the board of directors of a public power district receiving annual gross revenue of less than forty million dollars, the school board of a Class II school district, or the board of an educational service unit may place his or her name on the general election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent, the deadline filing period for filing the candidate filing form shall be between December 1 and July 15 prior to the date of the general election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after July 15 of that election year. All other candidates shall file for office by between December 1 and August 1 prior to the date of the general election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(3) Any city having a home rule charter may provide for filing deadlines for any person desiring to be a candidate for the office of council member or mayor.

Sec. 5. Section 32-615, Reissue Revised Statutes of Nebraska, is amended to read:

32-615 Any candidate engaged in or pursuing a write-in campaign shall file a notarized affidavit of his or her intent together with the receipt for any filing fee with the filing officer as provided in section 32-608 no earlier than December 1 and no later than ten days prior to the election. A candidate who has been defeated as a candidate in the primary election or defeated as a write-in candidate in the primary election shall not be eligible as a write-in candidate for the same office in the general election unless a vacancy on the ballot exists pursuant to section 32-625. A candidate who files a notarized affidavit shall be entitled to all write-in votes for the candidate even if only the last name of the candidate has been written if such last name is reasonably close to the proper spelling.

Sec. 6. Section 32-616, Reissue Revised Statutes of Nebraska, is

amended to read:

32-616 (1) Any registered voter who was not a candidate in the primary election and who was not registered to vote with a party affiliation on or before March 1 in the calendar year of the general election may have his or her name placed on the general election ballot for a partisan office by filing petitions as prescribed in sections 32-617 to 32-621 or by nomination by political party convention or committee.

(2) Any candidate who was defeated in the primary election and any registered voter who was not a candidate in the primary election may have his or her name placed on the general election ballot if a vacancy exists on the ballot under subsection (2) of section 32-625 and the candidate files for the office by petition as prescribed in sections 32-617 and 32-618 or files as a write-in candidate as prescribed in section 32-615.

Sec. 7. Section 32-811, Reissue Revised Statutes of Nebraska, is amended to read:

32-811 (1) If the names of candidates properly filed for nomination at the primary election for directors of natural resources districts, directors of public power districts, directors of reclamation districts, members of the boards of governors of community college areas, members of the boards of Class III or Class V school districts which nominate candidates at a primary election, and officers of cities of the first or second class and cities having a city manager plan of government do not exceed two candidates for each position to be filled, any such candidates shall be declared nominated and their names shall not appear on any primary election ballots. The official abstract of votes kept by the county or state shall show the names of such candidates with the statement Nominated Without Opposition. The election commissioner or county clerk shall place the names of such automatically nominated candidates on the general election ballot as provided in section 32-814.

(2) Candidates shall not appear on the ballot in the primary election for the board of directors in public power districts receiving annual gross revenue of less than forty million dollars, for county weed district boards, and for the board of trustees in villages.

(3) If the number of candidates for delegates to a county or national political party convention are the same in number or less than the number of candidates to be elected, the names shall not appear on the primary election ballot and those so filed shall receive a certificate of election.

Sec. 8. Section 32-903, Reissue Revised Statutes of Nebraska, is amended to read:

32-903 (1) The election commissioner or county clerk shall create precincts composed of compact and contiguous territory within the boundary lines of legislative districts. The precincts shall contain not less than seventy-five nor more than one thousand seven hundred fifty registered voters based on the number of voters voting at the last statewide general election, except that a precinct may contain less than seventy-five registered voters if in the judgment of the election commissioner or county clerk it is necessary to avoid creating an undue hardship on the registered voters in the precinct. The election commissioner or county clerk shall create precincts based on the number of votes cast at the immediately preceding presidential election or the current list of registered voters for the precinct. The election commissioner or county clerk shall revise and rearrange the precincts and increase or decrease them at such times as may be necessary to make the precincts contain as nearly as practicable not less than seventy-five nor more than one thousand seven hundred fifty registered voters voting at the last statewide general election. The election commissioner or county clerk shall, when necessary and possible, readjust precinct boundaries to coincide with the boundaries of cities, villages, and school districts which are divided into districts or wards for election purposes. The election commissioner or county clerk shall not make any precinct changes in precinct boundaries or divide precincts into two or more parts between the statewide primary and general elections unless he or she has been authorized to do so by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change.

(2) The election commissioner or county clerk may alter and divide the existing precincts, except that when any city of the first class by ordinance divides any ward of such city into two or more voting districts or polling places, the election commissioner or county clerk shall establish precincts or polling places in conformity with such ordinance. No such alteration or division shall take place between the statewide primary and general elections except as provided in subsection (1) of this section.

(3) All precincts and polling places may be consolidated for the use of electronic voting systems into fewer and larger precincts as deemed

necessary and advisable by the election commissioner or county clerk. Such precincts, consolidated for electronic voting systems only, may have as many registered voters therein as deemed advisable in the interest of economy and efficiency. At least one electronic voting device shall be provided for every five hundred registered voters voting in the consolidated precinct or polling place at the immediately preceding general election.

Sec. 9. Section 32-947, Reissue Revised Statutes of Nebraska, is amended to read:

32-947 (1) Upon receipt of an application or other request for a ballot to vote early, the election commissioner or county clerk shall determine whether the applicant is a registered voter and is entitled to vote as requested. If the election commissioner or county clerk determines that the applicant is a registered voter entitled to vote early and the application was received at or before 4 p.m. on the Wednesday preceding the election, the election commissioner or county clerk shall deliver a ballot to the applicant in person or by mail, postage paid. The election commissioner or county clerk or any employee of the election commissioner or county clerk shall write or cause to be affixed his or her customary signature or initials on the ballot.

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

VOTER'S OATH

I, the undersigned voter, declare 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.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(a) I, \_\_\_\_\_, am a registered voter in \_\_\_\_\_ County;

(b) I reside in the State of Nebraska at the address printed below: \_\_\_\_\_;

(c) I have voted the enclosed ballot and am returning it in compliance with Nebraska law; and

(d) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to ~~complete~~ sign the information below will invalidate my ballot.

Signature .....  
Printed Name .....  
Residence Address .....

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 ..... 20.. .

(3) If the ballot and identification envelope will be returned by mail or by someone other than the voter, the election commissioner or county clerk shall include with the ballot an identification envelope upon the face of which shall be printed the official title and post office address of the election commissioner or county clerk.

(4) The election commissioner or county clerk shall also enclose with the ballot materials:

(a) A registration application, if the election commissioner or county clerk has determined that the applicant is not a registered voter pursuant to section 32-945, with instructions that failure to return the completed and signed application indicating the residence address as it appears on the voter's request for a ballot to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted;

(b) A registration application and the oath pursuant to section 32-946, if the voter is without a residence address, with instructions that the residence address of the voter shall be deemed that of the office of the election commissioner or county clerk of the county of the voter's prior residence and that failure to return the completed and signed application and oath to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted; or

(c) Written instructions directing the voter to submit a copy of an

identification document pursuant to section 32-318.01 if the voter is required to present identification under such section and advising the voter that failure to submit identification to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted.

(5) The election commissioner or county clerk may enclose with the ballot materials a separate return envelope for the voter's use in returning his or her identification envelope containing the voted ballot, registration application, and other materials that may be required.

Sec. 10. Section 32-948, Reissue Revised Statutes of Nebraska, is amended to read:

32-948 (1) Upon receipt of an application or request for a ballot to vote early, the election commissioner or county clerk shall enter in the record of early voters the applicant's name, residence address, precinct, and subdivision of the precinct, if any, the mailing address to which the ballots are to be sent if different from the residence address, and the date on which the application was received. The election commissioner or county clerk shall also record other information in the record of early voters as may be necessary to aid in the processing or verification of ballots, including such information as the date ballots and related materials were sent to the voter or picked up in person, the date on which the ballots were voted in person or returned or received by mail, or information as to the reason why a ballot could not be issued or sent.

(2) ~~Applications~~ The record of early voters and applications for such ballots shall be open to public inspection prior to the election. ~~The record of early voters and all applications for such ballots shall be open to public inspection upon completion of the election.~~ The election commissioner or county clerk shall make an entry in the voter's registration record indicating that the voter has voted early in the election.

Sec. 11. Section 32-1203, Reissue Revised Statutes of Nebraska, is amended to read:

32-1203 (1) Each city, village, school district, public power district, sanitary and improvement district, metropolitan utilities district, fire district, natural resources district, community college area, learning community coordinating council, educational service unit, hospital district, reclamation district, and library board shall pay for the costs of nominating and electing its officers as provided in subsection (2), (3), or (4) of this section. If a special issue is placed on the ballot at the time of the statewide primary or general election by any political subdivision, the political subdivision shall pay for the costs of the election as provided in subsection (2), (3), or (4) of this section. The districts listed in this subsection shall furnish to the Secretary of State and election commissioner or county clerk any maps and additional information which the election commissioner or county clerk may require in the proper performance of their duties in the conduct of elections and certification of results.

(2) The charge for each primary and general election shall be determined by (a) ascertaining the total cost of all chargeable costs as described in section 32-1202, (b) dividing the total cost by the number of precincts participating in the election to fix the cost per precinct, (c) prorating the cost per precinct by the inked ballot inch in each precinct for each political subdivision, and (d) totaling the cost for each precinct for each political subdivision, except that the minimum charge for each primary and general election for each political subdivision shall be fifty dollars.

(3) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may charge public power districts the fee for election costs set by section 70-610.

(4) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may bill school districts directly for the costs of an election held under section 10-703.01.

Sec. 12. Section 32-1303, Reissue Revised Statutes of Nebraska, is amended to read:

32-1303 (1) A petition demanding that the question of removing an elected official or member of a governing body listed in section 32-1302 be submitted to the registered voters shall be signed by registered voters equal in number to at least thirty-five percent of the total vote cast for that office in the last general election, except that (a) for an office for which more than one candidate is chosen, the petition shall be signed by registered voters equal in number to at least thirty-five percent of the number of votes cast for the person receiving the most votes for such office in the last general election, (b) for a member of a board of a Class I school district, the petition shall be signed by registered voters of the school district equal in number to at least twenty-five percent of the total number of registered

voters residing in the district on the date that the recall petitions are first checked out from the filing clerk by the principal circulator, and (c) for a member of a governing body of a village, the petition shall be signed by registered voters equal in number to at least forty-five percent of the total vote cast for the person receiving the most votes for that office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Petition circulators shall conform to the requirements of sections 32-629 and 32-630.

(3) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, an affidavit shall be signed and filed with the filing clerk by at least one registered voter. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The affidavit shall state the name and office of the official sought to be removed, shall include in typewritten form in concise language of sixty words or less the reason or reasons for which recall is sought, and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the official sought to be removed by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving a copy of the affidavit at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address. If the official chooses, he or she may submit a defense statement in typewritten form in concise language of sixty words or less for inclusion on the petition. Any such defense statement shall be submitted to the filing clerk within twenty days after the official receives the copy of the affidavit. The principal circulator or circulators shall gather the petition papers within twenty days after the receipt of the official's defense statement. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days from the date of issuing the petitions.

(4) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, and the number of papers issued. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

(5) Petition signers shall conform to the requirements of sections 32-629 and 32-630. Each signer of a recall petition shall be a registered voter and qualified by his or her place of residence to vote for the office in question.

Sec. 13. Section 32-1306, Reissue Revised Statutes of Nebraska, is amended to read:

32-1306 (1) If the recall petition is found to be sufficient, the filing clerk shall notify the official whose removal is sought and the governing body of the affected political subdivision that sufficient signatures have been gathered. Notification of the official sought to be removed may be by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving such notice at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address.

(2) The governing body of the political subdivision shall order an election to be held not less than thirty nor more than ~~forty-five~~ seventy-five days after the notification of the official whose removal is sought under subsection (1) of this section, except that if any other election is to be held in that political subdivision within ninety days after such notification, the governing body of the political subdivision shall provide for the holding of the recall election on the same day. All resignations shall be tendered as provided in section 32-562. If the official whose removal is sought resigns before the recall election is held, the governing body may cancel the recall election if the governing body notifies the election commissioner or county clerk of the cancellation at least sixteen days prior to the election, otherwise the recall election shall be held as scheduled.

(3) If the governing body of the political subdivision fails or refuses to order a recall election within the time required, the election may be ordered by the district court having jurisdiction over a county in which the elected official serves. If a filing clerk is subject to a recall

election, the Secretary of State shall conduct the recall election.

Sec. 14. Original sections 32-208, 32-305, 32-312, 32-615, 32-616, 32-811, 32-903, 32-947, 32-948, 32-1203, 32-1303, and 32-1306, Reissue Revised Statutes of Nebraska, and section 32-606, Revised Statutes Cumulative Supplement, 2010, are repealed.