

CHAPTER 136

ELECTIONS

HOUSE BILL 03-1006

BY REPRESENTATIVE(S) Fairbank, Briggs, Brophy, Cadman, Crane, Fritz, Hall, Harvey, Hoppe, King, Lee, May M., Miller, Rhodes, Romanoff, Rose, Schultheis, Spence, Spradley, Stafford, Stengel, White, Wiens, Williams T., and Young; also SENATOR(S) Anderson, Andrews, Arnold, Cairns, Dyer, Entz, Evans, Hillman, Jones, Kester, Lamborn, May R., Nichol, and Owen.

AN ACT**CONCERNING PROVISIONAL BALLOTS.**

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

SECTION 1. The introductory portion to 1-2-217.5 (1), 1-2-217.5 (1) (b) and (1) (c), the introductory portion to 1-2-217.5 (2), and 1-2-217.5 (2) (a) and (5), Colorado Revised Statutes, are amended to read:

1-2-217.5. Change in residence before close of registration - emergency registration. (1) Notwithstanding the provisions of sections 1-2-101 and 1-2-102, an elector may register to vote in an election after the registration books of the county clerk and recorder are closed for that election BY COMPLETING AN EMERGENCY REGISTRATION AFFIDAVIT AS PRESCRIBED BY THE SECRETARY OF STATE if the elector:

(b) Presents ONE OF THE FOLLOWING FORMS OF IDENTIFICATION SHOWING AN ADDRESS FOR THE ELECTOR WITHIN THE COUNTY IN WHICH THE ELECTOR SEEKS TO REGISTER:

(I) A Colorado driver's license; or

(II) A personal identification card issued by the department of revenue pursuant to part 3 of article 2 of title 42, C.R.S. ~~that contains a photograph of that person; and~~

(c) ~~Files an emergency registration and provisional ballot affidavit as prescribed by the secretary of state.~~

(2) The elector shall declare under oath in the emergency registration ~~and~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~provisional ballot~~ affidavit that the elector wishes to register to vote in the election in the precinct and county for which the registration books are closed and that either:

(a) The elector was registered to vote in a different county prior to the close of the registration books, ~~had no knowledge that he or she was required by law~~ FAILED to register with the county clerk and recorder within the prescribed period after a change of residence to a different county, and has not and will not cast a vote in the election in the county of previous residence; or

(5) An elector changing registration on an election day pursuant to this section may vote in the office of the county clerk and recorder or in the precinct where the new address is located. IF THE ELECTOR'S QUALIFICATION TO VOTE CANNOT BE IMMEDIATELY ESTABLISHED AT THE OFFICE OF THE COUNTY CLERK AND RECORDER, THE ELECTOR MAY VOTE BY PROVISIONAL BALLOT.

SECTION 2. 1-9-301 (1) and (3), Colorado Revised Statutes, are amended, and the said 1-9-301 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

1-9-301. Provisional ballot voting. (1) At ~~all~~ ANY primary ~~and~~ OR November coordinated ~~elections~~ ELECTION conducted pursuant to this title, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the registration list for the precinct or upon examination of the records on file with the county clerk and recorder shall be entitled to vote a provisional ballot ~~upon completion of the provisional ballot affidavit.~~ IF THE VOTER:

(a) PRESENTS ONE OF THE FOLLOWING FORMS OF IDENTIFICATION SHOWING AN ADDRESS FOR THE VOTER WITHIN THE COUNTY IN WHICH THE VOTER SEEKS TO VOTE:

(I) A COLORADO DRIVER'S LICENSE; OR

(II) A PERSONAL IDENTIFICATION CARD ISSUED BY THE DEPARTMENT OF REVENUE PURSUANT TO PART 3 OF ARTICLE 2 OF TITLE 42, C.R.S.; AND

(b) COMPLETES A PROVISIONAL BALLOT AFFIDAVIT IN ACCORDANCE WITH SECTION 1-9-304.5.

(3) The provisional ballot envelope ~~affidavit~~ shall be printed with instructions on the voting and handling of provisional ballots drafted by the secretary of state.

(4) A VOTER WHO MOVES FROM ONE PRECINCT TO ANOTHER PRECINCT IN THE SAME COUNTY OR TO ANOTHER COUNTY LATER THAN THE THIRTIETH DAY BEFORE AN ELECTION IS NOT PROPERLY REGISTERED AT THE NEW ADDRESS FOR PURPOSES OF THIS SECTION AND MAY NOT VOTE A PROVISIONAL BALLOT, BUT THE VOTER MAY VOTE IN THE PRECINCT WHERE REGISTERED PURSUANT TO SECTION 1-2-217.

(5) THE PROVISIONAL BALLOT AFFIDAVIT SHALL CONSTITUTE A VOTER REGISTRATION FOR THE VOTER FOR FUTURE ELECTIONS. ANY PREVIOUS VOTER REGISTRATION FOR THE VOTER SHALL BE CANCELLED PURSUANT TO SECTION 1-2-603 (1).

(6) IF THE VOTER DOES NOT COMPLETE AND SIGN THE PROVISIONAL BALLOT AFFIDAVIT OR IF THE VOTER DOES NOT PRESENT THE REQUIRED IDENTIFICATION, THE BALLOT SHALL NOT BE COUNTED UNLESS THE COUNTY CLERK AND RECORDER OR DESIGNATED ELECTION OFFICIAL DETERMINES THAT THE VOTER WAS PROPERLY REGISTERED IN THE PRECINCT AND COUNTY.

SECTION 3. Part 3 of article 9 of title 1, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

1-9-304.5. Provisional ballot affidavit. THE PROVISIONAL BALLOT AFFIDAVIT SHALL BE PRINTED ON THE PROVISIONAL BALLOT ENVELOPE AS FOLLOWS:

"I, _____, DO SOLEMNLY AFFIRM THAT I AM A CITIZEN OF THE UNITED STATES, THAT I HAVE ATTAINED THE AGE OF EIGHTEEN YEARS, AND THAT I HAVE RESIDED IN THE STATE OF COLORADO AND IN MY PRESENT PRECINCT AT LEAST THIRTY DAYS BEFORE THE ELECTION. I FURTHER AFFIRM THAT THE ADDRESS INDICATED IN THIS AFFIDAVIT IS MY SOLE LEGAL RESIDENCE AND THAT I CLAIM NO OTHER PLACE AS MY LEGAL RESIDENCE. I FURTHER AFFIRM THAT:

I REGISTERED TO VOTE IN MY COUNTY AND PRECINCT OF RESIDENCE IN THE STATE OF COLORADO PRIOR TO THE CLOSE OF THE REGISTRATION BOOKS; OR

I WAS REGISTERED TO VOTE IN THE STATE OF COLORADO AND MOVED TO MY COUNTY AND PRECINCT OF RESIDENCE AT LEAST THIRTY DAYS BEFORE THE ELECTION, BUT FAILED TO REGISTER WITH THE CLERK AND RECORDER OF MY COUNTY OF RESIDENCE; OR

I APPLIED TO REGISTER TO VOTE PRIOR TO THE CLOSE OF REGISTRATION BY FEDERAL POSTCARD APPLICATION OR MAIL REGISTRATION APPLICATION, OR I APPLIED TO REGISTER AT A VOTER REGISTRATION AGENCY DESIGNATED PURSUANT TO SECTION 1-2-504, COLORADO REVISED STATUTES.

I FURTHER AFFIRM UNDER PENALTY OF LAW THAT I AM AN ELIGIBLE ELECTOR, THAT I HAVE NOT AND WILL NOT CAST ANY VOTE IN THIS ELECTION EXCEPT BY THE ENCLOSED BALLOT, THAT I WILL NOT VOTE IN ANY OTHER PRECINCT, COUNTY, OR STATE, AND THAT MY BALLOT IS ENCLOSED IN ACCORDANCE WITH THE PROVISIONS OF THE "UNIFORM ELECTION CODE OF 1992", ARTICLES 1 TO 13 OF TITLE 1, COLORADO REVISED STATUTES.

WARNING: IT IS A CRIME TO MAKE A FALSE AFFIRMATION AS TO YOUR QUALIFICATIONS TO VOTE. A PERSON WHO VOTES BY KNOWINGLY GIVING FALSE INFORMATION REGARDING HIS OR HER PLACE OF PRESENT RESIDENCE COMMITS A CLASS 6 FELONY PUNISHABLE BY A FINE OF UP TO \$100,000 AND/OR IMPRISONMENT FOR UP TO 18 MONTHS.

SIGNATURE: _____ ADDRESS: _____
DATE: _____".

THE ELECTION JUDGE SHALL MARK, ON A SPACE PROVIDED, ON THE PROVISIONAL BALLOT ENVELOPE, AS PRESCRIBED BY THE SECRETARY OF STATE, INDICATING THAT THE ELECTOR HAS FAILED TO PROVIDE REQUIRED VOTER IDENTIFICATION.

1-9-306. Information system. FOR ANY ELECTION HELD ON OR AFTER JANUARY 1, 2004, IN WHICH A PROVISIONAL BALLOT IS VOTED, THE COUNTY CLERK AND RECORDER OR DESIGNATED ELECTION OFFICIAL SHALL ESTABLISH A SYSTEM ALLOWING A VOTER WHO CAST A PROVISIONAL BALLOT TO DISCOVER WHETHER THE BALLOT WAS COUNTED AND, IF THE BALLOT WAS NOT COUNTED, THE REASON THE BALLOT WAS NOT COUNTED. THE SYSTEM SHALL PROVIDE ACCESS TO THIS INFORMATION AT NO COST TO THE VOTER BY TOLL-FREE TELEPHONE CALL, INTERNET WEBSITE, OR OTHER SUITABLE MEDIUM, IN ACCORDANCE WITH THE "HELP AMERICA VOTE ACT OF 2002", P.L. NO. 107-252. INFORMATION ABOUT A PROVISIONAL BALLOT SHALL BE AVAILABLE ONLY TO THE VOTER WHO CAST THE BALLOT.

SECTION 4. Repeal. 1-9-304, Colorado Revised Statutes, is repealed as follows:

1-9-304. Provisional ballots - absentee voters. ~~If a voter to whom an absentee ballot has been mailed or delivered has not returned the ballot to the county clerk and recorder or designated election official, the voter may vote a provisional ballot at the voter's polling location in lieu of returning an absentee ballot. If the voter returns the absentee ballot, the provisional ballot shall not be counted. If there is reasonable cause to believe that the duplicate voting was intentional or fraudulent, the county clerk and recorder or designated election official shall refer the matter to the district attorney.~~

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 17, 2003