

REFERENCE TITLE: election laws; security; enforcement

State of Arizona
House of Representatives
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HB 2511

Introduced by
Representatives Murphy: Ableser, Mason, Nichols, Reagan, Schapira, Stump,
Yarbrough

AN ACT

AMENDING SECTIONS 16-351, 16-461, 16-602 AND 16-924, ARIZONA REVISED
STATUTES; RELATING TO ELECTIONS AND ELECTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 16-351, Arizona Revised Statutes, is amended to
3 read:

4 16-351. Limitations on appeals of validity of nomination
5 petitions; disqualification of candidate

6 A. Any elector filing any court action challenging the nomination of a
7 candidate as provided for in this chapter shall do so no later than 5:00 p.m.
8 of the tenth day, excluding Saturday, Sunday and other legal holidays, after
9 the last day for filing nomination papers and petitions. The elector shall
10 specify in the action the petition number, line number and basis for the
11 challenge for each signature being challenged. Failure to specify this
12 information shall result in the dismissal of the court action. Within ten
13 days after the filing of the action, the superior court shall hear and render
14 a decision on the matter. Such decision shall be appealable only to the
15 supreme court, and notice of appeal shall be filed within five days after the
16 decision of the superior court in the action. The supreme court shall hear
17 and render a decision on the appeal promptly.

18 B. Any elector may challenge a candidate for any reason relating to
19 qualifications for the office sought as prescribed by law, including age,
20 residency or professional requirements, if applicable.

21 C. In any action challenging a nomination petition, the following
22 persons are indispensable parties to the action and shall be named and served
23 as defendants:

24 1. The candidate whose petition is the subject of the challenge.

25 2. The officer with whom the petitions are required to be filed.

26 3. The board of supervisors and the recorder of each county or the
27 clerk of each city or town who are responsible for preparing the ballots that
28 contain the challenged candidate's name.

29 D. For the purposes of an action challenging nomination petitions, the
30 board of supervisors and the recorder of each county or the clerk of each
31 city or town responsible for preparing the ballots that contain the
32 challenged candidate's name and each person filing a nomination petition
33 under this chapter appoints the officer with whom the candidate files the
34 nomination paper and petitions as the person's agent to receive service of
35 process. Process in an action challenging a nomination petition shall be
36 served immediately after the action is filed and in no event more than
37 twenty-four hours after filing the action excluding Saturdays, Sundays and
38 other legal holidays. Immediately upon receipt of process served upon the
39 officer as agent for a person filing a nomination petition, the officer shall
40 mail the process to the person and shall notify him by telephone of the
41 filing of the action.

42 E. Notwithstanding the system used pursuant to section 16-163,
43 subsection D, the most current version of the general county register at the
44 time of filing of a court action challenging a nomination petition shall
45 constitute the official record to be used to determine on a prima facie basis

1 by the challenger that the signer of a petition was not registered to vote at
2 the address given on the date of signing of the petition. This subsection
3 does not preclude the challenged candidate from introducing into evidence a
4 certified copy of the registration form of any signer of a petition dated on
5 or before the date of the signing of the petition if the registration form is
6 in the possession of the county recorder but has not yet been filed in the
7 general county register.

8 F. In addition to the procedures set forth in this section, all
9 petitions that have been submitted by a candidate who is found guilty of
10 petition forgery shall be disqualified and that candidate shall not be
11 eligible to seek election to a public office for a period of not less than
12 five years.

13 G. FOR THE PURPOSES OF THIS SECTION, A CANDIDATE IS GUILTY OF PETITION
14 FORGERY IF THE CANDIDATE FALSELY SIGNS THE CIRCULATOR VERIFICATION FOR THAT
15 CANDIDATE'S PETITIONS.

16 Sec. 2. Section 16-461, Arizona Revised Statutes, is amended to read:

17 16-461. Sample primary election ballots; submission to party
18 chairmen for examination; preparation, printing and
19 distribution of ballot

20 A. At least forty-five days before a primary election, the officer in
21 charge of that election shall:

22 1. Prepare a proof of a sample ballot.

23 2. Submit the sample ballot proof of each party to the county chairman
24 or in city or town primaries to the city or town chairman.

25 3. Mail a sample ballot proof to each candidate for whom a nomination
26 paper and petitions have been filed.

27 B. Within five days after receipt of the sample ballot, the county
28 chairman of each political party shall suggest to the election officer any
29 change the ~~officer~~ CHAIRMAN considers should be made in the ~~officer's~~
30 CHAIRMAN'S party ballot, and if upon examination the election officer finds
31 an error or omission in the ballot the officer shall correct it. The
32 election officer shall cause the sample ballots to be printed and distributed
33 as required by law, shall maintain a copy of each sample ballot and shall
34 post a notice indicating that sample ballots are available on request. The
35 official sample ballot shall be printed on colored paper. For voters who are
36 not registered with a party that is entitled to continued representation on
37 the ballot pursuant to section 16-804, the election officer may print and
38 distribute the required sample ballots in an alternative format, including a
39 reduced size format.

40 C. Not later than forty days before a primary election, the county
41 chairman of a political party may request one sample primary election ballot
42 of the chairman's party for each election precinct.

43 D. The board of supervisors shall have printed mailer-type sample
44 ballots for a primary election and shall mail at least eleven days prior to
45 the election one sample ballot of a political party to each household

1 containing a registered voter of that political party. EACH SAMPLE BALLOT
2 SHALL CONTAIN THE FOLLOWING STATEMENT: "THIS IS A SAMPLE BALLOT AND CANNOT
3 BE USED AS AN OFFICIAL BALLOT UNDER ANY CIRCUMSTANCES". A certified claim
4 shall be presented to the secretary of state by the board of supervisors for
5 the actual cost of printing, labeling and postage of each sample ballot
6 actually mailed, and the secretary of state shall direct payment of the
7 authenticated claim from funds of the secretary of state's office.

8 E. For city and town elections, the governing body of a city or town
9 may have printed mailer-type sample ballots for a primary election. If the
10 city or town has printed such sample ballots, the city or town shall provide
11 for the distribution of such ballots and shall bear the expense of printing
12 and distribution of such sample ballots.

13 F. The return address on the mailer-type sample ballots shall not
14 contain the name of an appointed or elected public officer nor may the name
15 of an appointed or elected public officer be used to indicate who produced
16 the sample ballot.

17 G. The great seal of the state of Arizona shall be imprinted along
18 with the words "official voting materials" on the mailing face of each sample
19 ballot. In county, city or town elections the seal of such jurisdiction
20 shall be substituted for the state seal.

21 Sec. 3. Section 16-602, Arizona Revised Statutes, is amended to read:

22 16-602. Removal of ballots from ballot boxes; disposition of
23 ballots folded together or excessive ballots;
24 designated margin; hand counts; vote count
25 verification committee

26 A. The ballots cast in the election shall first be removed from the
27 ballot box and counted without being opened, except as may be necessary to
28 ascertain that the number of ballots cast corresponds with the number of
29 names on the poll lists. FOR ANY PRIMARY OR GENERAL ELECTION IN WHICH THE
30 VOTES ARE CAST BY AN ELECTRONIC VOTING MACHINE OR TABULATOR, THE ELECTION
31 JUDGE SHALL COMPARE THE NUMBER OF VOTES CAST AS INDICATED ON THE MACHINE OR
32 TABULATOR WITH THE NUMBER OF VOTES CAST AS INDICATED ON THE POLL LIST AND
33 THAT INFORMATION SHALL BE NOTED IN A WRITTEN REPORT PREPARED AND SUBMITTED TO
34 THE OFFICER IN CHARGE OF ELECTIONS ALONG WITH OTHER TALLY REPORTS.

35 B. If two or more ballots are found folded together appearing as a
36 single ballot, they shall be laid aside until the count of the ballots is
37 completed. If it then appears by comparison of the count with the number of
38 names on the poll lists that the ballots thus folded together were cast by
39 one elector, they shall be destroyed. If the ballots in the box are still
40 found to exceed in number the names on the poll lists, the ballots, except
41 those destroyed, shall be replaced in the box, and one of the judges, without
42 looking in the box, shall draw therefrom, one at a time, and destroy
43 unopened, a number of ballots equal to the excess, and the election board
44 shall record on the poll lists the number of ballots so destroyed and shall
45 then sign the poll list.

1 C. For each countywide primary, general and presidential preference
 2 election, the county officer in charge of the election shall conduct a hand
 3 count at the central counting center of at least two per cent of the
 4 precincts in that county, or two precincts, whichever is greater. The county
 5 political party chairman for each political party that is entitled to
 6 continued representation on the state ballot or the chairman's designee shall
 7 conduct the selection of the precincts to be hand counted. The precincts
 8 shall be selected by lot without the use of a computer, and the order of
 9 selection by the county political party chairmen shall also be by lot. The
 10 selection of the precincts shall not begin until all ballots voted in the
 11 precinct polling places have been delivered to the central counting
 12 center. The unofficial vote totals from all precincts shall be made public
 13 before selecting the precincts to be hand counted. Only the ballots cast in
 14 the polling places and ballots from direct recording electronic machines
 15 shall be included in the hand counts conducted pursuant to this
 16 section. Provisional ballots, conditional provisional ballots and write-in
 17 votes shall not be included in the hand counts and the early ballots shall be
 18 grouped separately by the officer in charge of elections for purposes of a
 19 separate manual audit pursuant to subsection G. The races to be counted
 20 shall include at least four contested races, and shall include one federal
 21 race, one statewide candidate race, one ballot measure and one legislative
 22 race on those ballots. For the purposes of this section, a write-in candidacy
 23 in a race does not constitute a contested race. In elections in which there
 24 are candidates for president, the presidential race shall be added to the
 25 four categories of hand counted races. Each county chairman of a political
 26 party that is entitled to continued representation on the state ballot or the
 27 chairman's designee shall select by lot the individual races to be hand
 28 counted. The county chairman of each political party shall designate and
 29 provide the number of election board members as designated by the county
 30 officer in charge of elections who shall perform the hand count under the
 31 supervision of the county officer in charge of elections. For each precinct
 32 that is to be audited, the county chairmen shall designate at least three
 33 board workers who are registered members of any or no political party, and
 34 the county election officer shall provide for compensation for those board
 35 workers. If the board workers selected by the county chairmen fail to appear
 36 and perform the hand count pursuant to this subsection, no hand count will be
 37 conducted and the electronic tabulation is deemed the official count.

38 D. If the randomly selected races result in a difference in any race
 39 that is less than the designated margin when compared to the electronic
 40 tabulation of those same ballots, the results of the electronic tabulation
 41 constitute the official count for that race. If the randomly selected races
 42 result in a difference in any race that is equal to or greater than the
 43 designated margin when compared to the electronic tabulation of those same
 44 ballots, a second hand count of those same ballots and races shall be
 45 performed. If the second hand count results in a difference in any race that

1 is less than the designated margin when compared to the electronic tabulation
 2 for those same ballots, THE electronic tabulation constitutes the official
 3 count for that race. If the second hand count results in a difference in any
 4 race that is equal to or greater than the designated margin when compared to
 5 the electronic tabulation for those same ballots, the hand count shall be
 6 expanded to include a total of twice the original number of randomly selected
 7 precincts. Those additional precincts shall be selected by lot without the
 8 use of a computer.

9 E. In any expanded count of randomly selected precincts, if the
 10 randomly selected precinct hand counts result in a difference in any race
 11 that is equal to or greater than the designated margin when compared to the
 12 electronic tabulation of those same ballots, the final hand count shall be
 13 extended to include the entire jurisdiction for that race. If the
 14 jurisdictional boundary for that race would include any portion of more than
 15 one county, the final hand count shall not be extended into the precincts of
 16 that race that are outside of the county that is conducting the expanded hand
 17 count. If the expanded hand count results in a difference in that race that
 18 is less than the designated margin when compared to the electronic tabulation
 19 of those same ballots, the electronic tabulation constitutes the official
 20 count for that race.

21 F. If a final hand count is performed for an entire jurisdiction for a
 22 race, the final hand count shall be repeated for that race until a hand count
 23 for that race for the entire jurisdiction results in a count that is
 24 identical to one other hand count for that race for the entire jurisdiction
 25 and that hand count constitutes the official count for that race.

26 G. After the electronic tabulation of early ballots and at one or more
 27 times selected by the chairman of the political parties entitled to continued
 28 representation on the ballot or the chairman's designee, the county officer
 29 in charge of elections shall randomly select one or more batches of early
 30 ballots that have been tabulated to include at least one batch from each
 31 machine used for tabulating early ballots and shall securely sequester those
 32 ballots along with their unofficial tally reports for a postelection manual
 33 audit. The county officer in charge of elections shall randomly select from
 34 those sequestered early ballots a number equal to one per cent of the total
 35 number of early ballots cast or five thousand early ballots, whichever is
 36 less. From those randomly selected early ballots, the county officer in
 37 charge of elections shall conduct a manual audit of the same races that are
 38 being hand counted pursuant to subsection C. If the manual audit of the
 39 early ballots results in a difference in any race that is equal to or greater
 40 than the designated margin when compared to the electronically tabulated
 41 results for those same early ballots, the manual audit shall be repeated for
 42 those same early ballots. If the second manual audit results in a difference
 43 in that race that is equal to or greater than the designated margin when
 44 compared to the electronically tabulated results for those same early
 45 ballots, the manual audit shall be expanded only for that race to a number of

1 additional early ballots equal to one per cent of the total early ballots
2 cast or an additional five thousand ballots, whichever is less, to be
3 randomly selected from the batch or batches of sequestered early ballots. If
4 the expanded early ballot manual audit results in a difference for that race
5 that is equal to or greater than the designated margin when compared to any
6 of the earlier manual counts for that race, the manual counts shall be
7 repeated for that race until a manual count results in a difference in that
8 race that is less than the designated margin. If at any point in the manual
9 audit of early ballots the difference between any manual count of early
10 ballots is less than the designated margin when compared to the electronic
11 tabulation of those ballots, the electronic tabulation shall be included in
12 the canvass and no further manual audit of the early ballots shall be
13 conducted.

14 H. During any hand count of early ballots, the county officer in
15 charge of elections and election board workers shall attempt to determine the
16 intent of the voter in casting the ballot.

17 I. Notwithstanding any other law, the county officer in charge of
18 elections shall retain custody of the ballots for purposes of performing any
19 required hand counts and the officer shall provide for security for those
20 ballots.

21 J. The hand counts prescribed by this section shall begin within
22 twenty-four hours after the closing of the polls and shall be completed
23 before the canvassing of the election for that county. The results of those
24 hand counts shall be provided to the secretary of state, who shall make those
25 results publicly available on the secretary of state's web site.

26 K. For any county in which a hand count has been expanded to all
27 precincts in the jurisdiction, the secretary of state shall make available
28 the escrowed source code for that county to the superior court. The superior
29 court shall appoint a special master to review the computer software. The
30 special master shall have expertise in software engineering and shall not be
31 affiliated with an election software vendor nor with a candidate and shall
32 sign and be bound by a nondisclosure agreement regarding the source code
33 itself, and shall issue a public report to the court and to the secretary of
34 state regarding the special master's findings on the reasons for the
35 discrepancies. The secretary of state shall consider the reports for
36 purposes of reviewing the certification of that equipment and software for
37 use in this state.

38 L. The vote count verification committee is established in the office
39 of the secretary of state and all of the following apply:

40 1. At least thirty days before the 2006 primary election, the
41 secretary of state shall appoint seven persons to the committee, no more than
42 three of whom are members of the same political party.

43 2. Members of the committee shall have expertise in any two or more of
44 the areas of advanced mathematics, statistics, random selection methods,
45 systems operations or voting systems.

1 3. A person is not eligible to be a committee member if that person
2 has been affiliated with or received any income in the preceding five years
3 from any person or entity that provides election equipment or services in
4 this state.

5 4. The vote count verification committee shall meet and establish one
6 or more designated margins to be used in reviewing the hand counting of votes
7 as required pursuant to this section. The committee shall review and
8 consider revising the designated margins every two years for use in the
9 applicable elections. The committee shall provide the designated margins to
10 the secretary of state at least ten days before the primary election and at
11 least ten days before the general election, and the secretary of state shall
12 make that information publicly available on the secretary of state's web
13 site.

14 5. Members of the vote count verification committee are not eligible
15 to receive compensation but are eligible for reimbursement of expenses
16 pursuant to title 38, chapter 4, article 2. The committee is a public body
17 and its meetings are subject to title 38, chapter 3, article 3.1 and its
18 reports and records are subject to title 39, chapter 1.

19 Sec. 4. Section 16-924, Arizona Revised Statutes, is amended to read:
20 16-924. Civil penalties; attorney general; county, city or town
21 attorney; secretary of state; enforcement

22 A. Unless another penalty is specifically prescribed in this article,
23 if the filing officer for campaign finance reports designated pursuant to
24 section 16-916, subsection A has reasonable cause to believe that a person is
25 violating any provision of this article, the secretary of state shall notify
26 the attorney general for a violation regarding a statewide office or the
27 legislature, the county officer in charge of elections shall notify the
28 county attorney for that county for a violation regarding a county office or
29 the city or town clerk shall notify the city or town attorney for a violation
30 regarding a city or town office. The attorney general, county attorney or
31 city or town attorney, as appropriate, may serve on the person an order
32 requiring compliance with that provision. The order shall state with
33 reasonable particularity the nature of the violation and shall require
34 compliance within twenty days from the date of issuance of the order. The
35 alleged violator has twenty days from the date of issuance of the order to
36 request a hearing pursuant to title 41, chapter 6.

37 B. If a person fails to take corrective action within the time
38 specified in the compliance order issued pursuant to subsection A **OF THIS**
39 **SECTION**, the attorney general, county attorney or city or town attorney, as
40 appropriate, shall issue an order assessing a civil penalty of not more than
41 one thousand dollars. The person alleged to have violated the compliance
42 order has thirty days from the date of issuance of the order assessing the
43 civil penalty to request a hearing pursuant to title 41, chapter 6.

1 C. Any party aggrieved by an order or decision of the attorney
2 general, county attorney or city or town attorney, as appropriate, may appeal
3 to the superior court as provided in title 12, chapter 7, article 6.

4 D. For purposes of this section, failure to comply with a compliance
5 order issued by the attorney general, county attorney or city or town
6 attorney, as appropriate, as prescribed in subsection A OF THIS SECTION is
7 deemed an intentional act.

8 E. THE SECRETARY OF STATE MAY SUBPOENA WITNESSES, COMPEL THEIR
9 ATTENDANCE AND TESTIMONY, ADMINISTER OATHS AND AFFIRMATIONS, TAKE EVIDENCE
10 AND REQUIRE BY SUBPOENA THE PRODUCTION OF ANY BOOKS, PAPERS, RECORDS OR OTHER
11 ITEMS MATERIAL TO THE PERFORMANCE OF THE SECRETARY OF STATE'S POWERS AND
12 DUTIES UNDER THIS ARTICLE.