

CHAPTER 38

ELECTIONS

HOUSE BILL 20-1010

BY REPRESENTATIVE(S) Tipper and Coleman, Buckner, Duran, Esgar, Exum, Froelich, Gonzales-Gutierrez, Herod, Jackson, Jaquez Lewis, Kennedy, Kipp, Melton, Roberts, Snyder, Sullivan, Valdez A., Weissman;
also SENATOR(S) Gonzales and Donovan, Hansen, Moreno, Rodriguez, Williams A.

AN ACT

CONCERNING THE "COLORADO ACCURATE RESIDENCE FOR REDISTRICTING ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. The short title of this act is the "Colorado Accurate Residence for Redistricting Act".

SECTION 2. In Colorado Revised Statutes, **add 2-2-902** as follows:

2-2-902. Accurate census data - electronic record of prisoner home address - adjustment of census data - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DECENNIAL CENSUS DAY" MEANS APRIL 1 OF THE YEAR 2020 AND EVERY YEAR ENDING IN ZERO THEREAFTER.

(b) "DEPARTMENT" MEANS THE DEPARTMENT OF CORRECTIONS.

(c) "NECESSARY CENSUS DATA" MEANS THE FEDERAL DECENNIAL PUB.L. 94-171 DATA PUBLISHED FOR THE STATE BY THE UNITED STATES CENSUS BUREAU AND ADJUSTED BY THE GENERAL ASSEMBLY'S NONPARTISAN STAFF TO REFLECT THE CHANGES PURSUANT TO SUBSECTIONS (5) AND (6) OF THIS SECTION.

(d) "NONPARTISAN STAFF" MEANS THE STAFF OF THE LEGISLATIVE COUNCIL AND OFFICE OF LEGISLATIVE LEGAL SERVICES, OR ANY SUCCESSOR OFFICES.

(2) (a) STARTING AS SOON AS PRACTICABLE AFTER THE EFFECTIVE DATE OF THIS SECTION, THE DEPARTMENT SHALL COLLECT AND MAINTAIN AN ELECTRONIC RECORD

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

OF THE LEGAL RESIDENCE, PRESUMPTIVELY OUTSIDE OF THE CORRECTIONAL FACILITY, AND OTHER DEMOGRAPHIC DATA, FOR ANY PERSON ENTERING ITS CUSTODY. AT A MINIMUM, THIS RECORD MUST CONTAIN THE LAST KNOWN COMPLETE STREET ADDRESS PRIOR TO INCARCERATION, THE PERSON'S RACE, WHETHER THE PERSON IS OF HISPANIC ORIGIN, AND WHETHER THE PERSON IS OVER EIGHTEEN YEARS OF AGE. TO THE DEGREE POSSIBLE, THE DEPARTMENT SHALL ALSO ALLOW THE LEGAL RESIDENCE TO BE UPDATED AS APPROPRIATE.

(b) ON OR BEFORE MAY 1 OF EACH YEAR IN WHICH THE FEDERAL DECENNIAL CENSUS IS TAKEN AND IN WHICH THE UNITED STATES CENSUS BUREAU COUNTS INCARCERATED PERSONS AS RESIDENTS OF CORRECTIONAL FACILITIES, THE DEPARTMENT SHALL DELIVER TO NONPARTISAN STAFF A REPORT THAT INCLUDES, FOR EACH PERSON INCARCERATED IN A FACILITY OPERATED BY OR UNDER CONTRACT WITH THE DEPARTMENT FOR WHOM THE RECORDS OF THE DEPARTMENT INDICATE A LEGAL RESIDENCE IN THIS STATE:

(I) A UNIQUE IDENTIFIER, NOT INCLUDING THE NAME OF THE PERSON OR THE STATE OFFENDER IDENTIFICATION NUMBER. THE UNIQUE IDENTIFIER MUST ENABLE NONPARTISAN STAFF TO ADDRESS INQUIRIES ABOUT SPECIFIC ADDRESS RECORDS TO THE DEPARTMENT WITHOUT MAKING IT POSSIBLE FOR ANYONE OUTSIDE OF THE DEPARTMENT TO IDENTIFY THE PERSON TO WHOM THE ADDRESS RECORD PERTAINS.

(II) THE STREET ADDRESS OF THE CORRECTIONAL FACILITY IN WHICH SUCH PERSON WAS INCARCERATED ON THE DECENNIAL CENSUS DAY;

(III) THE LAST KNOWN ADDRESS OF SUCH PERSON PRIOR TO INCARCERATION OR OTHER LEGAL RESIDENCE, IF KNOWN;

(IV) THE PERSON'S RACE, WHETHER THE PERSON IS OF HISPANIC ORIGIN, AND WHETHER THE PERSON IS OVER EIGHTEEN YEARS OF AGE, IF KNOWN; AND

(V) ANY ADDITIONAL INFORMATION NONPARTISAN STAFF MAY REQUEST PURSUANT TO LAW.

(c) THE DEPARTMENT SHALL PROVIDE THE DATA SPECIFIED IN SUBSECTION (2)(b) OF THIS SECTION IN AN ELECTRONIC FORMAT AS SPECIFIED BY NONPARTISAN STAFF.

(d) THE INFORMATION REQUIRED TO BE PROVIDED TO NONPARTISAN STAFF PURSUANT TO THIS SUBSECTION (2) MUST NOT INCLUDE THE NAME OF ANY INCARCERATED PERSON AND MUST NOT ALLOW FOR THE IDENTIFICATION OF ANY SUCH PERSON EXCEPT TO THE DEPARTMENT. NOTWITHSTANDING THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, OR ANY OTHER PROVISION OF LAW, THE INFORMATION IS CONFIDENTIAL AND NONPARTISAN STAFF OR ANY OTHER STATE AGENCY OR LOCAL GOVERNMENT ENTITY SHALL NOT DISCLOSE ANY INFORMATION FROM THE REPORT EXCEPT AS REDISTRICTING DATA AGGREGATED BY CENSUS BLOCK FOR PURPOSES SPECIFIED IN SUBSECTION (4) OF THIS SECTION.

(3) NONPARTISAN STAFF SHALL REQUEST EACH AGENCY THAT OPERATES A FEDERAL FACILITY IN THIS STATE THAT INCARCERATES PERSONS CONVICTED OF A CRIMINAL OFFENSE TO PROVIDE IT WITH A REPORT INCLUDING THE INFORMATION LISTED IN SUBSECTION (2)(b) OF THIS SECTION.

(4) PURSUANT TO SUBSECTION (5) OF THIS SECTION, NONPARTISAN STAFF SHALL PREPARE REDISTRICTING POPULATION DATA TO REFLECT INCARCERATED PERSONS AT THEIR RESIDENTIAL ADDRESSES IN THIS STATE RATHER THAN THEIR PLACE OF INCARCERATION. THIS DATA PREPARED BY NONPARTISAN STAFF IS THE NECESSARY CENSUS DATA PROVIDED TO AND TO BE USED BY THE INDEPENDENT LEGISLATIVE AND CONGRESSIONAL REDISTRICTING COMMISSIONS ESTABLISHED PURSUANT TO SECTIONS 44 AND 46 OF ARTICLE V OF THE STATE CONSTITUTION. THE DATA IS THE POPULATION BASIS OF CONGRESSIONAL DISTRICTS, STATE HOUSE OF REPRESENTATIVE DISTRICTS, AND STATE SENATE DISTRICTS. NONPARTISAN STAFF SHALL MAKE THIS CENSUS DATA AVAILABLE TO THE INDEPENDENT LEGISLATIVE AND CONGRESSIONAL REDISTRICTING COMMISSIONS AND TO MEMBERS OF THE PUBLIC AND ANY COUNTY OR LOCAL GOVERNMENTAL ENTITY OF COLORADO UPON REQUEST.

(5) (a) FOR EACH PERSON INCLUDED IN A REPORT RECEIVED PURSUANT TO SUBSECTIONS (2)(b) AND (3) OF THIS SECTION, NONPARTISAN STAFF SHALL DETERMINE THE GEOGRAPHIC UNITS FOR WHICH POPULATION COUNTS ARE REPORTED IN THE FEDERAL DECENNIAL CENSUS THAT CONTAIN THE FACILITY OF INCARCERATION AND THE LEGAL RESIDENCE IN THIS STATE AS LISTED IN THE REPORT.

(b) FOR EACH PERSON INCLUDED IN A REPORT RECEIVED PURSUANT TO SUBSECTIONS (2)(b) AND (3) OF THIS SECTION, IF THE LEGAL RESIDENCE IS KNOWN AND IN THIS STATE, NONPARTISAN STAFF SHALL:

(I) ENSURE THAT THE PERSON IS NOT INCLUDED IN ANY POPULATION COUNTS REPORTED BY NONPARTISAN STAFF FOR THE GEOGRAPHIC UNITS THAT INCLUDE THE FACILITY AT WHICH THE PERSON WAS INCARCERATED, UNLESS THAT GEOGRAPHIC UNIT ALSO INCLUDES THE PERSON'S LEGAL RESIDENCE; AND

(II) ENSURE THAT ANY POPULATION COUNTS REPORTED BY NONPARTISAN STAFF REFLECT THE PERSON'S RESIDENTIAL ADDRESS IN THIS STATE AS REPORTED PURSUANT TO SUBSECTIONS (2)(b) AND (3) OF THIS SECTION.

(6) THE DATA PREPARED BY NONPARTISAN STAFF PURSUANT TO THIS SECTION MUST BE COMPLETED AND PUBLISHED NO LATER THAN THIRTY DAYS AFTER THE DATE THAT FEDERAL DECENNIAL PUB.L. 94-171 DATA FOR THE STATE IS DELIVERED TO THE STATE.

(7) THE DATA PREPARED BY NONPARTISAN STAFF PURSUANT TO THIS SECTION SHALL NOT BE USED IN THE DISTRIBUTION OF ANY STATE OR FEDERAL AID.

SECTION 3. In Colorado Revised Statutes, **amend 2-2-901** as follows:

2-2-901. Population data for redistricting. ~~(1) The general assembly hereby finds and declares that:~~

~~(a) Section 44 of article V of the state constitution requires the general assembly to divide the state into congressional districts after each new apportionment of seats in the United States house of representatives, and a new apportionment occurs after each federal decennial census;~~

~~(b) Section 48 of article V of the state constitution requires that a~~

~~reapportionment commission be appointed after each federal census to establish, revise, and alter the state senatorial and representative districts;~~

~~(c) These sections imply that the general assembly and the reapportionment commission must perform their constitutional duty to redraw the boundaries of congressional and state legislative districts using population data derived from the latest federal census, so that the equal population requirements of the federal and state constitutions can be satisfied;~~

~~(d) Federal officials have proposed using statistical sampling techniques to modify the traditional headcount of the population;~~

~~(e) The United States supreme court has held that the federal census act prohibits the use of statistically adjusted population data to apportion seats in the United States house of representatives among the states;~~

~~(f) Many have argued that statistically adjusted population data does not satisfy the requirement of the federal constitution for an "actual enumeration" of the population;~~

~~(g) There is no reason for congress to use one set of population data for apportionment of seats in congress and for state redistricting authorities to use a different set of data to redraw congressional and state legislative district boundaries, and the federal government would incur additional costs by furnishing two sets of data to the states;~~

~~(h) Using different population data for redistricting would subject the state of Colorado to the risk of litigation over the appropriate population figures, which form the very foundation of any congressional or state legislative redistricting plan;~~

~~(i) It is therefore necessary to establish the intent of the general assembly that the same population data be used in the congressional and state legislative redistricting processes as is used for purposes of apportioning seats in the United States house of representatives among the states.~~

~~(2) For purposes of redrawing the boundaries of congressional, state senatorial, and state representative districts after the EACH federal census, in the year 2010, the general assembly and the Colorado reapportionment commission THE INDEPENDENT LEGISLATIVE AND CONGRESSIONAL REDISTRICTING COMMISSIONS ESTABLISHED PURSUANT TO SECTIONS 44 AND 46 OF ARTICLE V OF THE STATE CONSTITUTION shall use population data supplied by the United States bureau of the census that has been used to apportion the seats in the United States house of representatives among the states BUREAU AS ADJUSTED BY THE LEGISLATIVE COUNCIL STAFF AND OFFICE OF LEGISLATIVE LEGAL SERVICES, OR ANY SUCCESSOR OFFICES, PURSUANT TO SECTION 2-2-902.~~

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: March 20, 2020