TITLE 1

ELECTIONS

Editor's note: Articles 1 to 13 were numbered as articles 1, 3, 4, 9 to 19, and 21 of chapter 49, C.R.S. 1963. The substantive provisions of these articles were repealed and reenacted in 1980, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to these articles prior to 1980, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. numbers prior to 1980 are shown in editor's notes following those sections that were relocated. For a detailed comparison of these articles for 1980, see the comparative tables located in the back of the index.

Cross references: For school elections, see articles 30, 31, and 42 of title 22; for elections for removal of county seats, see article 8 of title 30; for municipal elections, see article 10 of title 31; for special district elections, see part 8 of article 1 of title 32; for exemption of certain statutory proceedings from the rules of civil procedure, see C.R.C.P. 81.

GENERAL, PRIMARY, AND CONGRESSIONAL VACANCY ELECTIONS

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GENERAL, PRIMARY, AND CONGRESSIONAL VACANCY ELECTIONS

ARTICLE 1

Elections Generally

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this article was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of this article for 1980 and 1992, see the comparative tables located in the back of the index.

Law reviews: For a discussion of a Tenth Circuit decision dealing with elections, see 66 Den. U.L. Rev. 757 (1989); for article, "Psst-There's a New Election Code", see 22 Colo. Law. 1703 (1993); for article, "Hey, They Revised the Election Code Again!", see 23 Colo. Law. 1821 (1994); for article, "Yes, Even More Election Code Revisions", see 24 Colo. Law. 1803 (1995); for article, "Fill in the Blank: More ____ Election Code Revisions", see 25 Colo. Law. 93 (August 1996); for article, "Wow, What a Surprise! Still More Election Code Revisions", see 26 Colo. Law. 77 (August 1997); for article, "Florida Fallout and Other Colorado Election Law Amendments of 2002", see 31 Colo. Law. 63 (August 2002).

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PART 1

DEFINITIONS AND GENERAL PROVISIONS

1-1-101. Short title. Articles 1 to 13 of this title shall be known and may be cited as the "Uniform Election Code of 1992"; within these articles, "this code" means the "Uniform Election Code of 1992".

Source: L. 92: Entire article R&RE, p. 624, § 1, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is the same as 1-1-101 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

1-1-102. Applicability. (1) This code applies to all general, primary, congressional vacancy, school district, special district, ballot issue, and other authorized elections unless otherwise provided by this code. This code applies to any municipal election conducted as part of a coordinated election except to the extent that this code conflicts with a specific charter provision. Any municipality may provide by ordinance or resolution that it will utilize the requirements and procedures of this code in lieu of the "Colorado Municipal Election Code of 1965", article 10 of title 31, C.R.S., with respect to any election.

(2) For elections that must be coordinated pursuant to section 20 (3) (b) of article X of the Colorado constitution where the enabling legislation does not require that the electors be registered electors, the political subdivision may conduct its elections pursuant to the enabling legislation but it must assure that the notice required by part 9 of article 7 of this title is provided to the election official responsible for publishing the ballot issue notice.

Source: L. 92: Entire article R&RE, p. 624, § 1, effective January 1, 1993. **L. 93:** Entire section amended, p. 1393, § 1, effective July 1. **L. 94:** (2) amended, p. 1149, § 1, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-102 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

Cross references: For the definitions of "general election", "primary election", and "congressional vacancy election", see §§ 1-1-104 (17), 1-1-104 (32), and 1-1-104 (5), respectively.

1-1-103. Election code liberally construed. (1) This code shall be liberally construed so that all eligible electors may be permitted to vote and those who are not eligible electors may be kept from voting in order to prevent fraud and corruption in elections.

(2) It is also the intent of the general assembly that non-English-speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made to minimize obstacles to registration by citizens who lack sufficient skill in English to register without assistance.

(3) Substantial compliance with the provisions or intent of this code shall be all that is required for the proper conduct of an election to which this code applies.

Source: L. 92: Entire article R&RE, p. 624, § 1, effective January 1, 1993. **L. 96:** (1) amended and (3) added, p. 1732, § 1, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-103 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 178-180.

1-1-104. Definitions. As used in this code, unless the context otherwise requires:

(1) "Abstract of votes cast" means a certified record of the results in each election for candidates for any office, ballot issue, or ballot question that the county clerk and recorder certified for the ballot.

(1.1) "Address of record" means the elector's place of residence as specified in accordance with section 1-2-204 (2) (f).

(1.2) "Affiliation" means an elector's decision to affiliate with either a political party or a political organization, as defined in subsections (24) and (25) of this section.

(1.3) "Assembly" means a meeting of delegates of a political party, organized in accordance with the rules and regulations of the political party, held for the purpose of designating candidates for nominations.

(1.5) "Authorizing legislation" means the provisions of the state constitution or statutes or of a local charter authorizing the existence and powers of a political subdivision and providing for the call and conduct of the political subdivision's election.

(1.7) "Ballot" means the list of all candidates, ballot issues, and ballot questions upon which an eligible elector is entitled to vote at an election.

(2) "Ballot box" means the locked and sealed container in which ballots are deposited by eligible electors. The term includes the container in which ballots are transferred from a polling place to the office of the designated election official and the transfer case in which electronic ballot cards and paper tapes and the "prom" or any other electronic tabulation device are sealed by election judges for transfer to the central counting center.

(2.1) "Ballot card" means the card, tape, or other vehicle on which an elector's votes are recorded in an electronic or electromechanical voting system.

(2.3) "Ballot issue" means a state or local government matter arising under section 20 of article X of the state constitution, as defined in sections 1-41-102 (4) and 1-41-103 (4), respectively.

(2.5) "Ballot issue notice" means the notice which is required by section 20 (3) (b) of article X of the state constitution and comprises the material between the notice title and the conclusion of the summary of comments.

(2.7) "Ballot question" means a state or local government matter involving a citizen petition or referred measure, other than a ballot issue.

(3) (Deleted by amendment, L. 94, p. 1750, § 1, effective January 1, 1995.)

(4) (Deleted by amendment, L. 93, p. 1394, § 2, effective July 1, 1993.)

(5) "Congressional vacancy election" means an election held at a time other than the general election for the purpose of filling a vacancy in an unexpired term of a representative in congress.

(6) "Convention" means a meeting of delegates of a political party, organized in accordance with the rules and regulations of the political party, held for the purpose of selecting delegates to other political conventions, including national conventions, making nominations for presidential electors, or nominating candidates to fill vacancies in unexpired terms of representatives in congress or held for other political functions not otherwise covered in this code.

(6.5) "Coordinated election" means an election where more than one political subdivision with overlapping boundaries or the same electors holds an election on the same day and the eligible electors are all registered electors, and the county clerk and recorder is the coordinated election official for the political subdivisions.

(7) "County" includes a city and county.

(7.5) "Deliverable mailing address" means the elector's mailing address if different from the elector's address of record as specified in accordance with section 1-2-204 (2) (f).

(8) "Designated election official" means the member of a governing board, secretary of the board, county clerk and recorder, or other person designated by the governing body as the person who is responsible for the running of an election.

(9) "District captain" or "district co-captain" means any registered elector who is a resident of the district, is affiliated with a political party, and is designated or elected pursuant to political party rules of the county.

(9.5) "District office of state concern" means those elective offices, involving congressional districts or unique political subdivisions with territory in more than one county and with their own enabling legislation, as identified by rules of the secretary of state based upon the method for designating candidates for office and responsibility for identification and qualification of candidates.

(9.6) "Driver's license" means any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles and any identification card issued under part 4 of article 2 of title 42, C.R.S.

(10) "Election official" means any county clerk and recorder, election judge, member of a canvassing board, member of a board of county commissioners, member or secretary of a board of directors authorized to conduct public elections, representative of a governing body, or other person contracting for or engaged in the performance of election duties as required by this code.

(11) "Election records" includes but is not limited to accounting forms, certificates of registration, pollbooks, certificates of election, signature cards, all affidavits, mail-in voter applications, mail-in voter lists and records, mail-in voter return envelopes, voted ballots, unused ballots, spoiled ballots, and replacement ballots.

(12) "Elector" means a person who is legally qualified to vote in this state. The related terms "eligible elector", "registered elector", and "taxpaying elector" are separately defined in this section.

(13) "Elector registration information changes" means changes in the name, address, or political affiliation of a registered elector which are allowed by the provisions of this code.

(13.5) "Electromechanical voting system" means a system in which an elector votes using a device for marking a ballot card using ink or another visible substance and the votes are counted with electronic vote-tabulating equipment. The term includes a system in which votes are recorded electronically within the equipment on paper tape and are recorded simultaneously on an electronic device that permits tabulation at a counting center. As used in part 6 of article 5 of this title, "electromechanical voting system" shall include a paper-based voting system.

(14) "Electronic vote-tabulating equipment" or "electronic vote-counting equipment" means any apparatus that examines and records votes automatically and tabulates the result, including but not limited to optical scanning equipment. The term includes any apparatus that counts votes electronically and tabulates the results simultaneously on a paper tape within the apparatus, that uses an electronic device to store the tabulation results, and that has the capability to transmit the votes into a central processing unit for purposes of a printout and an official count.

(14.5) "Electronic voting device" means a device by which votes are recorded electronically, including a touchscreen system.

(15) Repealed.

(15.5) "Electronic voting system" means a system in which an elector votes using an electronic voting device.

(16) "Eligible elector" means a person who meets the specific requirements for voting at a specific election or for a specific candidate, ballot question, or ballot issue. If no specific provisions are given, an eligible elector shall be a registered elector, as defined in subsection (35) of this section.

(16.5) "Federally accredited laboratory" means a laboratory certified under sec. 231 of the federal "Help America Vote Act of 2002", Pub.L. 107-252, codified at 42 U.S.C. sec. 15301 et seq., or any successor section.

(17) "General election" means the election held on the Tuesday succeeding the first Monday of November in each even-numbered year.

(18) "Governing body" means a board of county commissioners, a city council, a board of trustees, a board of directors, or any other entity which is responsible for the calling and conducting of an election.

(18.5) "Group residential facility" means a nursing home, a nursing care facility licensed pursuant to part 1 of article 3 of title 25, C.R.S., a home for persons with developmental disabilities as defined in section 27-10.5-102, C.R.S., an assisted living residence licensed pursuant to section 25-27-105, C.R.S., or a residential treatment facility for mental illness.

(19) "Gubernatorial" means and refers to voting in general elections for the office of governor.

(19.5) (a) "Identification" means:

(I) A valid Colorado driver's license;

(II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S.;

(III) A valid United States passport;

(IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state;

(V) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States;

(VI) A valid United States military identification card with a photograph of the eligible elector;

(VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector;

(VIII) A valid medicare or medicaid card issued by the United States health care financing administration;

(IX) A certified copy of a birth certificate for the elector issued in the United States;

(X) Certified documentation of naturalization; or

(XI) A valid student identification card with a photograph of the eligible elector issued by an institution of higher education in Colorado, as defined in section 23-3.1-102 (5), C.R.S.

(b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado.

(c) Verification that a voter is a resident of a group residential facility, as defined in subsection (18.5) of this section, shall be considered sufficient identification for the purposes of section 1-7-110 (1).

(20) "Joint candidates" means the two candidates for the office of governor and the office of lieutenant governor for whom one vote cast at any general election is applicable to both offices.

(21) (Deleted by amendment, L. 93, p. 1394, § 2, effective July 1, 1993.)

(22) "Major political party" means any political party that at the last preceding gubernatorial election was represented on the official ballot either by political party candidates or by individual nominees and whose candidate at the last preceding gubernatorial election received at least ten percent of the total gubernatorial votes cast.

(22.5) "Major political party affiliation" means an elector's decision to affiliate with a major political party, as defined in subsection (22) of this section.

(22.7) "Manual count" means a count conducted by hand or by scanning a bar code.

(23) "Minor political party" means a political party other than a major political party that satisfies one of the conditions set forth in section 1-4-1303 (1) or has submitted a sufficient petition in accordance with section 1-4-1302.

(23.3) "Nonpartisan election" means an election that is not a partisan election.

(23.4) "Overvote" means the selection by an elector of more names than there are persons to be elected to an office or the designation of more than one answer to a ballot question or ballot issue.

(23.5) "Paper-based voting system" means an electromechanical voting system in which the elector's vote is recorded solely on a paper ballot.

(23.6) "Partisan election" means an election in which the names of the candidates are printed on the ballot along with their affiliation. The existence of a partisan election for the state or for a political subdivision as a part of a coordinated election does not cause an otherwise nonpartisan election of another political subdivision to become a partisan election.

(24) "Political organization" means any group of registered electors who, by petition for nomination of an unaffiliated candidate as provided in section 1-4-802, places upon the official general election ballot nominees for public office.

(25) "Political party" means either a major political party or a minor political party.

(26) "Political party district" means an area within a county composed of contiguous whole election precincts, as designated by the political party county chairperson.

(27) "Pollbook" means the list of eligible electors who are permitted to vote at a polling place or by mail ballot in an election conducted under this code.

(28) "Polling place" means the place established for holding elections.

(29) "Population" means population as determined by the latest federal census.

(30) "Precinct" means an area with established boundaries within a political subdivision used to establish election districts.

(31) "Precinct caucus" means a meeting of registered electors of a precinct who are eligible to participate in accordance with the provisions of section 1-3-101, such meeting being organized in accordance with the rules and regulations of the political party.

(31.5) "Presidential election" means an election held on the first Tuesday after the first Monday in November of an even-numbered year in which the names of candidates for president of the United States appear on the ballot.

(32) "Primary election" means the election held on the second Tuesday of August in each even-numbered year.

(33) "Property owners list" means the list furnished by the county assessor in accordance with section 1-5-304 showing each property owner within the subdivision, as shown on a deed or contract of record.

(33.5) "Public assistance" includes, but is not necessarily limited to, assistance provided under the following programs:

(a) The food stamp program, as provided in part 3 of article 2 of title 26, C.R.S.;

(b) Programs established pursuant to the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S.;

(c) The special supplemental food program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786;

(d) Assistance under the Colorado works program, as described in part 7 of article 2 of title 26, C.R.S.

(34) "Publication" means printing one time, in one newspaper of general circulation in the political subdivision if there is such a newspaper, and, if not, then in a newspaper in the county in which the political subdivision is located. For a political subdivision with territory within more than one county, if publication cannot be made in one newspaper of general circulation in the political subdivision, then one publication is required in a newspaper in each county in which the political subdivision is located and in which the political subdivision also has fifty or more eligible electors.

(34.2) "Purchase" means to enter into a contract for the purchase, lease, rental, or other acquisition of voting equipment.

(34.4) "Ranked voting method" means a method of casting and tabulating votes that allows electors to rank the candidates for an office in order of preference and uses these preferences to determine the winner of the election. "Ranked voting method" includes instant runoff voting and choice voting or proportional voting as described in section 1-7-1003.

(34.5) "Referred measure" includes any ballot question or ballot issue submitted by the general assembly or the governing body of any political subdivision to the eligible electors of the state or political subdivision pursuant to article 40 or 41 of this title.

(35) "Registered elector" means an elector, as defined in subsection (12) of this section, who has complied with the registration provisions of this code and who resides within or is eligible to vote in the jurisdiction of the political subdivision calling the election. If any provision of this code requires the signing of any document by a registered elector, the person making the signature shall be deemed to be a registered elector if the person's name and address at the time of signing the document matches the name and address for the person on the registration document at the county clerk and recorder's office, and as it appears on the master elector list on file with the secretary of state.

(36) "Registration book" means the original elector registration records for each county retained and stored by one of the following methods:

(a) On registration records by precinct in bound books arranged alphabetically for all active and all inactive registrations with all withdrawn and canceled registrations kept in separate bound books or on film; or

(b) On film and computer with access to the registration records available both alphabetically and by precinct. The system shall have the capability to print out active and inactive registration records, to retain the voting history for each active and inactive registration by surname, and to film completed voter signature forms by precinct for each election. Computer lists of registration records shall be furnished for use at the precinct polling places on election days.

(37) "Registration list" means the computer list of electors currently registered to vote as furnished and certified by the county clerk and recorder.

(38) "Registration record" means the approved and completed form on which an elector has registered to vote, which includes the original signature of the registrant. "Registration record" includes a standard-size approved elector registration record to which a nonstandard completed form has been transferred by copy or manual entry.

(39) "Regular biennial school election" means the election held on the first Tuesday in November of each odd-numbered year.

(40) "Regular drainage ditch election" means the election held on the first Tuesday after the first Monday in January of each alternate year.

(41) "Regular regional transportation district election" means the election held concurrently with the state general election in every even-numbered year during which the directors are elected.

(42) "Regular special district election" means the election on the Tuesday succeeding the first Monday of May in every even-numbered year, held for the purpose of electing members to the board of special districts and for submission of ballot issues, if any.

(43) "Residence" means the principal or primary home or place of abode of a person, as set forth in section 1-2-102.

(44) (Deleted by amendment, L. 96, p. 1732, § 2, effective July 1, 1996.)

(45) "School district" means a school district organized and existing pursuant to law but does not include a junior college district.

(45.5) "Self-affirmation" means a sworn statement made in writing and signed by an individual, as though under oath. Any person falsely making a self-affirmation violates section 1-13-104.

(46) "Special election" means any election called by a governing board for submission of ballot issues and other matters, as authorized by their enabling legislation. Any governing body may petition a district court judge who has jurisdiction over the political subdivision for permission to hold a special

election on a day other than those specified in this subsection (46). The district court judge may grant permission only upon a finding that an election on the days specified would be impossible or impracticable or upon a finding that an unforeseeable emergency would require an election on a day other than those specified.

(46.3) "Special legislative election" means an election called by the general assembly pursuant to part 3 of article 11 of this title.

(46.5) "Statewide abstract of votes cast" means the record of the results in each election for candidates, ballot issues, and ballot questions that the secretary of state certified for the ballot.

(47) "Supply judge" means the election judge appointed by the designated election official to be in charge of the election process at the polling place on election day.

(48) "Taxable property" means real or personal property subject to general ad valorem taxes. For all elections and petitions that require ownership of real property or land, ownership of a mobile home or manufactured home, as defined in section 5-1-301 (29), 38-12-201.5 (2), or 42-1-102 (106) (b), C.R.S., is sufficient to qualify as ownership of real property or land for the purpose of voting rights and petitions.

(49) "Taxpaying elector" shall have the same meaning as provided in section 32-1-103 (23), C.R.S.

(49.5) "Unaffiliated" means that a person is registered but not affiliated with a political party in accordance with the provisions of section 1-2-204 (2) (j).

(49.7) "Undervote" means the failure of an elector to vote on a ballot question or ballot issue, the failure of an elector to vote for any candidate for an office, or the designation by an elector of fewer votes than there are offices to be filled; except that it is not an undervote if there are fewer candidates than offices to be filled and the elector designates as many votes as there are candidates.

(49.8) "Vote center" means a polling place at which any registered elector in the political subdivision holding the election may vote, regardless of the precinct in which the elector resides.

(50) "Vote recorder" or "voting device" means any apparatus that the elector uses to record votes by marking a ballot card and that subsequently counts the votes by electronic tabulating equipment or records the votes electronically on a paper tape within the apparatus and simultaneously on an electronic tabulation device.

(50.2) "Voter registration agency" means an office designated in section 1-2-504 to perform voter registration activities.

(50.4) "Voter registration drive" means the distribution and collection of voter registration applications by two or more persons for delivery to a county clerk and recorder.

(50.5) "Voter registration drive organizer" means a person, as defined in section 2-4-401 (8), C.R.S., that organizes a voter registration drive in the state.

(50.6) (a) "Voter-verified paper record" means an auditable paper record that:

(I) Is available for the elector to inspect and verify before the vote is cast;

(II) Is produced contemporaneously with or employed by any voting system;

(III) Lists the designation of each office, the number or letter of each ballot issue or ballot question, and the elector's choice for each office, ballot issue, or ballot question and indicates any office, ballot issue, or ballot question for which the elector has not made a selection;

(IV) Is suitable for a manual audit or recount; and

(V) Is capable of being maintained as an election record in accordance with the requirements of section 1-7-802.

(b) Any paper ballot that lists the title, along with any number, as applicable, of each candidate race, ballot issue, or ballot question, on which the elector has marked his or her choices in such races, issues, or questions shall constitute a voter-verified paper record for purposes of this subsection (50.6).

(50.7) "Voting equipment" means electronic or electromechanical voting systems, electronic voting devices, and electronic vote-tabulating equipment, as well as materials, parts, or other equipment necessary for the operation and maintenance of such systems, devices, and equipment.

(50.8) "Voting system" means a process of casting, recording, and tabulating votes using electromechanical or electronic devices or ballot cards and includes, but is not limited to, the procedures for casting and processing votes and the operating manuals, hardware, firmware, printouts, and software necessary to operate the voting system.

(50.9) "Voting system provider" means an individual engaged in private enterprise or a business entity engaged in selling, leasing, marketing, designing, building, or modifying voting systems to the state, a political subdivision of the state, or another entity authorized to hold an election under this code.

(51) "Watcher" means an eligible elector other than a candidate on the ballot who has been selected by a political party chairperson on behalf of the political party, by a party candidate at a primary election, by an unaffiliated candidate at a general, congressional vacancy, or nonpartisan election, or by a person designated by either the opponents or the proponents in the case of a ballot issue or ballot question. If selected by a political party chairperson, a party candidate, or an unaffiliated candidate, the watcher shall be affiliated with that political party or unaffiliated as shown on the registration books of the county clerk and recorder.

Source: L. 92: Entire article R&RE, p. 625, § 1, effective January 1, 1993. **L. 93:** (4), (11), (16), (21), (28), (39), (46), (49), and (51) amended and (2.3), (2.7), and (6.5) added, p. 1394, § 2, effective July 1; (11) amended, p. 58, § 1, effective July 1. **L. 94:** (48) amended, p. 704, § 3, effective April 19; (2.3), (2.7), (8), (34), and (35) amended and (2.5), (9.5), and (34.5) added, p. 1149, § 2, effective July 1; (3), (37), and (38) amended and (9.6), (33.5), and (50.5) added, p. 1750, § 1, effective January 1, 1995; (48) amended, p. 2541, § 6, effective January 1, 1995. **L. 95:** (23.3), (23.6), and (49.5) added and (24), (33), (37), and (51) amended, pp. 819, 860, 863, §§1, 113, 125, effective July 1. **L. 96:** (12), (44), and (49) amended and (1.5) and (45.5) added, p. 1732, § 2, effective July 1. **L. 97:** (33.5)(d) amended, p. 1239, § 33, effective July 1. **L. 98:** (22), (23), and (25) amended, p. 255, § 2, effective April 13. **L. 99:** (37) amended, p. 756, § 1, effective May 20; (46.3) added, p. 1389, § 5, effective June 4; (1) amended and (1.3), (1.7), and (46.5) added, p. 477, § 1, effective July 1; (1) amended and (1.3), (22.5), and (23.6) added, p. 157, § 1, effective August 4; (1) amended and (1.3) and (7.5) added, p. 278, § 1, effective August 4. **L. 2000:** (48) amended, p. 1870, § 100, effective August 2. **L. 2003:** (32) amended, p. 495, § 1, effective March 5; (1.3) and (23) amended, p. 1308, § 1, effective April 22; (19.5) added, p. 1276, § 1, effective April 22; (19.5) added, p. 1437, § 1, effective April 29; (19.5)(a)(II), (19.5)(a)(V), and (19.5)(a)(VI) amended and (19.5)(a)(VII) added, p. 2064, § 1, effective May 22. **L. 2004:** (19.5)(a)(I) and (19.5)(a)(V) amended, p. 426, § 1, effective April 13; (19.5)(a)(V) amended and (19.5)(a)(VIII), (19.5)(a)(IX), and (19.5)(a)(X) added, p. 1051, § 1, effective May 21; (49.8) added, p. 1104, § 1, effective May 27; (2.1), (13.5), (14.5), (15.5), (23.4), (34.2), (49.7), (50.7), (50.8), and (50.9) added and (14) and (27) amended, p. 1342, § 2, effective May 28; (50) amended, p. 1343, § 3, effective January 1, 2006; (15)(b) added by revision, pp. 1361, 1213, §§ 30, 31, 108. **L. 2005:** (22.7), (50.2), (50.4), and (50.6) added and (50.5) amended, p. 1392, § 1, effective June 6; (22.7), (50.2), (50.4), and (50.6) added and (50.5) amended, p. 1427, § 1, effective June 6. **L. 2006:** (33.5)(b) amended, p. 1997, § 28, effective July 1. **L. 2007:** (11) amended, p. 1775, § 1, effective June 1; (19.5)(a)(XI) added and (50.6)(a)(III) amended, p. 1967, §§ 1, 2, effective August 3; (31.5) added, p. 1988, § 1, effective August 3. **L. 2008:** (34.4) added, p. 1249, § 1, effective August 5. **L. 2009:** (13.5) amended and (16.5) and (23.5) added, (HB 09-1335), ch. 260, p. 1189, § 1, effective May 15; (18.5) and (19.5)(c) added, (HB 09-1336), ch. 261, p. 1197, §§ 1, 2, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to § 1-1-104 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

(2) Amendments to subsection (11) by House Bill 93-1111 and House Bill 93-1255 were harmonized.

(3) Amendments to subsection (48) by House Bill 94-92 and House Bill 94-1 were harmonized.

(4) Subsection (9.6) was originally enacted as (9.5), by House Bill 94-1294, Session Laws of Colorado 1994, chapter 294, section 1, but was renumbered on revision for ease of location.

(5) Subsection (1.1) was originally numbered as (1) in House Bill 99-1082 but has been renumbered on revision for ease of location; subsection (1.2) was originally numbered as (1) in House Bill 99-1152 but has been renumbered on revision for ease of location; and subsection (46.3) was originally numbered as (46.5) in House Bill 99-1097 but has been renumbered on revision for ease of location.

(6) Amendments to subsection (19.5) by House Bill 03-1241 and Senate Bill 03-102 were harmonized.

(7) (a) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing subsection (15) takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for said subsection (15). For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(b) Subsection (15)(b) provided for the repeal of subsection (15), effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

(8) Subsections (18.5) and (19.5)(c) were added in a 2009 act that was passed without a safety clause. The act, or portions

thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

Cross references: For the legislative declaration contained in the 2004 act enacting subsections (2.1), (13.5), (14.5), (15.5), (23.4), (34.2), (49.7), (50.7), (50.8), and (50.9), amending subsections (14), (27), and (50), and repealing subsection (15), see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

I. Political Organization and Political Party.
II. Taxpaying Elector.

I. POLITICAL ORGANIZATION AND POLITICAL PARTY.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Distinction made between "political party" and "political organization". In common use the phrase "political party" is synonymous with "political organization", but the general assembly by this section has made a marked distinction between them. Clements v. People ex rel. Lee, 58 Colo. 105, 143 P. 834 (1914).

"Political organization" defined. An association of qualified electors who, by petition, place upon an official ballot individual nominees for public office constitute a "political organization". Clements v. People ex rel. Lee, 58 Colo. 105, 143 P. 834 (1914).

As a condition precedent for such a "political organization" to become a "political party" within the statutory definition, it shall participate in an election, and, in addition thereto, cast for its candidate for governor at least ten percent of the total vote cast at such election. When these things occur, the "political organization" becomes a "political party". Clements v. People ex rel. Lee, 58 Colo. 105, 143 P. 834 (1914).

If a person is the candidate solely of one "political party" or a single "political organization", the votes which he receives at a given election are conclusively presumed to have been cast by the particular party or organization whose candidate he is. Clements v. People ex rel. Lee, 58 Colo. 105, 143 P. 834 (1914).

But if a person is the candidate of two or more "political parties" or "political organizations", no such presumption can exist. Clements v. People ex rel. Lee, 58 Colo. 105, 143 P. 834 (1914).

Thus, where distinct political organizations, under different names, present the same individual as their candidate for governor, the votes cast by all these several organizations for the same candidate are not to be considered as cast by any one "party", as such is not conditioned upon the number of votes which the candidate received, but upon the number an organization itself cast. Clements v. People ex rel. Lee, 58 Colo. 105, 143 P. 834 (1914).

For a political organization is a distinct entity which can neither coalesce with another, nor lose its identity therein by the mere fact that its candidates, principles, and management are the same. Clements v. People ex rel. Lee, 58 Colo. 105, 143 P. 834 (1914).

Evidence that organizations voting for same person were but one organization under different names held inadmissible. Clements v. People ex rel. Lee, 58 Colo. 105, 143 P. 834 (1914).

II. TAXPAYING ELECTOR.

The phrases "taxpaying elector" and "qualified taxpaying elector" describe situations in which payment of a property tax is an additional qualification for voting. Sheldon v. Moffat Tunnel Comm'n, 335 F. Supp. 251 (D. Colo. 1971).

However, these phrases are not used in connection with general elections. Sheldon v. Moffat Tunnel Comm'n, 335 F. Supp. 251 (D. Colo. 1971).

Only taxpaying electors entitled to vote on municipal bond issue. In an election on a municipal bond issue, it is clear that under this subsection only those electors who paid, or were obligated to pay, taxes on real or personal property subject to the mill levy of the municipality are eligible to vote. City of Montrose v. Niles, 124 Colo. 535, 238 P.2d 875 (1951).

And in such a case, the tax on real or personal property unquestionably means a tax on property which is subject to the mill levy of the city. City of Montrose v. Niles, 124 Colo. 535, 238 P.2d 875 (1951).

Hence, county taxpayers cannot vote in municipal elections. Registered electors of the city who paid taxes in the county, but who did not pay taxes on property in the city, do not have the right to vote on the question of the erection of a municipal electric light plant. City of Loveland v. W. Light & Power Co., 65 Colo. 55, 173 P. 717 (1918).

Moreover, a person who owns property which is assessed in the name of another is not a "taxpaying elector" qualified to vote in a municipal bond election. City of Montrose v. Niles, 124 Colo. 535, 238 P.2d 875 (1951).

Nor is a purchaser of realty under contract of sale. City of Montrose v. Niles, 124 Colo. 535, 238 P.2d 875 (1951).

As ownership of property in and of itself is insufficient to qualify a citizen to vote, the property owned must in fact be "assessed to" him upon the assessment rolls of the county. City of Montrose v. Niles, 124 Colo. 535, 238 P.2d 875 (1951).

"Taxpaying elector" also must be registered. In a municipal bond election a person who possesses all qualifications as to ownership and assessment of property is nevertheless not entitled to vote over the objection that he is not registered. City of Montrose v. Niles, 124 Colo. 535, 238 P.2d 875 (1951)

1-1-105. Elections conducted pursuant to provisions which refer to qualified electors. Any election, and any acts relating thereto, including but not limited to elections under this code, the "Colorado Municipal Election Code of 1965", article 10 of title 31, C.R.S., school elections under title 22, C.R.S., and special district elections under title 32, C.R.S., which were conducted prior to July 1, 1987, pursuant to provisions which refer to a qualified elector rather than a registered elector and which were valid when conducted, shall be deemed and held to be legal and valid in all respects.

Source: L. 92: Entire article R&RE, p. 631, § 1, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is the same as 1-1-104.5 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-1-106. Computation of time. (1) Calendar days shall be used in all computations of time made under the provisions of this code.

(2) In computing any period of days prescribed by this code, the day of the act or event from which the designated period of days begins to run shall not be included and the last day shall be included. Saturdays, Sundays, and legal holidays shall be included, except as provided in subsection (4) of this section.

(3) If a number of months is to be computed by counting the months from a particular day, the period shall end on the same numerical day in the concluding month as the day of the month from which the computation is begun; except that, if there are not that many days in the concluding month, the counting period shall end on the last day of the concluding month.

(4) If the last day for any act to be done or the last day of any period is a Saturday, Sunday, or legal holiday and completion of such act involves a filing or other action during business hours, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday.

(5) If the state constitution or a state statute requires doing an act in "not less than" or "no later than" or "at least" a certain number of days or "prior to" a certain number of days or a certain number of months "before" the date of an election, or any phrase that suggests a similar meaning, the period is shortened to and ends on the prior business day that is not a Saturday, Sunday, or legal holiday, except as provided in section 1-2-201 (3).

Source: L. 92: Entire article R&RE, p. 631, § 1, effective January 1, 1993. **L. 93:** (5) amended, p. 1395, § 3, effective July 1. **L. 95:** (2) and (5) amended, p. 820, § 2, effective July 1. **L. 96:** (5) amended, p. 1773, § 76, effective July 1. **L. 99:** (4) and (5) amended, p. 756, § 2, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-105 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

Cross references: For computation of time under the statutes generally, see § 2-4-108.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section shall be used in all computations of time made under the provisions of the elections statutes which relate to general, primary, and special (now congressional vacancy) elections. Ray v. Mickelson, 196 Colo. 325, 584 P.2d 1215 (1978).

1-1-107. Powers and duties of secretary of state - penalty. (1) In addition to any other duties prescribed by law, the secretary of state has the following duties:

(a) To supervise the conduct of primary, general, congressional vacancy, and statewide ballot issue elections in this state;

(b) To enforce the provisions of this code;

(c) With the assistance and advice of the attorney general, to make uniform interpretations of this code;

(d) To coordinate the responsibilities of the state of Colorado under the federal "National Voter Registration Act of 1993", 42 U.S.C. sec. 1973gg;

(e) To serve as the chief state election official within the meaning of the federal "Help America Vote Act of 2002", Pub.L. 107-252, and, in that capacity, to coordinate the responsibilities of the state of Colorado under the federal act in accordance with the requirements of this code.

(2) In addition to any other powers prescribed by law, the secretary of state shall have the following powers:

(a) To promulgate, publish, and distribute, either in conjunction with copies of the election laws pursuant to section 1-1-108 or separately, such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws, including but not limited to rules establishing the amount of fees as provided in this code;

(b) To inspect, with or without the filing of a complaint by any person, and review the practices and procedures of county clerk and recorders, election commissions, their employees, and other election officials in the conduct of primary, general, and congressional vacancy elections and the registration of electors in this state;

(c) To employ, subject to section 13 of article XII of the state constitution, the personnel deemed necessary to efficiently carry out the powers and duties prescribed in this code;

(d) To enforce the provisions of this code by injunctive action brought by the attorney general in the district court for the judicial district in which any violation occurs.

(3) Repealed.

(4) Any other provision of law to the contrary notwithstanding, the office of the secretary of state, or the section or division administering the election laws of this state pursuant to this section, shall be open and available to the election officials and employees of the various political subdivisions conducting elections on each election day during the same hours that the polls are open for voting if the political subdivision has notified the office of the secretary of state that an election has been called and that the services of the office are desired.

(5) The provisions of this section are enacted, pursuant to section 11 of article VII of the state constitution, to secure the purity of elections and to guard against the abuses of the elective franchise.

(6) Repealed.

(7) No person while serving in the office of secretary of state shall serve as the highest ranking official, whether actual or honorary, in the campaign of any candidate for federal or statewide office. This subsection (7) shall not apply to a campaign in which the secretary of state is the candidate.

Source: L. 92: Entire article R&RE, p. 632, § 1, effective January 1, 1993. **L. 93:** (1)(a) amended, p. 1395, § 4, effective July 1. **L. 94:** (1)(d) added, p. 1751, § 2, effective January 1, 1995. **L. 95:** (6) added, p. 179, § 1, effective April 7. **L. 96:** (3) repealed, p. 1775, § 84, effective July 1. **L. 98:** (2)(a) amended, p. 1317, § 3, effective June 1. **L. 2001:** (6) amended, p. 518, § 6, effective January 1, 2002. **L. 2003:** (1)(e) added and (6) repealed, p. 2065, §§ 2, 3, effective May 22. **L. 2005:** (7) added, p. 1393, § 2, effective June 6; (7) added, p. 1428, § 2, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-106 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-1-106, as it existed in 1980, was similar to 1-1-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 93, 94.

Adoption of Rule 9.3 of the Colorado secretary of state's rules concerning campaign and political finance requiring the name of the candidate unambiguously referred to in the electioneering communication to be included in the electioneering report was within the rulemaking authority of the secretary of state under § 9(1)(b) of article XXVIII of the state constitution and subsection (2)(a) of this section. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

1-1-108. Copies of election laws and manual provided. (1) No later than sixty days after each adjournment of the general assembly, the secretary of state shall transmit to the county clerk and recorder of each county a complete, updated copy of the pertinent sections of the election laws of the state.

(2) No later than January 15 in even-numbered years, the division of local government in the department of local affairs shall transmit to the designated election official of each special district organized under article 1 of title 32, C.R.S., entitled to hold elections or, if there is no designated election official, to the chief executive officer of the special district, at least one copy of the election laws. The designated election officials or chief executive officers of those special districts may request additional copies of the election laws.

Source: L. 92: Entire article R&RE, p. 633, § 1, effective January 1, 1993. **L. 93:** (1) amended, p. 1395, § 5, effective July 1. **L. 95:** Entire section amended, p. 820, § 3, effective July 1. **L. 96:** Entire section amended, p. 1733, § 3, effective July 1. **L. 99:** (1) amended, p. 757, § 3, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-107 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-1-107, as it existed in 1980, was similar to 1-1-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-1-109. Forms prescribed - rules. (1) Except as otherwise provided by this code, the secretary of state shall approve all forms required by this code, which forms shall be followed by county clerk and recorders, election judges, and other election officials. Prior to approving any election form, the secretary shall determine and consider best practices in the design and development of the form in order to minimize voter confusion and maximize ease of use.

(2) A registered elector shall make elector registration information changes on an approved form, and the elector registration information changes shall be entered on the elector's registration record and retained and stored in a registration book, as provided for in section 1-1-104 (36).

(3) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., as may be necessary to administer and enforce any requirement of this section, including any rules necessary to specify what constitutes approved and acceptable forms certified for use by eligible voters, campaigns, and voter registration drives and acceptance by election officials and any rules necessary to establish uniformity regarding the use of forms.

Source: L. 92: Entire article R&RE, p. 633, § 1, effective January 1, 1993. **L. 96:** (1) amended, p. 1733, § 4, effective July 1. **L. 2003:** (1) amended, p. 2065, § 4, effective May 22. **L. 2009:** (1) amended and (3) added, (HB 09-1336), ch. 261, p. 1198, § 4, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-108 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-1-108, as it existed in 1980, was similar to 1-1-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (1) was amended and subsection (3) was added in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 178-183.

C.J.S. See 29 C.J.S., Elections, § 63

1-1-110. Powers of the county clerk and recorder and deputy. (1) The county clerk and recorder, in rendering decisions and interpretations under this code, shall consult with the secretary of state and follow the rules and orders promulgated by the secretary of state pursuant to this code.

(2) All powers and authority granted to the county clerk and recorder by this code may be exercised by a deputy clerk in the absence of the county clerk and recorder or if the county clerk and recorder for any reason is unable to perform the required duties.

(3) As the chief election official for the county, the county clerk and recorder shall be the chief designated election official for all coordinated elections.

(4) (a) For any elector registered after August 4, 1999, any communication by mail from the county clerk and recorder to any registered elector pursuant to this title, including, but not limited to, a voter information card provided pursuant to section 1-5-206 or an elector information card provided pursuant to section 1-2-605, shall be sent to the elector's address of record unless the elector has requested that said communication be sent to his or her deliverable mailing address pursuant to section 1-2-204 (2) (k).

(b) For any elector registered as of August 4, 1999, who has provided the county clerk and recorder both an address of record and a deliverable mailing address but has not indicated a mailing preference, any communication by mail from the county clerk and recorder to any registered elector pursuant to this title, including, but not limited to, a voter information card provided pursuant to section 1-5-206 or an elector information card provided pursuant to section 1-2-605, shall be sent to the elector's deliverable mailing address.

Source: L. 92: Entire article R&RE, p. 634, § 1, effective January 1, 1993. **L. 93:** (3) amended, p. 1396, § 6, effective July 1. **L. 96:** (3) amended, p. 1734, § 5, effective July 1. **L. 99:** (4) added, p. 279, § 2, effective August 4. **L. 2003:** (1) amended, p. 2065, § 5, effective May 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-109 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-1-109, as it existed in 1980, was similar to 1-1-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 93, 94.

C.J.S. See 29 C.J.S., Elections, § 109.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Subsection (3) governs the timeliness of the filing of an annexation petition pursuant to § 30-6-105 and language of notification requirement in this section is mandatory and thus county board of commissioners is without discretion to shorten notice period. Sellers v. Bd. of County Comm'rs, 682 P.2d 509 (Colo. App. 1984).

1-1-111. Powers and duties of governing boards. (1) In addition to any other duties prescribed by law, the governing board of a political subdivision entitled to call elections shall have the following duties:

(a) To supervise the conduct of regular and special elections which it is authorized or required to call; and

(b) Where appropriate, to consult and coordinate with the county clerk and recorder of the county in which the political subdivision is located and with the secretary of state in regard to conducting elections and rendering decisions and interpretations under this code.

(2) All powers and authority granted to the governing board of a political subdivision may be exercised by an election official designated by the board. The governing body may also contract with the county clerk and recorder of the county in which the political subdivision is organized to perform all or part of the required duties in conducting the election.

(3) Elections which are set for the same date by various political subdivisions may be held as coordinated elections if the governing bodies so choose. Political subdivisions are authorized to cooperate and contract with each other to perform any function relating to an election.

Source: L. 92: Entire article R&RE, p. 634, § 1, effective January 1, 1993. **L. 93:** (3) amended, p. 1396, § 7, effective July 1. **L. 94:** (2) amended, p. 1150, § 3, effective July 1. **L. 96:** (3) amended, p. 1734, § 6, effective July 1.

Cross references: For violation of duty and penalty therefor, see § 1-13-107.

1-1-112. Powers and duties of election commission. The election commission in counties having a commission shall have all the powers and jurisdiction and perform all the duties provided by this code in respect to county clerk and recorders and boards of county commissioners.

Source: L. 92: Entire article R&RE, p. 635, § 1, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is the same as 1-1-110 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-1-110, as it existed in 1980, was the same as 1-1-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 93-96. **C.J.S.** See 29 C.J.S., Elections, § 107

1-1-113. Neglect of duty and wrongful acts - procedures for adjudication of controversies - review by supreme court. (1) When any controversy arises between any official charged with any duty or function under this code and any candidate, or any officers or representatives of a political party, or any persons who have made nominations or when any eligible elector files a verified petition in a district court of competent jurisdiction alleging that a person charged with a duty under this code has committed or is about to commit a breach or neglect of duty or other wrongful act, after notice to the official which includes an opportunity to be heard, upon a finding of good cause, the district court shall issue an order requiring substantial compliance with the provisions of this code. The order shall require the person charged to forthwith perform the duty or to desist from the wrongful act or to forthwith show cause why the order should not be obeyed. The burden of proof is on the petitioner.

(2) The petitioner shall be required to deposit in court the statutory witness fees pursuant to section 13-33-102, C.R.S., for each person cited or summoned into court as a party or a witness, to be paid to the party or witness if the charge is not sustained. The money so deposited shall be returned to the party depositing it if any of the charges are sustained.

(3) The proceedings may be reviewed and finally adjudicated by the supreme court of this state, if either party makes application to the supreme court within three days after the district court proceedings are terminated, unless the supreme court, in its discretion, declines jurisdiction of the case. If the supreme court declines to review the proceedings, the decision of the district court shall be final and not subject to further appellate review.

(4) Except as otherwise provided in this part 1, the procedure specified in this section shall be the exclusive method for the adjudication of controversies arising from a breach or neglect of duty or other wrongful act that occurs prior to the day of an election.

(5) Notwithstanding any other provision of law, the procedures specified in section 1-1.5-105 shall constitute the exclusive administrative remedy for a complaint arising under title III of the federal "Help America Vote Act of 2002", Pub.L. 107-252.

Source: L. 92: Entire article R&RE, p. 635, § 1, effective January 1, 1993. **L. 93:** (1) amended, p. 1396, § 8, effective July 1. **L. 94:** (2) amended and (4) added, p. 1151, § 4, effective July 1. **L. 2003:** (5) added, p. 2065, § 6, effective May 22. **L. 2007:** (3) amended, p. 1968, § 3, effective August 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to § 1-1-111 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-1-111, as it existed in 1980, was similar to § 1-12-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: (1) For violation of duty and penalty therefor, see § 1-13-107.
(2) For the "Help America Vote Act of 2002", see Pub.L. 107-252, codified at 42 U.S.C. sec. 15301 et seq.

ANNOTATION

I. General Consideration.
II. District Court to Decide.
III. Review by Supreme Court and Court of Appeals.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers and Employees, § 292.

C.J.S. See 29 C.J.S., Elections, §§ 120-122, 549.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Authority of courts to determine election controversies when no candidate declared duly elected. State constitutional provisions and statutes permitting general assembly to judge election of members does not limit subject matter jurisdiction of district court to hear controversies related to elections where no candidate is yet declared duly elected by secretary of state. Meyer v. Lamm, 846 P.2d 862 (Colo. 1993) (decided under former § 1-1-112).

A 42 U.S.C. § 1983 claim of deprivation of rights, privileges, or immunities secured by the federal constitution or federal law may be litigated under this section if the claim arises out of a common nucleus of operative facts as the state law claims. Brown v. Davidson, 192 P.3d 415 (Colo. App. 2006).

Attorney fees should be awarded to a plaintiff pursuant to 42 U.S.C. § 1988 if the plaintiff's victory on a nonconstitutional claim prevents the court from reaching a substantial constitutional claim that arises out of a common nucleus of operative facts. Brown v. Davidson, 192 P.3d 415 (Colo. App. 2006).

Plaintiffs made a substantial constitutional claim, which is a claim that is not wholly frivolous and does not conflict with any U.S. supreme court decisions, when they alleged that a state statute that requires unaffiliated candidates for the office of president and vice president of the United States to file candidate statements of intent nearly two months before statutory filing deadlines for affiliated candidates placed unequal burdens on unaffiliated candidates in violation of the first and fourteenth amendments to the U.S. constitution. Brown v. Davidson, 192 P.3d 415 (Colo. App. 2006).

II. DISTRICT COURT TO DECIDE.

The court is given jurisdiction for the purpose of enforcing a substantial compliance with the provisions of election act by the parties to such controversy. People ex rel. McGaffey v. Dist. Court, 23 Colo. 150, 46 P. 681 (1896).

And provision for adjudication of controversies, being remedial in character, must be liberally construed in order that its purpose may be given effect. People v. Dist. Court, 23 Colo. 150, 46 P. 681 (1896).

The district court has jurisdiction to order the recognition by a state central committee of one who is admittedly a member of that body. People ex rel. Vick Roy v. Republican State Cent. Comm., 75 Colo. 312, 226 P. 656 (1924).

And it has jurisdiction to determine authority of the secretary of state. Where the secretary of state assumes jurisdiction, deciding a dispute, and the defeated party applies to the district court for relief, challenging the authority of the secretary to determine the controversy as well as the correctness of his decision upon the merits, the district court has jurisdiction to entertain the cause and determine the matter. People ex rel. McGaffey v. Dist. Court, 23 Colo. 150, 46 P. 681 (1896).

The provision for adjudication of controversies contemplates the taking of evidence where the issues require it. Leighton v. Bates, 24 Colo. 303, 50 P. 856, 50 P. 858 (1897).

III. REVIEW BY SUPREME COURT AND COURT OF APPEALS.

The provision for adjudication of controversies does not confer original jurisdiction on the supreme court. Leighton v. Bates, 24 Colo. 303, 50 P. 856, 50 P. 858 (1897).

Supreme court may in its discretion accept or reject an appeal with respect to nominations of candidates, and if it elects to accept the appeal, it may proceed in a summary way to dispose of it. In re Weber, 186 Colo. 61, 525 P.2d 465 (1974).

Court of appeals has jurisdiction to hear an appeal of a district court's denial of attorney fees under 42 U.S.C. § 1988. A judgment on the substantive merits of an action is separate from a judgment resolving a request for attorney fees. In addition, the § 1988 claim was not part of the summary proceedings pursuant to this section. The exceptions to the court of appeal's jurisdiction contained in this section and § 13-4-102 (1)(g) therefore are not applicable to the appeal. Brown v. Davidson, 192 P.3d 415 (Colo. App. 2006).

1-1-114. Registration deadline. (Repealed)

Source: L. 92: Entire article R&RE, p. 635, § 1, effective January 1, 1993. **L. 93:** Entire section amended, p. 1396, § 9, effective July 1. **L. 94:** Entire section amended, p. 1751, § 3, effective January 1, 1995. **L. 95:** Entire section amended, p. 820, § 4, effective July 1. **L. 96:** Entire section repealed, p. 1775, § 84, effective July 1.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1992 and 1980. This section, as it existed in 1992, is the same as 1-1-113 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article.

PART 2

TERMS OF OFFICE

1-1-201. Commencement of terms - state, congressional district, and county officers. The regular terms of office of all state, congressional district, and county officers shall commence on the second Tuesday of January next after their election, except as otherwise provided by law.

Source: L. 92: Entire article R&RE, p. 636, § 1, effective January 1, 1993. **L. 93:** Entire section amended, p. 1397, § 10, effective July 1.

1-1-202. Commencement of terms - nonpartisan officers. The regular terms of office of all nonpartisan officers elected at regular elections shall commence at the next meeting of the governing body following the date of the election, but no later than thirty days following the survey of returns and upon the signing of an oath and posting of a bond, where required, unless otherwise provided by law. If the election is cancelled in whole or in part pursuant to section 1-5-208 (1.5), then the regular term of office of a nonpartisan officer shall commence at the next meeting of the governing body following the date of the regular election, but no later than thirty days following the date of the regular election and upon the signing of an oath and posting of a bond, where required, unless otherwise provided by law.

Source: L. 92: Entire article R&RE, p. 636, § 1, effective January 1, 1993. **L. 93:** Entire section amended, p. 1397, § 11, effective July 1. **L. 94:** Entire section amended, p. 1151, § 5, effective July 1. **L. 2001:** Entire section amended, p. 1001, § 1, effective August 8.

1-1-203. End of the term. A person elected or appointed to an office shall hold office until the successor is elected, qualified, and takes office on the second Tuesday of January, unless otherwise provided by law.

Source: L. 92: Entire article R&RE, p. 636, § 1, effective January 1, 1993. **L. 93:** Entire section amended, p. 1397, § 12, effective July 1.

PART 3

TRAINING AND CERTIFICATION OF ELECTION OFFICIALS

1-1-301. Certification program. (1) The secretary of state shall establish and operate or provide by contract a certification program for local election officials on the conduct of elections, the federal "Help America Vote Act of 2002", Pub.L. 107-252, codified at 42 U.S.C. sec. 15301 et seq., and other topics related to elections.

(2) The secretary of state shall establish by rule a curriculum for the certification program, including core requirements and electives, the required number of hours, and methods for continuing education.

(3) The secretary of state shall provide staffing and support services for the certification program.

(4) The secretary of state shall appoint an advisory board to oversee the certification process and the development of the curriculum.

Source: L. 2005: Entire part added, p. 1393, § 3, effective June 6; entire part added, p. 1428, § 3, effective June 6.

1-1-302. Persons required to complete certification - deadline. (1) The following persons shall obtain certification in accordance with this part 3:

(a) The county clerk and recorder;

(b) Employees in the clerk and recorder's office who are directly responsible for overseeing elections; and

(c) Other employees in the clerk and recorder's office at the discretion of the clerk and recorder.

(2) A person required to obtain certification shall:

(a) (Deleted by amendment, L. 2006, p. 2030, § 6, effective June 6, 2006.)

(b) Complete the certification requirements within two years of undertaking the responsibilities for which the person is required to obtain certification; and

(c) Comply with the continuing education requirements prescribed by the secretary of state by rule.

(3) Nothing in this section shall be construed to require an elected official to attend a course of instruction or obtain a certification as a condition for seeking or holding elective office or as a condition for carrying out constitutional and statutory duties.

Source: L. 2005: Entire part added, p. 1394, § 3, effective June 6; entire part added, p. 1429, § 3, effective June 6. **L. 2006:** (2)(a) and (2)(b) amended, p. 2030, § 6, effective June 6.

1-1-303. Certification courses. (1) The curriculum for certification in accordance with this part 3 shall include courses in the following areas:

(a) General election law;

(b) The federal "Help America Vote Act of 2002"; and

(c) Professional development.

(2) The secretary of state shall offer certification courses at least annually.

Source: L. 2005: Entire part added, p. 1394, § 3, effective June 6; entire part added, p. 1429, § 3, effective June 6.

Cross references: For the "Help America Vote Act of 2002", see Pub.L. 107-252, codified at 42 U.S.C. sec. 15301 et seq.

PART 4

ELECTION REFORM COMMISSION

1-1-401 to 1-1-403. (Repealed)

Editor's note: (1) Section 1-1-403 provided for the repeal of this part 4, effective July 1, 2009. (See L. 2008, p. 2004.)

(2) This part 4 was added in 2008 and was not amended prior to its repeal in 2009. For the text of this part 4 prior to its repeal in 2009, consult the 2008 Colorado Revised Statutes.

ARTICLE 1.5

Help America Vote Act

Cross references: For the "Help America Vote Act of 2002", see Pub.L. 107-252, codified at 42 U.S.C. sec. 15301 et seq.

1-1.5-101. Legislative declaration.
1-1.5-102. Definitions.
1-1.5-103. Conflict with federal law.
1-1.5-104. Powers and duties of secretary of state.
1-1.5-105. Complaint procedure.
1-1.5-106. Federal elections assistance fund match requirements – maintenance of effort - grants and loans to counties.

1-1.5-101. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The "Help America Vote Act of 2002", Pub.L. 107-252, was passed by the United States congress and signed into law by president George W. Bush on October 29, 2002.

(b) HAVA resulted from a national consensus that the nation's electoral system needs improvements to ensure that every eligible voter has the opportunity to vote, that every vote that should be counted will be counted, and that no legal vote will be canceled by a fraudulent vote.

(c) HAVA clearly defines the rights and privileges of those eligible individuals who seek to vote, including all overseas and military service voters, and seeks to prevent disenfranchisement resulting from mistaken determinations of ineligibility to vote, the use of outdated voting systems that are unreliable or insufficiently accessible for disabled voters, or unnecessary administrative obstacles.

(d) To achieve these purposes, HAVA authorizes significant amounts of federal financial assistance to the states to finance the purchase of more reliable voting systems and mandates changes in the conduct of federal elections in all states for the purposes of ensuring greater access to the polls by individuals with disabilities, providing more information to individuals who wish to vote, improving the training of poll workers, and reducing the possibility of fraud in the electoral process.

(e) As a condition of the receipt of certain funds from the federal government under HAVA, section 253 (b) (5) of HAVA requires the states to appropriate funds for carrying out the activities for which such payments are made in an amount equal to five percent of the total amount to be spent for such activities.

(f) HAVA empowers the United States department of justice to bring civil actions seeking such declaratory and injunctive relief as may be necessary to carry out uniform and nondiscriminatory election technology and administration requirements. Accordingly, failure to satisfy the requirements of HAVA may subject election laws and procedures of this state to stringent review and approval by the United States department of justice.

(g) In order that its requirements may be effectively and uniformly implemented, HAVA mandates a greater role for the state governments and, in particular, the chief election official of each state, in overseeing and coordinating elections and in enforcing and implementing uniform standards in elections.

(h) In Colorado, the secretary of state is the chief state election official and, in that capacity, is charged by HAVA and existing state statutory provisions with responsibility for supervising the conduct of elections and for enforcing and implementing the provisions of HAVA and of this code.

(2) Now, therefore, by enacting this article, the general assembly intends to:

(a) Begin the process of implementing the changes in this code that are required by HAVA;

(b) Ensure the timely fulfillment by the state of all requirements for eligibility under HAVA to be able to receive appropriated federal funds under HAVA; and

(c) Provide the secretary of state with sufficient authority to ensure that the state of Colorado is fully compliant with all requirements imposed upon it pursuant to HAVA.

(3) The general assembly further intends that this article be liberally construed to effectuate its purposes as expressed in this section.

Source: L. 2003: Entire article added, p. 2065, § 7, effective May 22.

1-1.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Department" means the Colorado department of state.

(2) "Fund" means the federal elections assistance fund created in section 1-1.5-106.

(3) "HAVA" means the federal "Help America Vote Act of 2002", Pub.L. 107-252, codified at 42 U.S.C. sec. 15301 et seq.

(4) "Secretary" means the Colorado secretary of state.

Source: L. 2003: Entire article added, p. 2067, § 7, effective May 22. **L. 2004:** (3) amended, p. 1186, § 1, effective August 4.

1-1.5-103. Conflict with federal law. If the secretary or a court of competent jurisdiction determines there is a conflict between this article or any other provision of this code and any provision of HAVA, the provisions of HAVA and any rules promulgated thereunder shall control, and the secretary shall perform the duties and discharge the obligations contained in the federal act. If such a determination is made, the secretary shall submit a report to the general assembly explaining the conflict and suggesting language to change this article in the next legislative session.

Source: L. 2003: Entire article added, p. 2067, § 7, effective May 22.

1-1.5-104. Powers and duties of secretary of state. (1) The secretary may exercise such powers and perform such duties as reasonably necessary to ensure that the state is compliant with all requirements imposed upon it pursuant to HAVA to be eligible on a timely basis for all federal funds made available to the state under HAVA, including, without limitation, the power and duty to:

(a) Develop and require education and training programs and related services for state, county, and local election officials involved in the conduct of elections;

(b) Promulgate, oversee, and implement changes in the statewide voter registration system as specified in part 3 of article 2 of this title;

(c) Establish a uniform administrative complaint procedure in accordance with the requirements of section 1-1.5-105;

(d) Issue appropriate orders to county or local election officials in connection with the proper administration, implementation, and enforcement of the federal act, which orders shall be enforceable in a court of competent jurisdiction;

(e) Promulgate rules in accordance with the requirements of article 4 of title 24, C.R.S., as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA and of this article; and

(f) Exercise any other powers or perform any other duties that are consistent with this article and that are reasonably necessary for the proper administration, implementation, and enforcement of HAVA and that will improve the conduct of elections in the state in conformity with HAVA.

(2) (a) Acting either upon his or her own initiative or upon a complaint submitted to him or her giving the secretary reasonable grounds to believe that an election in this state is not being conducted in accordance with the requirements of HAVA or of this code, the secretary may investigate the allegation of noncompliance. In connection with such an investigation, the secretary may:

(I) Compel the testimony of witnesses and the production of documents from any state, county, or local official involved in the conduct of the election; and

(II) Send one or more official election observers to any county in the state to examine the conduct of any aspect of any election giving rise to the allegation of noncompliance. The clerk and recorder of the county in which the allegation of noncompliance arises shall assume the costs associated with the travel and other expenses of any observers sent to the county pursuant to this subparagraph (II) where the secretary has reasonable grounds to believe that the election is not being conducted in accordance with the requirements of HAVA or of this code.

(b) In order to satisfy the requirements of this subsection (2), the secretary may require that each county designate not less than three persons experienced in the conduct of elections to form a pool of official election observers.

(3) With the exception of a complaint brought under section 1-1.5-105 to remedy an alleged violation of HAVA, any interested party that has reasonable grounds to believe that an election is not being conducted in conformity with the requirements of this code may apply to the district court in the judicial district in which the allegation of noncompliance arises for an order giving the secretary access to all pertinent election records used in conducting the election and requesting the secretary to conduct the election.

(4) The secretary shall seek the full amount of funds available to the state under HAVA for distribution to the counties in accordance with HAVA.

Source: L. 2003: Entire article added, p. 2067, § 7, effective May 22. **L. 2005:** (4) added, p. 1394, § 4, effective June 6; (4) added, p. 1429, § 4, effective June 6.

1-1.5-105. Complaint procedure. (1) Subject to the requirements of this section, in accordance with section 402 of HAVA, the secretary may establish by rule a uniform administrative complaint procedure to remedy grievances brought under title III of HAVA.

(2) Any rules promulgated pursuant to subsection (1) of this section shall provide for, but need not be limited to, the following:

(a) A uniform and nondiscriminatory complaint procedure;

(b) Authorization for any person who has either been personally aggrieved by or has personally witnessed a violation of title III of HAVA that has occurred, is occurring, or that is about to occur, as applicable, to file a complaint;

(c) A description by the complainant in his or her complaint of the alleged violation with particularity and a reference to the section of HAVA alleged to have been violated;

(d) A requirement that the complaint be filed no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the complaint, whichever is later;

(e) A requirement that each complaint be in writing and notarized, signed, and sworn by the person filing the complaint;

(f) Authorization for the secretary to consolidate two or more complaints;

(g) At the request of the complainant, a hearing on the record;

(h) Authorization for the secretary to provide an appropriate remedy if the secretary determines that any provision of title III of HAVA has been violated or to dismiss the complaint and publish the results of his or her review if the secretary determines that no provision of title III of HAVA has been violated;

(i) A final determination on the complaint by the secretary prior to the expiration of the ninety-day period that begins on the date the complaint is filed, unless the complainant consents to an extension of time for making such determination;

(j) Resolution of the complaint within sixty days under an alternative dispute resolution procedure that the secretary shall establish in accordance with the requirements of this section if the secretary fails to satisfy the applicable deadline specified in paragraph (i) of this subsection (2), and the availability of the record and any other materials from any proceedings conducted under the complaint procedures established for use under such alternative dispute resolution procedures;

(k) Authorization for the secretary to conduct a preliminary review of any complaint submitted to him or her and to dismiss any complaint that he or she finds is not supported by credible evidence; and

(l) Recovery by the secretary of the costs of the proceeding against any complainant who files a complaint that, in connection with the final determination by the secretary pursuant to paragraph (i) of this subsection (2), is found, on the basis of clear and convincing evidence, to be frivolous, groundless, or vexatious.

(3) Notwithstanding any other provision of law:

(a) No complaint shall be brought pursuant to the procedure created by this section unless the complaint alleges a violation of title III of HAVA;

(b) Proceedings for the resolution of a complaint brought pursuant to this section shall not be considered an adjudication under article 4 of title 24, C.R.S.; and

(c) The procedures created by this section shall constitute the exclusive administrative remedy for a violation of title III of HAVA.

(4) Any person aggrieved by a final determination by the secretary acting pursuant to paragraph (i) of subsection (2) of this section may appeal the secretary's determination to the district court in and for the city and county of Denver within thirty days of the date of the determination.

Source: L. 2003: Entire article added, p. 2069, § 7, effective May 22.

1-1.5-106. Federal elections assistance fund - match requirements - maintenance of effort - grants and loans to counties. (1) (a) There is hereby created in the state treasury the federal elections assistance fund, which fund shall be administered by the secretary and shall consist of:

(I) All moneys received by the state from the federal government pursuant to HAVA;

(II) All moneys appropriated or otherwise made available to the fund by the general assembly for the purpose of carrying out the activities required by HAVA;

(III) All moneys received by the state as payment from the counties pursuant to subsection (3) of this section;

(IV) Moneys collected by the secretary for the implementation of this article from federal grants and other contributions, grants, bequests, and donations received from individuals, private organizations, or foundations; and

(V) Interest earned on deposits made to the fund.

(b) All moneys specified in paragraph (a) of this subsection (1) shall be transmitted to the state treasurer to be credited to the fund.

(2) (a) Any moneys received by the state from the federal government pursuant to HAVA shall be used by the state only for the purposes specified by the provisions of HAVA under which the moneys were provided.

(b) All moneys in the fund are continuously appropriated to the department for the proper administration, implementation, and enforcement of HAVA in accordance with the requirements of this article. All moneys in the fund at the end of each fiscal year shall be retained in the fund and shall not revert to the general fund or any other fund.

(3) Subject to available appropriations, the secretary may direct that moneys in the department of state cash fund created in section 24-21-104 (3) (b), C.R.S., as of July 1, 2003, be used to satisfy in whole or in part the requirement of section 253 (b) (5) of HAVA that the state appropriate funds for carrying out the activities for which federal payments are being made in an amount equal to five percent of the total amount to be spent for such activities. In order to assist the state in satisfying this requirement of HAVA, the secretary may assess the counties for a share of the financial requirement assessed against the state under HAVA as specified in this subsection (3) and may establish by rule a plan to fairly and reasonably allocate the financial obligation among the counties pursuant to this subsection (3).

(4) For the 2002-03 fiscal year, and for each fiscal year thereafter in which the state receives payments from the federal government in accordance with title I of HAVA, and subject to available appropriations, the general assembly shall make an annual appropriation to the department out of moneys in the department of state cash fund for election-related purposes that is not less than the level of expenditures for such purposes maintained by the state for the 2001-02 fiscal year.

(5) For the 2002-03 fiscal year, and for each fiscal year thereafter in which the state receives payments from the federal government in accordance with title I of HAVA, and subject to available appropriations, the secretary shall maintain out of moneys in the department of state cash fund a level of expenditures in support of the statewide voter registration system created in section 1-2-301 that is not less than the level of expenditures for such purposes maintained by the secretary for the 2001-02 fiscal year.

(6) For the county fiscal year that ends prior to November 1, 2003, and for each county fiscal year thereafter in which the state receives payments from the federal government in accordance with title I of HAVA, each county shall maintain not less than the same amount of expenditures on activities arising under title III of HAVA that it expended on such activities for its fiscal year ending prior to November 2002, excluding moneys expended during that period for capital expenditures on new voting equipment or any other one-time capital expenditure as determined by the secretary.

(7) The secretary may establish a program pursuant to which the secretary may award grants or loans to the counties for the purpose of assisting the counties in meeting any of the requirements imposed upon them pursuant to HAVA or by this article. In connection with the establishment of any such program created pursuant to this subsection (7), the secretary shall specify, without limitation, qualification requirements for eligibility to receive a grant or loan, administration of the grant or loan program, criteria for awarding a grant or loan, any limit on the total amount of moneys to be awarded in a grant or loan pursuant to the requirements of this subsection (7), any limit on the amount to be awarded to any one grant or loan recipient, auditing or reporting requirements for grant or loan recipients, penalty provisions where grant or loan moneys are expended improperly, and, in the case of loans, repayment terms. Notwithstanding any other provision of law, each loan awarded pursuant to this subsection (7) shall bear interest at a specified rate.

(8) In response to the failure by a county to satisfy any of the requirements imposed upon it pursuant to this section, the secretary may deduct from the reimbursement to which the county would ordinarily be entitled pursuant to section 1-5-505.5 the amount of moneys owed by the county pursuant to this section.

(9) Any county may donate to the state equipment for voter registration purposes in accordance with part 3 of article 2 of this title, which equipment is determined to be usable by the secretary. In exchange for such donation, the county shall receive a credit in the amount of the fair market value of the item donated against the financial obligation assessed against the county pursuant to subsection (3) of this section.

Source: L. 2003: Entire article added, p. 2070, § 7, effective May 22.

ARTICLE 2

Qualifications and Registration of Electors

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this article was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of this article for 1980 and 1992, see the comparative tables located in the back of the index.

Cross references: For election offenses relating to qualifications and registration of electors, see part 2 of article 13 of this title.

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PART 1

QUALIFICATIONS OF ELECTORS

1-2-101. Qualifications for registration. (1) Every person who is eighteen years of age or older on the date of the next election and who has the following qualifications is entitled to register to vote at all elections:

(a) The person is a citizen of the United States; and

(b) The person has resided in this state and the precinct in which the person intends to register thirty days immediately prior to the election at which the person intends to vote; but, in case of an annexation that changes county boundaries, any person otherwise qualified to register to vote under the provisions of this section who has resided within the territory annexed for the time prescribed shall be deemed to have met the residence requirements for the precinct to which the territory was annexed.

Source: L. 92: Entire article R&RE, p. 636, § 2, effective January 1, 1993. **L. 93:** (1)(b) amended, p. 1397, § 13, effective July 1. **L. 94:** (1)(b) amended, p. 1751, § 4, effective January 1, 1995. **L. 95:** (1)(b) amended, p. 821, § 5, effective July 1. **L. 96:** (1)(b) amended, p. 1734, § 7, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-101 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

Cross references: For voting age for electors, see § 1 of art. VII, Colo. Const., and article XXVI of the Constitution of the United States; for registration of citizens residing outside the United States, see § 1-2-209; for emergency registration in certain cases of change of residence, see § 1-2-217.5; for qualifications of electors, see also § 1 of art. VII, Colo. Const.

ANNOTATION

I. General Consideration.
II. Residency.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 155-163.

C.J.S. See 29 C.J.S., Elections, § 26.

Law reviews. For comment on Porter v. Johnson appearing below, see 2 Rocky Mt. L. Rev. 131 (1930).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The state has the power to prescribe reasonable and nondiscriminatory qualifications for voting in federal as well as state elections. Hall v. Beals, 292 F. Supp. 610 (D. Colo. 1968), vacated as moot, 396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969).

And requirements as to the qualifications of electors are mandatory, and must be strictly observed. Jain v. Bossen, 27 Colo. 423, 62 P. 194 (1900); People v. Turpin, 49 Colo. 234, 112 P. 539 (1910); City of Montrose v. Niles, 124 Colo. 535, 238 P.2d 875 (1951).

This section provides the necessary qualifications for a voter and elector. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

After an elector demonstrates those qualifications, the election code directs that he "shall" be registered and permitted to vote. Sheldon v. Moffat Tunnel Comm'n, 335 F. Supp. 251 (D. Colo. 1971).

Unsworn declarations of a voter are inadmissible to impeach his qualifications as an elector, Sharp v. McIntire, 23 Colo. 99, 46 P. 115 (1896).

However, when such declarations are made prior or subsequent to the time of voting they are admissible to impeach the voter's qualifications when made concurrently with the act of voting in the presence of the judges of the election. Sharp v. McIntire, 23 Colo. 99, 46 P. 115 (1896).

Statutes prohibiting permanent resident aliens from voting in school elections, which incorporate the substantive and procedural requirements concerning general elections into school elections, are constitutional. Skafte v. Rorex, 191 Colo. 399, 553 P.2d 830 (1976), appeal dismissed, 430 U.S. 961, 97 S. Ct. 1638, 52 L. Ed. 2d 352 (1977).

Applied in Hesseltine v. United States, 538 F. Supp. 1003 (D. Colo. 1982).

II. RESIDENCY.

An essential qualification of a voter is that he shall have resided in the state, county, and ward or precinct for the required time immediately preceding the election at which he offers to vote. Sharp v. McIntire, 23 Colo. 99, 46 P. 115 (1896).

The state may require its voters to be residents. Jarmel v. Putnam, 179 Colo. 215, 499 P.2d 603 (1972).

The purposes of residency requirements are: (1) To preserve the purity of elections, and (2) To prevent the control of state affairs by persons who have no pecuniary interest in them. Hall v. Beals, 292 F. Supp. 610 (D. Colo. 1968), vacated as moot, 396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969).

Thus the status of transient is not that of residency. Jarmel v. Putnam, 179 Colo. 215, 499 P.2d 603 (1972).

As some time limit must be set for determining who is and who is not a resident for the purposes of voting, not only to preserve the purity of the election, but also for administrative reasons. Hall v. Beals, 292 F. Supp. 610 (D. Colo. 1968), vacated as moot, 396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969).

Moreover, a federal court cannot substitute personal views of what time limit would accomplish the objectives of a residency requirement for the judgment of the Colorado general assembly in the absence of a showing of unreasonable discrimination. Hall v. Beals, 292 F. Supp. 610 (D. Colo. 1968), vacated as moot, 396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969).

But previous section's requirement of three months durational residency as condition of right to vote held unconstitutional. Jarmel v. Putnam, 179 Colo. 215, 499 P.2d 603 (1972).

Test of residency after elector moves from precinct. The following inquiry is required to be undertaken if an elector has moved outside the boundaries of his voting precinct and wishes to retain his right to vote within the precinct: (1) Had the elector established his principal or primary home or place of abode within the election precinct? and (2) was the individual's departure taken or does his absence continue with a present intention of returning to the precinct in the future? Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

Intent to keep legal residence central factor. Once a person's legal residence has been established, his intent to keep it becomes the central factor in determining whether it continues. Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

But mere intention without other indicia not enough. The mere intention to return to a former abode at some more or less indefinite time, with no other indicia of a home or domicile, may not fulfill the usual requirements of legal residence for voting purposes. Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

Evidence supported conclusion that school teachers had moved to the town with intention of establishing permanent residence. Porter v. Johnson, 85 Colo. 440, 276 P. 333 (1929).

1-2-102. Rules for determining residence. (1) The following rules shall be used to determine the residence of a person intending to register or to vote in any precinct in this state and shall be used by election judges in challenge procedures:

(a) (I) The residence of a person is the principal or primary home or place of abode of a person. A principal or primary home or place of abode is that home or place in which a person's habitation is fixed and to which that person, whenever absent, has the present intention of returning after a departure or absence, regardless of the duration of the absence. A residence is a permanent building or part of a building and may include a house, condominium, apartment, room in a house, or mobile home. No vacant lot or business address shall be considered a residence.

(II) The mailing address of a homeless individual shall constitute that individual's residence for purposes of registering or voting in any precinct in this state. A homeless individual who has no mailing address shall not be eligible to register or to vote. The mailing address of a homeless individual may include a shelter, a homeless service provider, or a private residence, but it may not include a post office box or general delivery at a post office.

(b) In determining what is the principal or primary place of abode of a person, the following circumstances relating to the person shall be taken into account: Business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, existence of any other residences and the amount of time spent at each residence, and motor vehicle registration.

(c) The residence given for voting purposes shall be the same as the residence given for motor vehicle registration and for state income tax purposes.

(d) A person shall not be considered to have gained a residence in this state, or in any county or municipality in this state, while retaining a home or domicile elsewhere.

(e) If a person moves to any other state with the intention of making it a permanent residence, that person shall be considered to have lost Colorado residence after thirty days' absence from this state unless the person has evidenced an intent to retain a residence in this state by a self-affirmation executed pursuant to section 1-8-114.

(f) If a person moves from one county or precinct in this state to another with the intention of making the new county or precinct a permanent residence, after thirty days the person shall be considered to have lost residence in the county or precinct from which the person moved.

Source: L. 92: Entire article R&RE, p. 636, § 2, effective January 1, 1993. **L. 94:** (1)(e) and (1)(f) amended, p. 1752, § 5, effective January 1, 1995. **L. 96:** (1)(a) and (1)(e) amended, pp. 1737, 1773, §§ 8, 77, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-102, as it existed in 1980, was similar to 1-2-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For change of residence, see § 1-2-216; for penalty for voting by giving false information regarding place of residence, see § 1-2-228; for residency requirement for electors, see § 1-2-101 (1)(b); for emergency registration in certain cases of change of residence, see § 1-2-217.5.

ANNOTATION

I. General Consideration.
II. Establishing Residence.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 165-167.

C.J.S. See 29 C.J.S., Elections, §§ 30, 32.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. ESTABLISHING RESIDENCE.

A person is not entitled to vote unless he has adopted the state as a fixed and permanent habitation. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

And there must not only be a personal presence, but an intent to make the place his true home. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

And a change of voting place is compelling evidence of an intention to make a change in residence. Kellner v. Dist. Court, 127 Colo. 320, 256 P.2d 887 (1953).

But residence is not acquired by mere intention. People v. Turpin, 49 Colo. 234, 112 P. 539 (1910).

The mere intention to return to a former abode at some more or less indefinite time, with no other indicia of a home or domicile, may not fulfill the usual requirements of legal residence for voting purposes. Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

As the residence contemplated is synonymous with home or domicile and means actual settlement within the state. Sharp v. McIntire, 23 Colo. 99, 46 P. 115 (1896); People v. Turpin, 49 Colo. 234, 112 P. 539 (1910).

Hence, mere purchase of home in the state is not sufficient. The purchase by a citizen of another state of a plantation in this state with a bona fide purpose to remove to it, and make it his home as soon as possession can be acquired, but in the meantime retaining his former home, does not constitute him a resident of this state, though he afterwards, pursuing his original purpose, removes to this state and establishes himself here. People v. Turpin, 49 Colo. 234, 112 P. 539 (1910).

For residence and capacity as an elector relate to the day of actual settlement in this state, and not to the day when the purpose was formed. People v. Turpin, 49 Colo. 234, 112 P. 539 (1910).

Moreover, one who has a home or domicile in another state cannot by a sojourn here, however long, acquire a residence in this state, within the meaning of this section, without abandoning his former domicile. Sharp v. McIntire, 23 Colo. 99, 46 P. 115 (1896).

Thus, to effect a change of residence from one state to another, there must be an actual removal, an actual change of domicile, and a bona fide intention of abandoning the former place of residence and establishing a new one. People v. Turpin, 49 Colo. 234, 112 P. 539 (1910).

Test of residency after elector moves from precinct. The following inquiry is required to be undertaken if an elector has moved outside the boundaries of his voting precinct and wishes to retain his right to vote there: (1) Had the party established his principal or primary home or place of abode within the election precinct? and (2) was the individual's departure taken or does his absence continue with a present intention of returning to the precinct in the future? Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

Intent to keep legal residency central factor. Once a person's legal residence has been established, his intent to keep it becomes the central factor in determining whether it continues. Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

Some time limit must be set for determining who is and who is not a resident for the purpose of voting, not only to preserve the purity of the election but also for administrative reasons. Hall v. Beals, 292 F. Supp. 610 (D. Colo. 1968), appeal dismissed as moot, 396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969).

Temporary move for work purposes does not constitute abandonment of domicile. Where a man and his wife had acquired a domicile in a town and a short while before an election they moved to another place where the man had a contract to work with the intention of residing there till the contract was finished and during the time left their home in the town with part of their furniture in the care of another, they had not abandoned their domicile and were legally entitled to vote at an election in the town of their domicile occurring during the time of their residence at the place of the work. Jain v. Bossen, 27 Colo. 423, 62 P. 194 (1900).

One does not lose voting rights by reason of departure or absence from primary home, once it has been established. Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

But where a person registers in another state and makes declarations to that end, that person cannot legally vote in Colorado. Kellner v. Dist. Court, 127 Colo. 320, 256 P.2d 887 (1953).

1-2-103. Military service - students - inmates - persons with mental illness. (1) For the purposes of registration, voting, and eligibility for office, no person shall gain residence by reason of that person's presence, or lose it by reason of absence, while in the civil or military service of the state or of the United States; nor while a student at any institution of higher education; nor while confined in a correctional facility, jail, or state institution.

(2) The provisions of subsection (1) of this section notwithstanding, no person otherwise qualified under the provisions of this code shall be denied the right to register or to vote at any election held within this state solely because that person is a student at an institution of higher education.

(3) No provision in this section shall apply in the determination of residence or residence status of students for any college or university purpose.

(4) No person while serving a sentence of detention or confinement in a correctional facility, jail, or other location for a felony conviction or while serving a sentence of parole shall be eligible to register to vote or to vote in any election; however, a confined prisoner who is awaiting trial but has not been tried shall be certified by the institutional administrator and shall be permitted to register to vote by mail registration pursuant to part 5 of this article.

(5) A person confined in a state institution for persons with mental illness shall not lose the right to vote because of the confinement.

Source: L. 92: Entire article R&RE, p. 637, § 2, effective January 1, 1993. **L. 95:** (4) amended, p. 821, § 6, effective July 1. **L. 2005:** (4) amended, p. 1395, § 5, effective June 6; (4) amended, p. 1430, § 5, effective June 6. **L. 2006:** (5) amended, p. 1394, § 29, effective August 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-103 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-103, as it existed in 1980, was similar to 1-2-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For when residence does not change because of presence in the state as a student, inmate, or due to civil or military service, see § 4 of art. VII, Colo. Const.; for disfranchisement during imprisonment, see § 10 of art. VII, Colo. Const.

ANNOTATION

I. General Consideration.
II. Civil or Military Service.
III. Students.
IV. Inmates.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 169-172.

C.J.S. See 29 C.J.S., Elections, §§ 26, 34, 35, 43, 44.

Law reviews. For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Judicial notice taken of location of public institutions and elections precinct boundaries. Israel v. Wood, 93 Colo. 500, 27 P.2d 1024 (1933).

A person serving a sentence of parole does not meet the constitutional requirement of having served out the full term of imprisonment and, therefore, is ineligible to vote. Danielson v. Dennis, 139 P.3d 688 (Colo. 2006).

II. CIVIL OR MILITARY SERVICE.

Mere presence of disabled soldiers in government hospital does not constitute residence. A hospital maintained by the United States government for the treatment of disabled soldiers, who may be transferred or discharged as determined by the government authorities, is an asylum, as that term is used in § 4 of art. VII, Colo. Const., and the inmates of such an institution are not, on account of their mere residence there, entitled to vote at general elections, as the presence in such a hospital does not constitute a residence as is required by this section. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

III. STUDENTS.

A student has no right to vote at the place where he resides for the purposes of education. Sharp v. McIntire, 23 Colo. 99, 46 P. 115 (1896).

Thus a student in a college town is presumed not to have the right to vote. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

And if he attempts to vote, the burden is upon him to prove his residence at that place, which must be done by other evidence than his mere presence in the town. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

Moreover, a student coming to the state for the sole purpose of attending school, not intending to stay after the completion of his course, does not acquire a residence for the purpose of voting. Parsons v. People, 30 Colo. 388, 70 P. 689 (1902).

IV. INMATES.

Presence in an institution as public charges raised a presumption against the right to vote in the precinct in which such is situated and requires evidence to overcome that presumption. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923); Kemp v. Heebner, 77 Colo. 177, 234 P. 1068 (1925); Israel v. Wood, 93 Colo. 500, 27 P.2d 1024 (1933).

But if, just prior to becoming inmates, voters have a bona fide residence in the precinct in which an institution is situated, they do not lose their residence in that precinct by becoming inmates. Israel v. Wood, 93 Colo. 500, 27 P.2d 1024 (1933).

"Prisoner" construed. The term "prisoner", as used in subsection (4), means one confined to serve a term of imprisonment. Moore v. MacFarlane, 642 P.2d 496 (Colo. 1982) (decided under this section as it existed prior to 1992 repeal and reenactment of this article).

Pretrial detainees may vote. Subsection (4) does not prohibit pretrial detainees confined in a jail or correctional facility from exercising the right to vote. Moore v. MacFarlane, 642 P.2d 496 (Colo. 1982) (decided under this section as it existed prior to 1992 repeal and reenactment of this article).

1-2-104. Additional qualifications. The authorizing legislation, as defined in section 1-1-104 (1.5), may provide additional or alternative qualifications for a person to become an eligible elector of a political subdivision.

Source: L. 92: Entire article R&RE, p. 638, § 2, effective January 1, 1993. **L. 94:** (1)(a) amended, p. 1752, § 6, effective January 1, 1995. **L. 96:** Entire section amended, p. 1735, § 9, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-104 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-104, as it existed in 1980, was similar to 1-2-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 155-163.

PART 2
REGISTRATION OF ELECTORS

1-2-201. Registration required - deadline. (1) No person shall be permitted to cast a regular ballot at any election without first having been registered within the time and in the manner required by the provisions of this article. No charge shall be made for registration.

(2) Each elector registering shall sign his or her name on the registration record or, if unable to write, shall make a personal mark or be provided assistance to make such a mark by the county clerk and recorder or any other person authorized by the county clerk and recorder or the elector. The elector shall answer the questions required by section 1-2-204 and shall complete the self-affirmation required by section 1-2-205.

(3) Any other provisions of this title to the contrary notwithstanding, electors shall be permitted to vote if the elector is registered to vote no later than twenty-nine days before any primary, presidential, general, special legislative election, municipal, congressional vacancy, special district, or other election, and, if the twenty-ninth day before an election is a Saturday, Sunday, or legal holiday, then electors shall be permitted to register on the next day that is not a Saturday, Sunday, or legal holiday.

Source: L. 92: Entire article R&RE, p. 638, § 2, effective January 1, 1993. **L. 94:** (2) amended, p. 1752, § 7, effective January 1, 1995. **L. 96:** (2) amended and (3) added, p. 1735, §§ 10, 11, effective July 1. **L. 97:** (3) amended, p. 471, § 2, effective July 1. **L. 99:** (3) amended, p. 757, § 4, effective May 20; (3) amended, p. 1389, § 6, effective June 4. **L. 2005:** (1) amended, p. 1395, § 6, effective June 6; (1) amended, p. 1430, § 6, effective June 6.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-201 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

(2) In 1996, § 1-1-114 was relocated to subsection (3).

(3) Amendments to subsection (3) by Senate Bill 99-025 and House Bill 99-1097 were harmonized.

Cross references: For eligibility of nonresident citizens to vote, see § 1-2-209; for emergency registration in certain cases of change of residence, see § 1-2-217.5; for challenge of registration, see § 1-9-101. As to offenses relating to registration, see §§ 1-13-201 and 1-13-203 to 1-13-205.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 178-183.

C.J.S. See 29 C.J.S., Elections, §§ 47, 49, 58.

Law reviews. For note, "Purged Voter Lists", see 44 Den. L.J. 279 (1967).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Registration precedes an election and is a distinct subject of legislation. Aichele v. People ex rel. Lowry, 40 Colo. 482, 90 P. 1122 (1907).

Therefore, jurisdiction of the courts to protect registration books from padding is something distinct from jurisdiction of the conduct of an election on the day when voting takes place. Aichele v. People ex rel. Lowry, 40 Colo. 482, 90 P. 1122 (1907).

Registration laws to be construed to effectuate constitutional requirement election purity. Since § 11 of art. VII, Colo. Const., requires the general assembly "to pass laws to secure the purity of elections", registration laws enacted in compliance with this requirement should be construed to effectuate the intent and purpose of the constitutional requirement. People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908).

Section held not to apply to school elections. Guyer v. Stutt, 68 Colo. 422, 191 P. 120 (1920).

1-2-202. Registration by county clerk and recorder. (1) The county clerk and recorder shall register any eligible elector residing in any precinct in the state of Colorado who appears in person at any office regularly maintained by the county clerk and recorder and staffed by regular employees at any time. If the elector resides in a county other than where he or she is registering, the registration shall be forwarded to the county clerk and recorder of the county in which the elector resides.

(2) Each municipal clerk shall serve as a deputy registrar. The municipal clerk shall register any eligible elector who appears in person at the municipal clerk's primary office at any time during which registration is permitted in the office of the county clerk and recorder. The municipal clerk shall deliver the new registration records to the office of the county clerk and recorder either in person or by mail no later than the tenth day of each month for the month immediately prior and in person on the day following the last day for registration preceding any election for which registration is required.

(3) (Deleted by amendment, L. 94, p. 1753, § 8, effective January 1, 1995.)

(4) If the county clerk and recorder finds that a precinct is composed of three percent or more non-English-speaking eligible electors, the county clerk and recorder shall take affirmative action to recruit full-time or part-time staff members who are fluent in the language used by the eligible electors and in English. The action shall be conducted through voluntarily donated public service notices in the media, including newspapers, radio, and television, particularly those media which serve those non-English-speaking persons.

(5) The county clerk and recorder shall attest to the signature of all electors who register in the county clerk and recorder's office by placing the official signature of the county clerk and recorder on the registration sheet.

(6) (Deleted by amendment, L. 97, p. 471, § 3, effective July 1, 1997.)

(7) Registration records for any election shall include all those electors who have registered at least twenty-nine days before the election.

Source: L. 92: Entire article R&RE, p. 639, § 2, effective January 1, 1993. **L. 93:** (2) amended, p. 1397, § 14, effective July 1. **L. 94:** (1) amended, p. 1151, § 6, effective July 1; (1), (2), (3), and (7) amended, p. 1753, § 8, effective January 1, 1995. **L. 95:** (1), (2), and (7) amended, p. 821, § 7, effective July 1. **L. 97:** (1), (2), (6), and (7) amended, p. 471, § 3, effective July 1. **L. 99:** (2) amended, p. 757, § 5, effective May 20.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-202 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

(2) Amendments to subsection (1) by House Bill 94-1286 and House Bill 94-1294 were harmonized.

Cross references: For verification of registration sheets and admissibility thereof in evidence in criminal proceedings for election offenses, see §§ 1-2-205 (4) and 1-13-207; for questions answered and oath taken by the elector, see §§ 1-2-204 and 1-2-205.

ANNOTATION

I. General Consideration.
II. Registering Qualified Elector.
III. Registering Family Member.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 182.

C.J.S. See 29 C.J.S., Elections, § 59.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. REGISTERING QUALIFIED ELECTOR.

The entire purpose of the election law, insofar as it relates to the subject of registration, is to render it impossible to prevent registration on account of political affiliations or preferences. People ex rel. Smith v. Dist. Court, 33 Colo. 22, 78 P. 679 (1904).

Person complying with section is entitled to have name upon registration list. People ex rel. Smith v. Dist. Court, 33 Colo. 22, 78 P. 679 (1904).

And in such instances there is no power to prevent the registration. See People ex rel. Smith v. Dist. Court, 33 Colo. 22, 78 P. 679 (1904).

Nor strike the name from the registration list. See People ex rel. Smith v. Dist. Court, 33 Colo. 16, 78 P. 684 (1904).

However, registration lists are only prima facie evidence that the persons whose names appear thereon are legally qualified to vote, and so, when they present themselves at the polls, they may be challenged. People ex rel. Smith v. Dist. Court, 33 Colo. 22, 78 P. 679 (1904).

Closing registration books 32nd day before election is constitutional. Since the state is entitled to a reasonable time to complete whatever administrative tasks are necessary to prevent fraud, the requirement that registration books be closed after the 32nd day before an election is constitutionally valid. Jarmel v. Putnam, 179 Colo. 215, 499 P.2d 603 (1972) (decided prior to 1992 repeal and reenactment of this article).

But county clerks must register any persons otherwise qualified as electors who are or will be residents of the state for 32 days on the date of the election for which they seek to register. Jarmel v. Putnam, 179 Colo. 215, 499 P.2d 603 (1972) (decided prior to 1992 repeal and reenactment of this article).

III. REGISTERING FAMILY MEMBER.

Where individuals are members of a religious order, then, even though they live together in a community, such a community within the meaning of this section is not such a family as to make registration valid. Goss v. Klipfel, 112 Colo. 87, 146 P.2d 217 (1944).

1-2-202.5. Online voter registration - online changes in elector information. (1) (a) An elector may register to vote, and a registered elector may change his or her residence on the registration record, change or withdraw his or her affiliation, apply for permanent mail-in ballot status, or amend his or her existing mail-in ballot status, by completing an electronic form on the official web site of the secretary of state if the elector's signature is stored in digital form in the database systems maintained by the department of state pursuant to section 1-2-301 (1) or accessible to the department of state in accordance with the requirements of sections 1-2-302 (6) and 42-1-211 (1.5), C.R.S.

(b) The official web site referenced in paragraph (a) of this subsection (1) shall be fully secure. The web site shall maintain the confidentiality of all users and preserve the integrity of the data submitted. Further specifications regarding the security of the web site may be promulgated by the secretary by rule in accordance with the provisions of section 1-1-107 (2) (a).

(2) No later than April 1, 2010, the secretary of state shall make available on the secretary of state's official web site electronic forms for persons to apply to register to vote and for a registered elector to change his or her residence, change or withdraw his or her affiliation, apply for permanent mail-in ballot status, or amend his or her existing mail-in ballot status.

(3) The electronic voter registration form shall include:

(a) (I) The questions "Are you a citizen of the United States of America?", "Will you be at least eighteen years of age on election day?", and "Have you resided in Colorado and in the precinct in which you intend to register for at least thirty days immediately prior to the election?" and places for the elector to input answers to the questions.

(II) Following the questions listed in subparagraph (I) of this paragraph (a), the form shall include the statement "If you checked 'no' in response to any of these questions, do not complete this application because you do not qualify as an eligible elector in accordance with section 1-2-101, Colorado Revised Statutes.".

(b) The questions specified in section 1-2-204 (1) and (2) with places for the elector to input information in response to the questions;

(c) A place for the elector to input additional information, as determined by the secretary of state, necessary to locate the elector's signature in the database systems specified in subsection (1) of this section and a place for the elector to assent to the use of the signature for voter registration purposes;

(d) A self-affirmation that the elector is qualified to register and that the information entered by the elector on the electronic application is true; and

(e) A statement that notifies the user of the web site that it is against the law to knowingly submit false information or to tamper with another person's voter registration information.

(4) (a) The electronic form for a registered elector to change his or her residence shall include the information required by section 1-2-216 (1).

(b) The electronic form for a registered elector to change or withdraw his or her affiliation shall include the information required by section 1-2-219 (1).

(c) The electronic form for a registered elector to apply for permanent mail-in ballot status shall meet the requirements of section 1-8-104.5 (1).

(d) In addition to any other requirements of this section, in order for a registered elector to access the electronic form to change his or her residence, change or withdraw his or her affiliation, apply for permanent mail-in ballot status, or amend his or her existing mail-in ballot status, the registered elector shall submit his or her birth date and the last four digits of his or her social security number.

(5) An elector's assent on the electronic application to the use of his or her signature for voter registration purposes meets the signature requirement of section 1-2-201 (2).

(6) The county clerk and recorder shall determine if the information submitted on the electronic form is complete prior to approving a new registration or approving an elector's change in residence, change in or withdrawal of his or her affiliation, or change to permanent mail-in ballot status.

(7) (a) When a person completes an electronic voter registration form in accordance with subsection (3) of this section and is qualified to register based on the information provided in the form, the county clerk and recorder shall search for the elector's signature in the database systems specified in subsection (1) of this section. If the signature is found, the county clerk and recorder shall approve the new registration pursuant to subsection (6) of this section and shall add the elector to the computerized statewide voter registration list maintained by the secretary of state pursuant to section 1-2-301 (1).

(b) When a registered elector completes an electronic form to change his or her residence, change or withdraw his or her affiliation, or apply for permanent mail-in ballot status, the county clerk and recorder shall search for the registered elector's signature in the database systems specified in subsection (1) of this section. In the case of a change in residence, the county clerk and recorder shall also send a nonforwardable postcard to the registered elector at his or her old address of record, by regular mail, giving notice to the registered elector that a change in residence form has been submitted by the registered elector and asking the registered elector to contact the county clerk and recorder within ten calendar days of receiving the postcard if it is not the registered elector's intent to change his or her address of record. If the signature is found and, in the case of a change in residence, if the registered elector has not timely contacted the county clerk and recorder pursuant to this paragraph (b), the county clerk and recorder shall approve the change in status pursuant to subsection (6) of this section and shall make the changes indicated on the electronic form in the computerized statewide voter registration list maintained by the secretary of state pursuant to section 1-2-301 (1).

(c) A voter registration, change of residence, change or withdrawal of affiliation, or application for permanent mail-in ballot status made in accordance with this section shall apply to an election if the elector completes the electronic form no later than twenty-nine days before the election.

Source: L. 2009: Entire section added, (HB 09-1160), ch. 263, p. 1205, § 1, effective May 15.

1-2-203. Registration on Indian reservations. The secretary or secretary's designee of any tribal council of an Indian tribe located on a federal reservation which has no municipality contained within the reservation shall serve as a deputy registrar only for registration purposes for the county in which the reservation is located. The secretary of the tribal council or the secretary's designee shall take registrations only in the tribal council headquarters. The secretary of the tribal council or the secretary's designee shall register any eligible elector residing in any precinct in the county who appears in person in the office of the secretary of the tribal council at any time during which registration is permitted in the office of the county clerk and recorder. The secretary of the tribal council shall forward the registration records to the county clerk and recorder, either in person or by certified mail, on or before the fifteenth day of each month; except that the secretary of the tribal council shall appear in person to deliver any

registration records to the county clerk and recorder on the day following the last day that registration is permitted preceding any election for which registration is required.

Source: L. 92: Entire article R&RE, p. 640, § 2, effective January 1, 1993. **L. 93:** Entire section amended, p. 1398, § 15, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-2-202.5 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 178-183.

C.J.S. See 29 C.J.S., Elections, § 47.

Annotator's note. The following annotations are taken from a case decided under former provisions similar to this section.

Provisions not mandatory. To treat all of the provisions of this statute as mandatory so as to deprive those who attempt to register would provide an unequal application of the statute and an inconsistency not warranted by any express language in the enactment. Meyer v. Putnam, 186 Colo. 132, 526 P.2d 139 (1974).

Obtaining social security numbers from vast majority of voters is only directory. Meyer v. Putnam, 186 Colo. 132, 526 P.2d 139 (1974).

1-2-204. Questions answered by elector - rules. (1) The county clerk and recorder shall ask each eligible elector making application for registration, and the elector shall answer, the following:

(a) Whether the elector intends to claim the elector's present address as the elector's sole legal place of residence and, in so doing, to abandon claim to any other legal residence;

(b) Whether the elector is aware that, if the elector is a resident of this state for voting purposes, the elector is also a resident of this state for motor vehicle registration and operation purposes and for income tax purposes;

(c) Whether the elector is aware that the elector cannot legally vote in more than one place in any election; and

(d) Whether the elector is aware that a violation of the self-affirmation the elector is about to make is a criminal act under the laws of this state and will subject the elector to the penalties provided by law.

(2) In addition, each eligible elector shall be asked, and the elector shall correctly answer, the following:

(a) The elector's name in full;

(b) The elector's place of residence, including municipal address with street number or, if there is no street number, by legal description of the land upon which the residence sits, including lot, block, addition, division, or subdivision, as applicable. In all other cases, the residence shall be described by the section or subdivision in the township and range as established and numbered by the United States government survey. If the place of residence is an apartment house, rooming house, dormitory, hotel, or motel, the number of the floor and the number of the apartment or room shall also be given. No vacant lot or business address shall be considered a residence. A post office box number shall not be used as a place of residence for the purposes of this subsection (2).

(c) Whether the elector is a citizen of the United States;

(d) The elector's gender;

(e) The elector's date of birth;

(f) The elector's deliverable mailing address if different from the elector's address of record;

(f.5) In the case of an elector who has been issued a current and valid Colorado driver's license, the elector's Colorado driver's license number. If, instead of a driver's license, the elector has been issued a current and valid identification card by the department of revenue in accordance with part 3 of article 2 of title 42, C.R.S., the elector shall provide the number of the identification card. If the elector has not

been issued a current and valid Colorado driver's license or identification card, the elector shall answer that he or she does not have a driver's license or identification card and shall provide the last four digits of the elector's social security number. If the elector does not have a social security number, the elector shall answer that he or she does not have a social security number.

(g) The elector's complete social security number, if the elector wishes to state it;

(h) Whether or not the elector is registered to vote in another county of this state;

(i) Whether or not the elector has voted or was registered to vote in another county of this state or in another state;

(j) The elector's affiliation, if any, if the eligible elector desires to affiliate with any political party or political organization. If this question is not answered, the elector shall be registered as "unaffiliated". Only the eligible elector personally shall declare the eligible elector's affiliation.

(k) Whether any communication by mail from the county clerk and recorder to such eligible elector, including, but not limited to, a voter information card provided pursuant to section 1-5-206 or an elector information card provided pursuant to section 1-2-605, should be sent to the elector's deliverable mailing address.

(2.5) If an applicant for voter registration has not been issued a current and valid Colorado driver's license, a current and valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S., or a social security number, the secretary of state shall assign the applicant a number that will serve to identify the applicant for voter registration purposes. Insofar as the department of state has created a computerized statewide voter registration list in accordance with the requirements of part 3 of this article and the list assigns unique identifying numbers to registrants, the number assigned under this subsection (2.5) shall be the unique identifying number assigned under the list.

(2.7) The form used for registration of electors shall contain a statement that the applicant must comply with the requirements of paragraph (f.5) of subsection (2) of this section, that an applicant who is qualified to vote in this state but does not have a driver's license, state-issued identification card, or social security number may still register to vote, and that the secretary of state will assign an identifying number to such an applicant for voter registration purposes.

(3) (a) If the county clerk and recorder has reasonable cause to believe that an applicant has falsified any answers to the questions set forth in this section, the county clerk and recorder shall certify the same to the district attorney for investigation and appropriate action.

(b) If the elector states that the elector's present address is the elector's sole legal residence and that the elector claims no other place as the elector's legal residence and if the elector meets the qualifications of section 1-2-101, the county clerk and recorder shall proceed to register the elector.

(c) If the elector does not comply with the requirements of subsections (1) and (2) of this section, the county clerk and recorder shall not register the elector.

(4) (a) In the event that the registration record of a registered elector does not contain the last four digits of the elector's social security number, the county clerk and recorder shall request the elector to provide either the last four digits of the elector's social security number or the elector's full social security number if the elector wishes to state such number. Such a request may be made of the registered elector by the county clerk and recorder:

(I) In any written communication by mail from the county clerk and recorder to the registered elector;

(II) At the registered elector's polling place on the day of the election;

(III) At the registered elector's early voters' polling place;

(IV) In a mail-in ballot application form or in materials to be returned by the registered elector with the mail-in ballot.

(b) No registered elector shall be prohibited from voting at any election for failure to provide the last four digits of the elector's social security number or the elector's full social security number.

(c) Any social security number or the last four digits of a social security number of an elector that is obtained by the county clerk and recorder from such elector pursuant to this section shall be held confidential and shall not be published or be open to or available for public inspection. The county clerk and recorder shall develop appropriate security measures to ensure the confidentiality of such numbers.

(d) The last four digits of a social security number described in this section shall not be considered a social security number for purposes of section 7 of the federal "Privacy Act of 1974", Pub.L. 93-579.

(5) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., as may be necessary to determine the identity of a resident of a group residential facility, as defined in section 1-1-104 (18.5), and any rules necessary to ensure the consistent application of such identification rules.

Source: L. 92: Entire article R&RE, p. 641, § 2, effective January 1, 1993. **L. 93:** (2)(j) amended, p. 1398, § 16, effective July 1. **L. 94:** (1)(d) amended, p. 1753, § 9, effective January 1, 1995. **L. 95:** (2)(f) amended, p. 822, § 8, effective July 1. **L. 97:** (2)(i) amended, p. 472, § 4, effective July 1. **L. 98:** (2)(f.5) and (4) added and (2)(g) amended, p. 279, §§1, 2, effective April 14. **L. 99:** (2)(f) amended and (2)(k) added, p. 279, § 3, effective August 4; (2)(j) amended, p. 158, § 2, effective August 4. **L. 2003:** (2)(f.5) amended and (2.5) added, p. 2072, § 8, effective May 22. **L. 2004:** (2)(c), (2)(d), and (2)(f.5) amended, p. 426, § 2, effective April 13; (2)(f.5), IP(4)(a), (4)(a)(I), and (4)(b) amended and (4)(d) added, p. 1051, § 2, effective May 21. **L. 2006:** (2)(f.5) amended and (2.7) and (3)(c) added, pp. 2028, 2029, §§ 1, 2, effective June 6. **L. 2007:** (4)(a)(IV) amended, p. 1775, § 2, effective June 1; (2)(f.5) amended, p. 1968, § 4, effective August 3. **L. 2009:** (5) added, (HB 09-1336), ch. 261, p. 1198, § 5, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to § 1-2-203 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-203, as it existed in 1980, was similar to § 1-2-206 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (2)(f.5) was amended in Senate Bill 04-084. Those amendments were superseded by the amendment of subsection (2)(f.5) in Senate Bill 04-213.

(3) Subsection (5) was added in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 186.

C.J.S. See 29 C.J.S., Elections, § 47.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Provisions not mandatory. To treat all of the provisions of this statute as mandatory so as to deprive those who attempt to register would provide an unequal application of the statute and an inconsistency not warranted by any express language in the enactment. Meyer v. Putnam, 186 Colo. 132, 526 P.2d 139 (1974).

Obtaining social security numbers from vast majority of voters is only directory. Meyer v. Putnam, 186 Colo. 132, 526 P.2d 139 (1974).

Supporters of minor parties must be allowed to designate that support on voter registration forms. The refusal to permit such designation unnecessarily burdens the opportunity of the citizen and his party to promote their minority interests. Baer v. Meyer, 577 F. Supp. 838 (D. Colo. 1984), aff'd in part, rev'd in part on other grounds, 728 F.2d 471 (10th Cir. 1984).

But party designation need only be permitted if a political organization already exists in the state under its name, has recognized officials, and has previously placed a candidate on the ballot by petition. Baer v. Meyer, 728 F.2d 471 (10th Cir. 1984).

1-2-205. Self-affirmation made by elector. (1) The registration record to be signed by the elector shall bear the following statement:

"WARNING:
IT IS A CRIME:

To swear or affirm falsely as to your qualifications to register to vote."

(2) Each elector making application for registration shall make the following self-affirmation: "I, ..., do solemnly affirm that I am a citizen of the United States and that on the date of the next election I shall have attained the age of eighteen years and shall have resided in the state of Colorado at least thirty days and in precinct no. .... at least thirty days before the election. I further affirm that the present address I listed herein is my sole legal place of residence and that I claim no other place as my legal residence."

(3) (Deleted by amendment, L. 94, p. 1754, § 10, effective January 1, 1995.)

(4) The elector shall sign the registration record as evidence of the affirmation made by the elector.

Source: L. 92: Entire article R&RE, p. 643, § 2, effective January 1, 1993. **L. 94:** (2), (3), and (4) amended, p. 1754, § 10, effective January 1, 1995.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-204 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-204, as it existed in 1980, was similar to 1-2-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For procuring false registration, see § 1-13-203.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 47.

1-2-206. Declaration of party affiliation. (Repealed)

Source: L. 92: Entire article R&RE, p. 643, § 2, effective January 1, 1993. **L. 94:** (2) amended, p. 1152, § 7, effective July 1. **L. 96:** (2) repealed, p. 1736, § 12, effective July 1. **L. 99:** Entire section repealed, p. 165, § 28, effective August 4.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-205 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-205, as it existed in 1980, is similar to 1-2-206 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-2-207. Affidavit registration. (Repealed)

Source: L. 92: Entire article R&RE, p. 644, § 2, effective January 1, 1993. **L. 94:** Entire section repealed, p. 1754, §§ 11, 48, effective January 1, 1995.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-206 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-206, as it existed in 1980, was similar to 1-2-203 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-2-208. Registration by federal postcard application - definitions. (1) An absent uniformed services elector or a resident overseas elector may register by properly executing the federal postcard application as provided in the laws of the United States known as the "Federal Voting Assistance Act of

1955", as amended, and may vote in accordance with the federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff et seq., as amended. The application shall be made no later than the twenty-ninth day before the election at which the person intends to vote. The date of registration shall be the date of the postmark or date of receipt by the county clerk and recorder of the application, whichever is earlier. Where the application has no postmark and the application is received no later than five days after the close of registration, the county clerk and recorder shall record the date of registration as the date of the last day allowed for registration. Where the application has no postmark and the application is received six or more days after the close of registration, the county clerk and recorder shall record the date of registration as the date that the application was received. The elector shall be given the same ballot as any other elector registered in that precinct at that address.

(2) (Deleted by amendment, L. 2003, p. 1332, § 1, effective August 6, 2003.)

(2.5) As used in this code, unless the context otherwise requires:

(a) "Absent uniformed services elector" means:

(I) A member of a uniformed service of the United States who is a resident of this state but who is absent from the state by reason of active duty;

(II) A member of the merchant marine of the United States who is a resident of this state but who is absent from the state by reason of service in the merchant marine; or

(III) A spouse or dependent of a person described in subparagraph (I) or (II) of this paragraph (a) who is a resident of this state but who is absent from the state by reason of the active duty or service of that person.

(b) "Nonresident overseas elector" means a citizen of the United States who resides outside the United States and who was a resident of this state immediately prior to leaving the United States.

(c) "Resident overseas elector" means a resident of this state who is living temporarily outside the United States.

(3) (Deleted by amendment, L. 2003, p. 1332, § 1, effective August 6, 2003.)

(4) The address used at the time of registration pursuant to this section shall continue to be the address of registration record as long as the eligible elector continues to serve in the United States service.

Source: L. 92: Entire article R&RE, p. 644, § 2, effective January 1, 1993. **L. 94:** (1) amended, p. 1755, § 12, effective January 1, 1995. **L. 95:** (1) amended, p. 822, § 9, effective July 1. **L. 99:** (1) amended, p. 757, § 6, effective May 20. **L. 2003:** (1), (2), and (3) amended and (2.5) added, p. 1332, § 1, effective August 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-207 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-207, as it existed in 1980, was similar to 1-2-204 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the "Federal Voting Assistance Act of 1955", as it existed prior to its repeal in 1987, see 42 U.S.C. sec. 1973cc et seq.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 47.

1-2-209. Registration of citizens who reside outside the United States - federal law. (1) A nonresident overseas elector who meets the other qualifications for registration in this state shall be registered and entitled to vote at any primary, general, or congressional vacancy election for federal offices only, upon receipt by the county clerk and recorder of the former domicile of the elector of a federal postcard application, even though while residing outside the United States the elector does not have a place of residence in this state and the intent to return may be uncertain, if:

(a) The elector does not maintain a sole legal residence, is not registered to vote, and is not voting in any other state, any district, or any territory of the United States; or

(b) The elector has a valid passport or card of identity issued under the authority of the United States secretary of state.

(1.5) Notwithstanding section 1-2-101 (1) (b), a person who is a citizen of the United States, will be eighteen years of age or older on the date of the next election, and has never been a resident of any state but whose parent is eligible to register and vote in this state may register to vote by federal postcard application or by state application and vote in accordance with subsection (3) of this section.

(2) The application shall be made no later than the twenty-ninth day before the election at which the person intends to vote. The date of registration shall be the date of the postmark or date of receipt by the county clerk and recorder of the application, whichever is earlier. Where the application has no postmark and the application is received no later than five days after the close of registration, the county clerk and recorder shall record the date of registration as the date of the last day allowed for registration. Where the application has no postmark and the application is received six or more days after the close of registration, the county clerk and recorder shall record the date of registration as the date that the application was received.

(3) An elector registered pursuant to this section shall vote by absent voting procedures as authorized by this code. The mail-in ballot issued shall carry the candidates for the following federal offices: President and vice president of the United States, member of the United States senate, and member of the United States house of representatives. Any elector registered pursuant to this section shall be canceled under the provisions of section 1-2-605. Upon returning to the United States, any elector registered pursuant to this section shall notify the county clerk and recorder either to cancel the elector's registration because the elector has established residence outside the county where registered or to complete the registration because the elector has established residence in the county.

Source: L. 92: Entire article R&RE, p. 645, § 2, effective January 1, 1993. **L. 94:** (2) amended, p. 1755, § 13, effective January 1, 1995. **L. 95:** (2) amended, p. 822, § 10, effective July 1. **L. 97:** (3) amended, p. 475, § 15, effective July 1. **L. 99:** (2) amended, p. 758, § 7, effective May 20. **L. 2003:** IP(1) and (3) amended, p. 1333, § 2, effective August 6. **L. 2007:** (3) amended, p. 1776, § 3, effective June 1; (1.5) added, p. 1041, § 1, effective August 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-208 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-208, as it existed in 1980, was similar to 1-2-204.5 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the "Uniformed and Overseas Citizens Absentee Voting Act", see 42 U.S.C. sec. 1973ff et seq.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 187-189.

C.J.S. See 29 C.J.S., Elections, § 47.

Law reviews. For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970).

Previous six-month residency requirement held not so unreasonable as to amount to prohibited discrimination under fourteenth amendment. See Hall v. Beals, 292 F. Supp. 610 (D. Colo. 1968), vacated as moot, 396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969) (decided under former law).

The state has the authority and responsibility to prescribe qualifications for voting in an election for president and vice president of the United States. Hall v. Beals, 292 F. Supp. 610 (D. Colo. 1968), vacated as moot, 396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969) (decided under former law).

1-2-209.5. Absent uniformed services and overseas electors - simultaneous voter registration and absentee ballot application - designated office - cooperation with military units. (1) An elector may simultaneously register to vote and apply for an absentee ballot by federal postcard application pursuant to section 1-2-208 or 1-2-209. If the elector requests that the application be considered an application for permanent mail-in voter status pursuant to section 1-8-104.5, the designated election official shall provide a mail-in ballot to the elector for each such subsequent election.

(2) (a) In accordance with section 702 of the "Help America Vote Act of 2002", 42 U.S.C. sec. 1973ff-1 (b), as amended, the secretary of state is designated as the single office responsible for providing information on voter registration and absentee ballot procedures to be used by absent uniformed services electors, nonresident overseas electors, and resident overseas electors who wish to register to vote or vote in any jurisdiction in this state.

(b) The secretary of state shall cooperate with the voting assistance officer of any unit of the armed forces of the United States, an officer of the Colorado National Guard, or an officer of a unit of the reserve components of the uniformed services of the United States based in Colorado to assist with voter registration and absentee ballot applications.

Source: L. 2003: Entire section added, p. 1334, § 3, effective August 6. **L. 2007:** (1) amended, p. 1776, § 4, effective June 1; (2)(b) amended, p. 1041, § 2, effective August 3.

1-2-210. Registration for congressional vacancy elections. Except as otherwise provided in section 1-4-401.5, in any congressional vacancy election, the time and method of registration and performance of other acts shall be as provided in this part 2 for general elections. In every other respect, the election shall be held in conformity with this part 2 as far as practicable. Any congressional vacancy election shall be called in sufficient time before the date of the election to permit the county clerk and recorder to comply with the provisions of this part 2.

Source: L. 92: Entire article R&RE, p. 646, § 2, effective January 1, 1993. **L. 2008:** Entire section amended, p. 409, § 1, effective August 5.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to § 1-2-211 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-211, as it existed in 1980, was similar to § 1-2-213 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 184. **C.J.S.** See 29 C.J.S., Elections, § 47.

1-2-211. Establishment and conduct of branch registration sites. (Repealed)

Source: L. 92: Entire article R&RE, p. 647, § 2, effective January 1, 1993. **L. 94:** Entire section repealed, p. 1755, § 14, effective January 1, 1995.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-212 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-212, as it existed in 1980, was similar to 1-2-215 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-2-212. Mobile registration sites - definitions - establishment and conduct. (Repealed)

Source: L. 92: Entire article R&RE, p. 648, § 2, effective January 1, 1993. **L. 94:** (2)(a) and (2)(b) amended, p. 1756, § 15, effective January 1, 1995. **L. 95:** (2)(b) amended, p. 823, § 11, effective July 1. **L. 97:** Entire section repealed, p. 472, § 5, effective July 1.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-212.9 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article.

1-2-213. Registration at driver's license examination facilities. (1) Commencing July 1, 1985, the department of revenue, through its local driver's license examination facilities, shall provide each eligible elector who applies for the issuance, renewal, or correction of any type of driver's license or for an identification card pursuant to part 3 of article 2 of title 42, C.R.S., an opportunity to complete an application to register to vote by use of a form containing the necessary information required by this part 2.

(2) (a) An applicant who wishes to complete an application for registration shall read and answer the questions required by section 1-2-204 and shall make a self-affirmation by signing the following statement: "I, ..., do solemnly affirm that I am a citizen of the United States and that on the date of the next election I shall have attained the age of eighteen years and shall have resided in the state of Colorado at least thirty days and in my precinct at least thirty days before the election. I further affirm that the present address I listed herein is my sole legal place of residence and that I claim no other place as my legal residence." Each application for registration shall bear the following statement: "Warning: It is a class 1 misdemeanor to affirm falsely as to your qualifications to register to vote."

(b) The application for registration shall not require any information that duplicates information required in the driver's license portion of the form other than a second signature or other information necessary to assure that the applicant meets the eligibility requirements for registration. The application may require only the minimum amount of information necessary to prevent duplicate voter registrations and enable the county clerk and recorder to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.

(c) The application shall include a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration statistics purposes, and a statement that, if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration statistics purposes.

(d) The authorized employee shall stamp the application for registration with a validation stamp and indicate on the driver's license that the bearer registered to vote, which license shall be the elector's receipt. Applications and changes shall be forwarded on a weekly basis, or on a daily basis when open during the last week allowed for registration prior to any election, to the county clerk and recorder of the county in which the driver's license examination facility is located, and, if the applicant lives in a different county from the facility, the application shall then be forwarded to the county clerk and recorder of the county in which the applicant resides.

(e) The department of revenue, through its local driver's license examination facilities, shall notify a program participant, as defined in section 24-21-203 (8), C.R.S., who submits a current and valid address confidentiality program authorization card, of the provisions of section 24-21-208 (4), C.R.S., and inform the participant about how he or she may use a substitute address, as defined in section 24-21-203 (13), C.R.S., on the driver's license or identification card.

(3) Upon receipt of an application, the county clerk and recorder shall determine if the application is complete. If the application is complete, the applicant shall be deemed registered as of the date of application. If the application is not complete, the county clerk and recorder shall notify the applicant, stating the additional information required. The applicant shall be deemed registered as of the date of application if the additional information is provided at any time prior to the actual voting.

(4) (Deleted by amendment, L. 94, p. 1756, § 16, effective January 1, 1995.)

(5) The department of revenue and the secretary of state shall jointly develop an application form and a change of name and address form, which shall allow an applicant wishing to register to vote to do so by the use of a single form containing the necessary information required by this part 2 and the information required for the issuance, renewal, or correction of the driver's license or identification card. The forms shall be furnished to the local driver's license examination facilities by the department of revenue.

(6) Unless the registrant states on the form that the change of address is not for voter registration purposes, any eligible elector who continues to reside in the county where the elector is registered to vote and who informs a driver's license examination facility of a change of name or address shall have notice of the change of name or address forwarded by the driver's license examination facility to the county clerk and recorder of the county in which the driver's license facility is located. If the elector lives in a different county from the facility, the county clerk and recorder shall forward the change to the county clerk and recorder of the county in which the elector resides. The county clerk and recorder of the county in which the elector resides shall change the registration record of the elector to reflect the change of name and address.

(7) No information relating to the failure of an applicant for a driver's license to sign a voter registration application may be used for any purpose other than voter registration statistics.

Source: L. 92: Entire article R&RE, p. 648, § 2, effective January 1, 1993. **L. 93:** (1) and (2) amended, p. 1398, § 17, effective July 1. **L. 94:** (1) amended, p. 2542, § 7, effective January 1, 1995; (2), (4), and (6) amended and (7) added, p. 1756, § 16, effective January 1, 1995. **L. 96:** (2)(c), (2)(d), and (7) amended, p. 1736, § 13, effective July 1. **L. 97:** (2)(d) amended, p. 472, § 6, effective July 1. **L. 2004:** (5) amended, p. 191, § 1, effective August 4. **L. 2007:** (2)(e) added, p. 1699, § 1, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992 and 1980. Provisions of this section, as it existed in 1992, are similar to those contained in 1-2-212.5 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-2-214. Withdrawal of registration. (Repealed)

Source: L. 92: Entire article R&RE, p. 650, § 2, effective January 1, 1993. **L. 97:** Entire section repealed, p. 478, § 23, effective July 1.

Editor's note: (1) Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-213 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-213, as it existed in 1980, was similar to 1-2-216 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) This section was relocated to § 1-2-601.

1-2-215. Certificate of registration. Upon the request of any eligible elector, including requests made at the time of a regular biennial or special school election, special district election, or municipal election, the county clerk and recorder shall make and deliver to the elector a certificate of registration for the elector, setting forth the facts of the elector's registration, including the date, description, and other information recorded in connection with the registration, which certificate shall be attested by the signature of the county clerk and recorder and the seal of the county.

Source: L. 92: Entire article R&RE, p. 650, § 2, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-214 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-214, as it existed in 1980, was similar to 1-2-212 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 63.

1-2-216. Change of residence. (1) Any eligible elector who has moved within the state may have his or her residence changed on the registration record by submitting a letter or form furnished by the county clerk and recorder, either by mail or in person. The letter or form for the change shall include the elector's new residence address, mailing address if different from the residence address, old address, printed name, birth date, social security number, if the elector wishes to state it, and signature and the date.

(2) Any address change made on the same form or personal letter as a change or withdrawal of affiliation or name change shall be accepted by the county clerk and recorder if the form or personal letter is signed indicating that the elector intended to make the change or withdrawal indicated on the form or in the personal letter.

(3) Any eligible elector who is unable to write may request assistance from the county clerk and recorder, and the county clerk and recorder shall sign the form, witnessing the elector's mark, or the elector may have his or her mark attested to by any other person on a prescribed form or personal letter, if the request is not made at the office of the county clerk and recorder.

(4) (a) For the twenty-eight days before and on the day of any election, any eligible elector, by appearing in person at the office of the clerk and recorder of the county in which the elector is registered, may complete a change of address form stating, under penalty of perjury, that the elector moved no later than the thirtieth day before the election and that, on the day of the election, the elector will have lived at the new address in the new precinct for at least thirty days. Upon the receipt of the request, the county clerk and recorder shall verify the registration of the elector and, upon verification, if the elector does not choose to vote at the time the request is verified, shall issue or authorize a certificate of registration showing the information required in section 1-2-215 plus the change of address; except that the county shall only be required to issue or authorize a certificate of registration in accordance with the provisions of this paragraph (a) where it has printed its pollbooks.

(b) The election judges shall allow the registered elector to vote in the precinct where the new address is located. The election judges shall use the certificate of registration as a substitute registration record, entering the date of the election and pollbook ballot number on the certificate and including it with the registration book when it is returned to the county clerk and recorder following the election.

(c) If the request is received by the county clerk and recorder on or after the time early voting has begun, the elector may vote at the time the change of address request is received. The elector may also vote by mail-in ballot if the ballots have been prepared. If the request is received on the election day, the elector may, at the discretion of the county clerk and recorder, vote in the office of the county clerk and recorder rather than voting in the precinct where the new address is located.

(5) A change of residence within the same precinct may be made on the day of any primary, general, odd-numbered year, congressional vacancy, or coordinated election at the polls by the elector.

Source: L. 92: Entire article R&RE, p. 651, § 2, effective January 1, 1993. **L. 93:** Entire section amended, p. 1399, § 18, effective July 1. **L. 94:** (1) amended, p. 1152, § 8, effective July 1; (1) and (4) amended, p. 1758, § 17, effective January 1, 1995. **L. 95:** (4) amended, p. 823, § 12, effective July 1. **L. 96:** (1) amended, p. 1736, § 14, effective July 1. **L. 97:** (4)(a) and (5) amended, p. 473, § 7, effective July 1. **L. 99:** (4)(a) amended, p. 758, § 8, effective May 20. **L. 2005:** (3) amended, p. 1395, § 7, effective June 6; (3) amended, p. 1430, § 7, effective June 6. **L. 2007:** (4)(c) amended, p. 1776, § 5, effective June 1. **L. 2009:** (1) amended, (HB 09-1216), ch. 165, p. 728, § 1, effective August 5; (4)(a) amended, (HB 09-1018), ch. 158, p. 682, § 1, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-215 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-215, as it existed in 1980, was similar to 1-2-208 as said section existed in 1979, the year prior to the

first repeal and reenactment of this article.

(2) Amendments to subsection (1) by House Bill 94-1286 and House Bill 94-1294 were harmonized.

(3) Subsections (1) and (4)(a) were amended in 2009 acts that were passed without safety clauses. The acts, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective dates, see page ix of this volume.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 33.

1-2-216.5. Verification of change of address. (1) If a county clerk and recorder receives information from the United States postal service or a driver's license examination facility that an elector has changed addresses and is still within the county, the county clerk and recorder shall send that elector a notice of the change by forwardable mail and a postage prepaid, preaddressed return form by which the registrant may verify or correct the address information.

(2) If a county clerk and recorder receives information from the United States postal service or a driver's license examination facility that an elector has changed addresses and is a resident of another county in Colorado, the county clerk and recorder shall send the elector a notice by forwardable mail and a postage prepaid mail registration form preaddressed to the appropriate county clerk and recorder by which the registrant may reregister to vote.

Source: L. 94: Entire section added, p. 1759, § 18, effective January 1, 1995. **L. 95:** Entire section amended, p. 823, § 13, effective July 1. **L. 96:** (2) amended, p. 1737, § 15, effective July 1.

1-2-217. Change in residence after close of registration. (1) Notwithstanding the provisions of subsection (2) of this section and sections 1-2-101 and 1-2-102, an elector who moves from the precinct where registered during the twenty-nine days before any election shall be permitted to cast a ballot at the election by one of the following methods: At the polling place for the precinct where registered, by a mail-in ballot, or by early voting.

(2) Any eligible elector who moves from the precinct in which the elector is registered to some other precinct in the same county after the time during which registration is permitted may return to the precinct of registration and vote on the day of any election and sign a change of residence form. The form shall include a printed statement of the penalty for anyone who votes by knowingly giving false information.

Source: L. 92: Entire article R&RE, p. 651, § 2, effective January 1, 1993. **L. 93:** (1) amended, p. 1400, § 19, effective July 1. **L. 94:** (1) amended, p. 1760, § 19, effective January 1, 1995. **L. 95:** (1) amended, p. 824, § 14, effective July 1. **L. 96:** (2) amended, p. 1737, § 16, effective July 1. **L. 99:** (1) amended, p. 758, § 9, effective May 20. **L. 2007:** (1) amended, p. 1776, § 6, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-101 and 1-2-215 as said sections existed in 1991, the year prior to the most recent repeal and reenactment of this article. Sections 1-2-101 and 1-2-215, as they existed in 1980, were similar to 1-2-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article. For a more detailed comparison, see the comparative table located in the back of the index.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 168.

C.J.S. See 29 C.J.S., Elections, § 33.

1-2-217.5. Change in residence before close of registration - emergency registration at office of county clerk and recorder. (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:

(a) Appears in person at the primary office of the county clerk and recorder or at any office or location authorized by the county clerk and recorder and staffed by personnel authorized by the county clerk and recorder; and

(b) Complies with the requirements of section 1-2-204 (1) and (2).

(c) (Deleted by amendment, L. 2003, p. 986, § 1, effective April 17, 2003.)

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

(a) The elector was registered to vote in a different county in this state, moved to the new county of residence prior to the close of the registration books but failed to register with the county clerk and recorder prior to the close of the registration books, and has not and will not cast a vote in the election in the county of previous residence;

(b) The elector applied to register to vote prior to the close of registration by federal postcard application or mail registration application;

(c) The elector applied to register to vote prior to the close of registration in a voter registration drive and is able either to show the receipt from the voter registration application that the elector submitted to the voter registration drive or to provide the location of the voter registration drive and the approximate date of registration;

(d) The elector applied to register at a voter registration agency designated pursuant to the federal "National Voter Registration Act of 1993", 42 U.S.C. sec. 1973gg, as amended, and is able to provide the name and location of and the approximate date of registration application at the agency; or

(e) The elector is a resident of this state who was an absent uniformed services elector serving outside the United States and was discharged from active duty or service within twenty-nine days prior to the election, moved to a new county of residence after the close of the registration books, and has not and will not cast a vote in the election in any other county or state.

(3) (Deleted by amendment, L. 2002, p. 1625, § 1, effective June 7, 2002.)

(4) The elector shall subscribe to the oath before an officer authorized by law to administer oaths. Upon completion of the affidavit and the approval and qualification of the elector by the county clerk and recorder or other designated election official, the name of the elector shall be placed in the registration books or added to the list of eligible electors for the election for which the registration books were closed.

(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.

Source: L. 94: Entire section added, p. 1759, § 18, effective January 1, 1995. **L. 95:** (2)(a) and (2)(b) amended and (5) added, p. 824, § 15, effective July 1. **L. 96:** (1)(b) amended, p. 1466, § 1, effective June 1; (2)(b) amended, p. 1737, § 17, effective July 1. **L. 2002:** (1)(a), (1)(c), IP(2), (3), (4), and (5) amended, p. 1625, § 1, effective June 7. **L. 2003:** IP(1), (1)(b), (1)(c), IP(2), (2)(a), and (5) amended, p. 986, § 1, effective April 17. **L. 2004:** (1)(a) and (1)(b) amended, p. 1052, § 3, effective May 21. **L. 2005:** (1)(a) and (2) amended, p. 1395, § 8, effective June 6; (1)(a) and (2) amended, p. 1430, § 8, effective June 6. **L. 2007:** (1)(b) and (2) amended, p. 1968, § 5, effective August 3. **L. 2009:** (2)(e) added, (HB 09-1205), ch. 383, p. 2078, § 1, effective August 5.

Editor's note: Subsection (2)(e) was added in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-2-218. Change of name. (1) Any eligible elector who has been registered in the county and who subsequently has had a name change by reason of marriage, divorce, or other legal means may have his or her name changed on the registration book by appearing before the county clerk and recorder by submitting the change on forms prescribed by the secretary of state or in the form of a personal letter at any time during which registration is permitted or on election day by an election judge on forms prescribed by the secretary of state and supplied to each polling place by the county clerk and recorder.

(2) The prescribed form or personal letter for the change shall include the elector's printed former legal name, printed present legal name, birth date, social security number, if the elector wishes to state it, and signature of present legal name and the date. Prescribed forms may be furnished by the county clerk and recorder upon oral or written request by the elector.

(3) A name change may not be made by anyone other than the elector.

Source: L. 92: Entire article R&RE, p. 652, § 2, effective January 1, 1993. **L. 93:** Entire section amended, p. 1400, § 20, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-216 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-216, as it existed in 1980, was similar to 1-2-209 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 47.

Annotator's note. The following annotations are taken from cases decided under former provisions similar to this section.

The pertinent sections concerning the transfer of party affiliation from one county to another are §§ 1-14-104 and 1-14-105 (now §§ 1-2-218 and 1-2-219). Murphey v. Trott, 160 Colo. 336, 417 P.2d 234 (1966).

And § 1-14-104 (now § 1-2-218) provides that unless the procedure of § 1-14-105 (now § 1-2-219) is followed, an elector moving from one county to another shall lose his party affiliation. Murphey v. Trott, 160 Colo. 336, 417 P.2d 234 (1966).

Provision of section constitutional. Provision in this section that a registered elector shall lose his party affiliation "by his failure to vote at any general election" is constitutional. Duprey v. Anderson, 184 Colo. 70, 518 P.2d 807 (1974).

1-2-218.5. Declaration of affiliation. (1) The declaration of affiliation of each registered elector shall remain as recorded in the registration record until the elector changes or withdraws his or her affiliation.

(2) Any eligible elector who has not declared an affiliation with a political party or political organization shall be designated on the registration records of the county clerk and recorder as "unaffiliated". Any unaffiliated eligible elector may declare a political party affiliation when the elector desires to vote at a primary election, as provided in section 1-7-201 (2), or the elector may declare his or her political party or political organization affiliation at any other time during which electors are permitted to register by submitting a letter or a form furnished by the county clerk and recorder, either by mail or in person.

Source: L. 99: Entire section added, p. 158, § 3, effective August 4. **L. 2003:** (2) amended, p. 1308, § 2, effective April 22.

1-2-219. Changing or withdrawing declaration of affiliation. (1) Any eligible elector desiring to change or withdraw the elector's affiliation may do so by completing and signing a prescribed request for the change or withdrawal and filing it with the county clerk and recorder or by submitting a personal

letter written by the elector to the county clerk and recorder at any time up to and including the twenty-ninth day preceding an election. The prescribed form or personal letter for the change shall include the elector's printed name, address within the county, birth date, social security number, if the elector wishes to state it, and signature, the date, the elector's previous affiliation status, and the requested change in affiliation status. A prescribed form shall be furnished by the county clerk and recorder upon the elector's oral or written request. Upon receiving the request, the county clerk and recorder shall change the elector's affiliation on the registration record. If the affiliation is withdrawn, the designation on the registration record shall be changed to "unaffiliated". If an elector changes affiliation, the elector is entitled to vote, at any primary election, only the ballot of the political party to which the elector is currently affiliated. A change or withdrawal of affiliation may not be made by anyone other than the elector.

(2) Any declaration, change, or withdrawal of affiliation made on the same form or personal letter as an address or name change shall be accepted by the county clerk and recorder if the form or personal letter is dated and signed so that it is clearly indicated that the elector intended to make the change or withdrawal indicated on the form or in the personal letter. An elector who is unable to write may request assistance from the county clerk and recorder, and the county clerk and recorder shall sign the form, witnessing the elector's mark or, on a personal letter, the elector shall have his or her signature attested to by a notary public.

Source: L. 92: Entire article R&RE, p. 652, § 2, effective January 1, 1993. **L. 93:** Entire section amended, p. 1401, § 21, effective July 1. **L. 99:** (1) amended, p. 158, § 4, effective August 4. **L. 2003:** (1) amended, p. 1309, § 3, effective April 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-217 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-217, as it existed in 1980, was similar to 1-14-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 183, 186.

C.J.S. See 29 C.J.S., Elections, § 211.

1-2-220. Loss of party affiliation. (Repealed)

Source: L. 92: Entire article R&RE, p. 653, § 2, effective January 1, 1993. **L. 95:** Entire section amended, p. 824, § 16, effective July 1. **L. 99:** Entire section repealed, p. 165, § 28, effective August 4.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-218 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-218, as it existed in 1980, was similar to 1-14-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-2-221. Continuation of affiliation. (Repealed)

Source: L. 92: Entire article R&RE, p. 653, § 2, effective January 1, 1993. **L. 93:** Entire section amended, p. 1402, § 22, effective July 1. **L. 99:** Entire section repealed, p. 165, § 28, effective August 4.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-219 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-219, as it existed in 1980, was similar to 1-14-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-2-222. Errors in recording of affiliation. (1) If an elector goes to the elector's legal voting place to vote at any primary election or to the office of the county clerk and recorder and contends that an error has been made in the recording of the elector's affiliation on the registration book or that the affiliation has been unlawfully changed or withdrawn, the election judges or the county clerk and recorder shall allow the elector to make and sign an affidavit, which shall be substantially in the form provided in subsection (4) of this section. Any election judge or the county clerk and recorder has authority to administer the oath and take the acknowledgment of the elector's affidavit. When the affidavit is completed, the county clerk and recorder shall make the change as specified in the affidavit using the date of the affidavit as the new affiliation date.

(2) (Deleted by amendment, L. 99, p. 159, § 5, effective August 4, 1999.)

(3) For the purposes of determining the eligibility of candidates for nomination in accordance with sections 1-4-601 (4) (a) and 1-4-801 (4), the eligibility of persons to vote at any precinct caucus, assembly, or convention in accordance with section 1-3-101, or the eligibility of persons to sign petitions in accordance with section 1-4-801 (2), the date of declaration of the party affiliation of the elector shall be the date of the declaration which the elector alleges by affidavit to have been erroneously recorded or unlawfully changed or withdrawn.

(4) Printed affidavit forms shall be furnished to the election judges of the various election precincts. The affidavit form shall be substantially as follows:

STATE OF COLORADO)
) ss.
County of .....)

I, ..., believing an error has been made as to the recording of my party affiliation, or a change unlawfully made, or a withdrawal unlawfully made on the registration book of precinct ..... in ..... County, do solemnly swear, or affirm, that the party affiliation as now shown on the registration book is an error, or has been unlawfully changed, or has been unlawfully withdrawn and that my correct party affiliation should be ..... instead of ..... and request that the party affiliation be corrected on the registration book. My correct affiliation was made on or before ..... (date) at ..... (place).

Dated .....
Signed .....
Subscribed and sworn to before me this ..... day of ....., 20....

.....
Election Judge or County Clerk
Precinct .....
County .....

Source: L. 92: Entire article R&RE, p. 654, § 2, effective January 1, 1993. **L. 93:** (3) amended, p. 1765, § 1, effective June 6. **L. 99:** (1) and (2) amended, p. 159, § 5, effective August 4.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-220 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-220, as it existed in 1980, was similar to 1-14-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-2-223. Names transferred when precinct boundaries changed. (1) In case any new election precinct is formed within a county or in case of the division of any existing precinct, the precinct number on the voter's master file record shall be changed to reflect the new precinct number.

(2) In case any change is made in precinct boundaries as a result of annexation affecting county boundaries, the county clerk and recorder of the county from which the annexed territory was detached shall forthwith remove from the registration book the registration records of all electors residing in the annexed territory. The county clerk and recorder shall forthwith deliver, in person or by certified mail, the registration records to the county clerk and recorder of the county to which the territory was annexed, who shall insert them in the registration book of the appropriate precinct upon receipt. The registrations shall be considered as continuing registrations with all the registered electors involved having full rights and privileges as if no change in county boundaries had occurred.

Source: L. 92: Entire article R&RE, p. 656, § 2, effective January 1, 1993. **L. 97:** (1) amended, p. 473, § 8, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-221 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-221, as it existed in 1980, was similar to 1-2-210 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 75.

1-2-224. Canceling registration. (Repealed)

Source: L. 92: Entire article R&RE, p. 656, § 2, effective January 1, 1993. **L. 93:** (6)(a) amended and (9) added, p. 1403, § 23, effective July 1. **L. 94:** (6)(a) and (7) amended, p. 1152, § 9, effective July 1; (1)(a), (2)(a)(II), (5)(a), (5)(b)(II), (6), and (9) amended, p. 1760, § 20, effective January 1, 1995. **L. 95:** (1)(a), IP(2), and (9) amended, p. 825, § 17, effective July 1. **L. 96:** (3.5) added, p. 1738, § 18, effective July 1. **L. 97:** Entire section repealed, p. 478, § 23, effective July 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-222 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-222, as it existed in 1980, was similar to 1-2-211 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) The amendment to subsection (6)(a) by House Bill 94-1286 was harmonized with the amendment to subsection (6) by House Bill 94-1294.

(3) This section was relocated to § 1-2-605.

1-2-225. Change of polling place - accessibility for persons with disabilities. (1) The general assembly hereby finds, determines, and declares that the purpose of this section is to protect the fundamental right of citizens with disabilities to vote. The general assembly further finds that, where reasonable polling place access for electors with disabilities cannot be provided, other reasonable accommodations should be made to enable those electors to cast their votes.

(2) The elector information card required to be sent to all registered electors pursuant to sections 1-2-605 and 1-5-206 shall include a notice to the elector indicating whether the polling place for the elector is accessible to persons with disabilities. The information card shall also include an affidavit which may be signed and returned to the county clerk and recorder indicating that the elector to whom the information card was sent has a disability and requesting a change of polling place assignment to a location that is accessible to persons with disabilities.

(3) Any registered elector with a disability, or a family member living at the same address as the elector and acting for the elector, may appear at the county clerk and recorder's office in the county in which the elector is registered and sign an affidavit requesting a temporary change of polling place to a place that is accessible to persons with disabilities.

(4) Upon receiving an affidavit requesting a polling place change pursuant to this section, a county clerk and recorder shall temporarily assign the requesting elector to a polling place that uses the same ballot type as the permanently assigned location and is accessible to persons with disabilities, if such a

place exists. If more than one such polling place exists, the county clerk and recorder shall assign the polling place that is closest to the elector's residence.

(5) A family member living at the same address as an elector who has changed polling places pursuant to subsection (2) or (3) of this section may also change polling places to vote at the same polling place as the elector with a disability by filing a request with the county clerk and recorder containing the information required by the county clerk and recorder.

(6) Any request for a change of polling place to a polling place which is accessible to persons with disabilities must be received by the designated election official no later than twelve days before the election for which the change is requested.

(7) Upon granting a request for a temporary change of polling place pursuant to this section, the county clerk and recorder shall make and deliver to the elector a temporary polling place certificate setting forth the facts of the temporary polling place change, including the name of the elector, the date of the election, the type of election, and the address of the temporary polling place. The certificate shall be attested by the hand of the county clerk and recorder and the seal of the county.

(8) An elector who has temporarily changed polling places pursuant to this section shall present the temporary polling place certificate on the day of the election to the election judges at the temporary polling place assigned to the elector. The election judges shall allow the elector to vote at that polling place. The election judges shall use the certificate as a substitute registration record, entering the date of the election and pollbook ballot number on the certificate and including it with the registration book when it is returned to the county clerk and recorder following the election.

(9) Only one application for a temporary change of polling place pursuant to this section must be made for all subsequent primary and general elections in any calendar year. Separate applications for temporary changes of polling places must be made for all other elections.

(10) Any political subdivision which holds elections is authorized to follow the procedures specified in this section for its elections.

Source: L. 92: Entire article R&RE, p. 659, § 2, effective January 1, 1993. **L. 93:** (1) to (6) amended, pp. 1629, 1403, §§ 1, 24, effective July 1. **L. 95:** (6) amended, p. 825, § 18, effective July 1. **L. 97:** (2) amended, pp. 473, 475, §§ 9, 16, effective July 1. **L. 99:** (6) amended, p. 759, § 10, effective May 20.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-222.5 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article.

(2) Amendments to subsection (6) by House Bill 93-1255 and Senate Bill 93-242 were harmonized. Amendments to subsection (2) by sections 9 and 16 of House Bill 97-1234 were harmonized.

1-2-226. Deceased electors - purging of registration book. (Repealed)

Source: L. 92: Entire article R&RE, p. 661, § 2, effective January 1, 1993. **L. 97:** (1) and entire section repealed, pp. 475, 478, §§ 17, 23, effective July 1.

Editor's note: (1) Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-223 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-223, as it existed in 1980, was similar to 1-2-211.1 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) This section was relocated to § 1-2-602.

1-2-227. Custody and preservation of records. Registration books shall be left in the custody of the county clerk and recorder, who shall be responsible for them. The oaths or affirmations, applications for affidavit registration, federal postcard applications, applications for change of residence or change of name, and other papers provided for by this part 2 shall be preserved by the county clerk and recorder and shall not be destroyed until after the next general election. They shall be public records subject to

examination by any elector, and the elector shall have the right to make copies of the records during office hours.

Source: L. 92: Entire article R&RE, p. 661, § 2, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is the same as 1-2-224 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-224, as it existed in 1980, was similar to 1-2-214 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Law reviews. For note, "Purged Voter Lists", see 44 Den. L.J. 279 (1967).

1-2-228. Residence - false information - penalty. Any person who votes by knowingly giving false information regarding the elector's place of present residence commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 92: Entire article R&RE, p. 662, § 2, effective January 1, 1993. **L. 2002:** Entire section amended, p. 1464, § 4, effective October 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is the same as 1-2-225 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-225, as it existed in 1980, was similar to 1-2-310 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Conduct prohibited by this section is sufficiently distinguishable from misdemeanor election statute to create two separate offenses, avoiding violation of equal protection clause. This section is violated when defendant actually votes by providing false information about present residence. People v. Onesimo Romero, 746 P.2d 534 (Colo. 1987).

PART 3

MASTER LIST OF ELECTORS

1-2-301. Centralized statewide registration system - secretary of state to maintain computerized statewide voter registration list - county computer records - agreement to match information. (1) No later than January 1, 2006, the secretary of state shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive, computerized statewide voter registration system defined, maintained, and administered at the state level, which system shall contain a computerized statewide voter registration list maintained by the secretary of state that contains the name and registration information of every legally registered voter in the state and that assigns a unique identifier to each legally registered voter. The single, uniform, official, centralized, interactive, computerized statewide voter registration system required by this subsection (1) shall be referred to in this part 3 as the "centralized statewide registration system". The centralized statewide registration system shall replace the voter registration and election management that was required to be developed or acquired prior to May 22, 2003. On or before January 1, 2006, the centralized statewide registration

system and the computerized statewide voter registration list shall be fully compliant with all applicable requirements specified in section 303 of the federal "Help America Vote Act of 2002", Pub.L. 107-252, codified at 42 U.S.C. sec. 15301 et seq.

(2) (a) On and after January 1, 2006, the county clerk and recorder of each county shall maintain voter registration information by utilizing the centralized statewide registration system developed or acquired by the department of state under subsection (1) of this section. Prior to the implementation of the computerized statewide voter registration list required by subsection (1) of this section, if the county chooses to maintain voter registration information on its own computer system, the information required by law to be transmitted to the secretary of state shall be transmitted in a media format acceptable to the secretary of state and within the time prescribed by the secretary of state, by this section, and by section 1-2-302.

(b) Repealed.

(3) (Deleted by amendment, L. 2001, p. 514, § 1, effective January 1, 2002.)

(4) (a) (I) (Deleted by amendment, L. 2003, p. 2073, § 9, effective May 22, 2003.)

(II) The centralized statewide registration system shall enable county clerk and recorders to maintain voter registration information and shall include such additional capabilities as may be necessary or desirable to enable county clerk and recorders and the secretary of state to carry out their responsibilities related to the conduct of elections. Such additional capabilities may include but need not be limited to the preparation of ballots, the identification of voting districts for each address, access by county clerk and recorders to the master list of registered electors and, on or after January 1, 2006, the computerized statewide voter registration list maintained pursuant to this section and section 1-2-302, the management of mail-in and mail ballots, the preparation of official abstracts of votes cast, the transmission of voting data from county clerk and recorders to the secretary of state, and reporting of voting results on election night. County clerk and recorders shall have access to the digitized signatures of electors in the centralized statewide registration system for the purpose of comparing an elector's signature in the system with the signature on the return envelope of a mail-in ballot or mail ballot, including by using a signature verification device in accordance with sections 1-7.5-107.3 (5) and 1-8-114.5 (5).

(III) Subject to available appropriations, the department of state is responsible for the cost of acquiring computer hardware and providing necessary training for the centralized statewide registration system. The secretary of state shall promulgate rules specifying whether such hardware is owned by the department or the counties or whether and to what extent ownership may be shared between the department and the counties. If the department provides system hardware to any county clerk and recorder, it may transfer ownership of the hardware to that clerk and recorder. The secretary of state may promulgate rules providing that the county clerk and recorders shall be solely responsible for the support and maintenance of the hardware provided to the counties. On or after January 1, 2006, the department shall make the centralized statewide registration system software available at no charge to the clerk and recorder of each county.

(b) As soon as practicable, the department of state shall make the master list of registered electors available at no charge on the internet to the county clerk and recorders. This paragraph (b) shall not be construed to require the department to provide or pay for internet connection services for any county.

(c) (Deleted by amendment, L. 2003, p. 2073, § 9, effective May 22, 2003.)

Source: L. 92: Entire article R&RE, p. 662, § 2, effective January 1, 1993. **L. 93:** (3) added, p. 2039, § 1, effective July 1. **L. 94:** (2) amended, p. 1152, § 10, effective July 1; (3) amended, p. 2542, § 8, effective January 1, 1995. **L. 95:** (2) amended, p. 179, § 2, effective April 7. **L. 97:** (1) and (2)(b) amended, p. 474, § 10, effective July 1. **L. 99:** (2)(b) amended, p. 759, § 11, effective May 20. **L. 2000:** (1) amended, p. 1758, § 2, effective January 1, 2001. **L. 2001:** (4) added, p. 515, § 2, effective May 18; (2)(a) and (3) amended, p. 514, § 1, effective January 1, 2002. **L. 2003:** (1), (2)(a), and (4) amended, p. 2073, § 9, effective May 22. **L. 2005:** (1) amended, p. 758, § 1, effective June 1. **L. 2007:** (4)(a)(II) amended, p. 1776, § 7, effective June 1. **L. 2008:** (4)(a)(II) amended, p. 356, § 1, effective April 10. **L. 2009:** (2)(b) repealed, (HB 09-1018), ch. 158, p. 682, § 2, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to § 1-2-301 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-301, as it existed in 1980, was similar to § 1-2-217 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (2)(b) was repealed in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 67.

1-2-302. Maintenance of computerized statewide voter registration list - confidentiality. (1) The secretary of state shall maintain the master list of registered electors of the entire state on as current a basis as is possible.

(1.5) The maintenance of the computerized statewide voter registration list by the secretary of state pursuant to section 1-2-301 (1) shall be conducted in a manner that ensures that:

(a) The name of each registered elector appears in the computerized statewide voter registration list;

(b) Only the names of voters who are not registered or who are not eligible to vote are removed from the computerized statewide voter registration list; and

(c) Duplicate names are removed from the computerized statewide voter registration list.

(2) The electors on the computerized statewide voter registration list shall be identified by name, place of residence, precinct number, date of birth, Colorado driver's license number, social security number, or other identification number, as such numbers may have been provided by the elector at the time the elector first registered to vote, and the date of registration.

(3) (Deleted by amendment, L. 2009, (HB 09-1018), ch. 158, p. 683, § 3, effective August 5, 2009.)

(3.5) (a) The secretary of state shall coordinate the computerized statewide voter registration list with state agency records on death. Upon being furnished with the report provided to him or her by the state registrar of vital statistics pursuant to section 1-2-602 (1), the secretary of state may electronically cancel the registration of deceased persons.

(b) The secretary of state shall coordinate the computerized statewide voter registration list with state agency records on felony status. Upon being furnished with information from the Colorado integrated criminal justice system that a particular registered elector has been convicted of a felony, the secretary of state may electronically cancel the registration of persons who have been convicted of a felony.

(4) Repealed.

(5) (a) (Deleted by amendment, L. 97, p. 476, § 18, effective July 1, 1997.)

(b) Repealed.

(6) The secretary of state shall determine and use other necessary means to maintain the master list of registered electors on a current basis. In accordance with the provisions of section 42-1-211, C.R.S., the department of state and the department of revenue shall allow for the exchange of information between the systems used by them to collect information on residence addresses, signatures, and party affiliation for all applicants for driver's licenses or state identification cards. The department of revenue may exchange information on residence addresses in the driver's license database with the motor vehicle registration database, motorist insurance database, and the state income tax information systems.

(6.5) At the earliest practical time, the secretary of state, acting on behalf of the department of state, and the executive director of the department of revenue, as the official responsible for the division of motor vehicles, shall enter into an agreement to match information in the database of the centralized statewide registration system with information in the database of the division of motor vehicles to the extent required to enable each department to verify the accuracy of the information provided on

applications for voter registration in conformity with the requirements of section 1-2-301.

(6.7) In accordance with the requirements of section 42-1-211 (1.5) (c), C.R.S., the department of revenue shall enter into an agreement with the federal commissioner of social security for the purpose of verifying applicable information in accordance with the requirements of section 303 (a) (5) (B) (ii) of the federal "Help America Vote Act of 2002", Pub.L. 107-252, codified at 42 U.S.C. sec. 15301 et seq.

(7) Repealed.

(8) The secretary of state shall provide adequate technological security measures to prevent unauthorized access to the computerized statewide voter registration list. The secretary of state, the department of revenue, and the clerk and recorders shall not sell, disclose, or otherwise release a social security number, a driver's license or a state-issued identification number, or the unique identification number assigned by the secretary of state to the voter pursuant to section 1-2-204 (2.5) or electronic copies of signatures created, transferred, or maintained pursuant to this section, part 1 of article 8 of this title, or section 42-1-211, C.R.S., to any individual other than the elector who created such signature absent such elector's consent; except that nothing in this subsection (8) shall prohibit the sale, disclosure, or release of an electronic copy of such signature for use by any other public entity in carrying out its functions, or the sale, disclosure, or release of a photocopied or microfilmed image of an elector's signature.

Source: L. 92: Entire article R&RE, p. 662, § 2, effective January 1, 1993. **L. 93:** (6) amended, p. 2040, § 2, effective July 1. **L. 94:** (6) amended, p. 2542, § 9, effective January 1, 1995. **L. 95:** IP(1) and (3) amended, p. 180, § 3, effective April 7. **L. 97:** (1) to (3) and (5)(a) amended and (4), (5)(b), and (7) repealed, pp. 476, 478, §§18, 23, effective July 1. **L. 99:** (1) amended, p. 759, § 12, effective May 20. **L. 2001:** (6) amended, p. 518, § 7, effective January 1, 2002. **L. 2002:** (6) amended, p. 1626, § 2, effective June 7; (8) added, p. 1864, § 1, effective June 7. **L. 2003:** (1.5), (3.5), (6.5), and (6.7) added and (2), (3), and (8) amended, p. 2075, § 10, effective May 22. **L. 2005:** (6.7) amended, p. 759, § 2, effective June 1; (6.5) amended, p. 17, § 1, effective July 1. **L. 2009:** (6) amended, (HB 09-1160), ch. 263, p. 1208, § 2, effective May 15; (1) and (3) amended, (HB 09-1018), ch. 158, p. 683, § 3, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-302 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-302, as it existed in 1980, was similar to 1-2-218 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) In 1997, subsections (4) and (7) were relocated to § 1-2-602 and subsection (5)(b) was relocated to § 1-2-604.

(3) Subsections (1) and (3) were amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 183. **C.J.S.** See 29 C.J.S., Elections, § 67.

1-2-303. Multiple registration - most recent date of registration determines precinct in which allowed to vote. (1) If a registered elector is registered to vote in more than one precinct in this state, the elector shall vote only in the precinct which pertains to the most recent date of registration, as determined by the secretary of state's master list of registered electors.

(2) and (3) Repealed.

Source: L. 92: Entire article R&RE, p. 664, § 2, effective January 1, 1993. **L. 93:** Entire section amended, p. 278, § 1, effective July 1. **L. 95:** (2) amended and (3) added, p. 825, § 19, effective July 1. **L. 97:** (1) amended and (2) and (3) repealed, pp. 474, 478, §§ 11, 23, effective July 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-303 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-303, as it existed in 1980, was similar to 1-2-219 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) In 1997, subsections (2) and (3) were relocated to § 1-2-603.

Cross references: For penalty for voting in wrong precinct, see § 1-13-709; for penalty for voting twice, see § 1-13-710.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 181, 183.

C.J.S. See 29 C.J.S., Elections, §§ 64, 68, 69.

1-2-304. Multiple registration - procedure. (Repealed)

Source: L. 92: Entire article R&RE, p. 664, § 2, effective January 1, 1993. **L. 97:** Entire section repealed, pp. 478, 474, §§ 23, 12, effective July 1.

Editor's note: (1) Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-304 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-304, as it existed in 1980, was similar to 1-2-220 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) In 1997, subsection (1) was relocated to § 1-2-604.

1-2-305. Postelection procedures - voting history - definitions. (1) Not later than sixty days after a state election, the secretary of state shall generate a list of electors showing who voted and who did not vote in the election. The list shall be drawn from the statewide voter registration database. For electors who voted, the list shall show such elector's method of voting, whether by early voting, mail-in ballot, mail ballot, polling place voting, or otherwise.

(2) Upon receipt of the lists, the secretary of state shall examine the lists to see which electors did and did not vote in the election in order to ascertain if any elector has voted more than once. If it is determined that an elector has voted more than once, the secretary of state shall notify the proper district attorney for prosecution of a violation of the provisions of this code.

(3) As used in this section, unless the context otherwise requires:

(a) "District of state concern" means a congressional district or a unique political subdivision with territory in more than one county and with its own enabling legislation, as identified by rules adopted by the secretary of state pursuant to section 1-1-104 (9.5).

(b) "State election" means a general, primary, or congressional vacancy election, a special legislative election involving more than one county, a ballot issue election involving a statewide ballot issue, or any election involving a candidate or ballot issue for a district of state concern.

(4) No later than March 1 of each year following a year in which a general election was held, the secretary of state shall distribute to each major and minor political party, free of charge, a list of individuals who actually voted in such election. Such list may be in the form of a computer list.

Source: L. 92: Entire article R&RE, p. 664, § 2, effective January 1, 1993. **L. 95:** Entire section amended, p. 180, § 4, effective April 7. **L. 2000:** (1) amended and (3) and (4) added, p. 1758, § 3, effective January 1, 2001. **L. 2007:** (1) amended, p. 1777, § 8, effective June 1. **L. 2009:** (1) and (2) amended, (HB 09-1018), ch. 158, p. 683, § 4, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-305 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-305, as it existed in 1980, was similar to 1-2-221 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsections (1) and (2) were amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 67.

PART 4

HIGH SCHOOL REGISTRATION

Editor's note: The addition of this part 4 by House Bill 92-1317 and the repeal and reenactment of this article in House Bill 92-1333 were harmonized.

1-2-401. Legislative declaration. It is the intent of the general assembly that, in order to promote and encourage voter registration of all eligible electors in the state, registration should be made as convenient as possible. It is determined by the general assembly that if voter registration is convenient, the number of registered voters will increase. It is further determined by the general assembly that support and cooperation of school officials and interested citizens will make high school registration successful. It is therefore the purpose of this part 4 to encourage voter registration by providing convenient registration procedures for qualified high school students, employees, and other persons by using high school deputy registrars.

Source: L. 92: Entire part added, p. 621, § 1, effective July 1. **L. 93:** Entire section amended, p. 1403, § 25, effective July 1.

1-2-402. Registration by high school deputy registrars. (1) Each principal of a public high school, or the principal's designee who is a registered voter in the county, may serve as a deputy registrar. The principal of each high school shall notify the county clerk and recorder of the county in which the high school is located of the name of the school's deputy registrar, and the county clerk and recorder shall maintain a list of the names of all of the high school deputy registrars in that county in a public file.

(2) The high school deputy registrar may register any student, employee of the school, other person who attends school functions, or any other person who is eligible to register to vote. Voter registration may be made available only when the school is open for classes or any other school or community function. The high school deputy registrar shall take registrations only on school district premises.

(3) A high school deputy registrar may have available an official application form for voter registration for each student who is eighteen years of age or who will be eighteen years of age at the time of the next election.

Source: L. 92: Entire part added, p. 621, § 1, effective July 1. **L. 93:** Entire section amended, p. 1403, § 26, effective July 1.

1-2-403. Training and registration materials for high school deputy registrars. (1) The county clerk and recorder shall train and supervise the high school deputy registrars, and, after training is completed, shall administer the oath of office to the high school deputy registrars.

(2) The county clerk and recorder shall issue sufficient registration materials to each high school deputy registrar for the registration of all eligible students, employees, and other persons at the high school which the high school deputy registrar serves. The high school deputy registrar shall give a receipt to the county clerk and recorder for all materials issued.

(3) The deputy registrar shall stamp the application for registration with a validation stamp and provide the applicant with a receipt verifying the registration application. Applications and changes shall be forwarded on a weekly basis to the county clerk and recorder of the county in which the high school is located. During the last week allowed for registrations prior to any election, such applications shall be forwarded daily to the county clerk and recorder of the county in which the high school is located.

(4) Upon receipt of an application, the county clerk and recorder shall determine if the application is complete. If the county clerk and recorder determines that the application is complete, the applicant shall

be deemed registered as of the date of application. If the county clerk and recorder determines that the application is not complete, the county clerk and recorder shall notify the applicant, stating the additional information required. The applicant shall be deemed registered as of the date of application when the additional information is provided any time prior to the actual voting.

Source: L. 92: Entire part added, p. 622, § 1, effective July 1. **L. 93:** (1), (2), and (3) amended, p. 1404, § 27, effective July 1.

PART 5

MAIL REGISTRATION AND REGISTRATION AT VOTER REGISTRATION AGENCIES

1-2-501. Form for mail and agency registration - procedures for registration by mail for first-time electors - additional identifying information to be provided by first-time registrants. (1) The secretary of state, in consultation with the federal election assistance commission, shall develop an application form that may be used for mail voter registration, voter registration at voter registration agencies, and voter change of address. The form developed shall:

(a) Require only such identifying information, including the signature of the applicant and other information such as data relating to previous registration by the applicant, as is necessary to enable the appropriate county clerk and recorder to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(b) Include a statement that:

(I) Specifies each eligibility requirement, including citizenship;

(II) Contains an affirmation that the applicant meets each requirement; and

(III) Requires the signature of the applicant, under penalty of perjury;

(b.5) (I) Include:

(A) The question: "Are you a citizen of the United States of America?" and boxes for the applicant to indicate whether the applicant is or is not a citizen of the United States;

(B) The question "Will you be eighteen years of age on or before election day?" and boxes for the applicant to indicate whether or not the applicant will be eighteen years of age or older on election day;

(C) The statement "If you checked 'no' in response to either of these questions, do not complete this form."; and

(D) A statement informing the applicant that, if the form is submitted by mail and the applicant has not previously voted in the county, or in the state if the statewide voter registration system required by section 1-2-301 is operating, the applicant shall submit with the registration form a copy of identification as defined in section 1-1-104 (19.5), the applicant's driver's license number, or the last four digits of the applicant's social security number, otherwise the applicant will be required to submit a copy of identification with the applicant's mail ballot or absentee ballot.

(II) If an applicant for registration fails on the mail registration form to answer the question specified in sub-subparagraph (A) of subparagraph (I) of this paragraph (b.5), the state or local election official shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for federal office.

(c) Not include any requirement for notarization or other formal authentication; and

(d) Include, in print that is identical to that used in the affirmation portion of the application:

(I) A statement of the penalties provided by law for submission of a false voter registration application;

(II) A statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(III) A statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(e) Include the question, "Do you wish to be designated as a permanent mail-in voter?" and boxes for the applicant to indicate whether the applicant does or does not wish such designation. An elector who requests designation as a permanent mail-in voter that meets the requirements of section 1-8-104.5 shall be added to the list of permanent mail-in voters maintained pursuant to section 1-8-108.

(1.5) An elector who submits a voter registration form by mail and has not previously voted in the county, or in the state if the statewide voter registration system required by section 1-2-301 is operating, shall:

(a) Submit with the voter registration form a copy of identification as defined in section 1-1-104 (19.5), the elector's driver's license number, or the last four digits of the elector's social security number; or

(b) Submit a copy of identification as defined in section 1-1-104 (19.5) with the elector's mail ballot in accordance with section 1-7.5-107 (3.5) or with the elector's mail-in ballot in accordance with section 1-8-113 (3).

(2) (a) Subject to the requirements of paragraph (b) of this subsection (2), in addition to the identifying information required to be provided by the elector pursuant to subsection (1) of this section, a person who applies to register by mail in accordance with this part 5 shall submit with the registration application:

(I) In the case of an elector who has been issued a current and valid Colorado driver's license or a current and valid identification card issued by the department of revenue in accordance with part 3 of article 2 of title 42, C.R.S., the number of the elector's Colorado driver's license or identification card; or

(II) In the case of an elector who has not been issued a current and valid Colorado driver's license or a current and valid identification card issued by the department of revenue in accordance with part 3 of article 2 of title 42, C.R.S., the last four digits of the person's social security number.

(a.5) If an applicant has not been issued a current and valid Colorado driver's license, has not been issued a current and valid identification card by the department of revenue in accordance with part 3 of article 2 of title 42, C.R.S., and does not have a social security number, the secretary of state shall assign the applicant a number for voter registration purposes in accordance with section 1-2-204 (2.5).

(b) Notwithstanding any other provision of law, a Colorado driver's license number, the number of an identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S., or the last four digits of the person's social security number shall only be received in satisfaction of the requirements of this subsection (2) where the state or local election official matches the number of the driver's license or identification card or the person's social security number submitted under paragraph (a) of this subsection (2) with an existing state identification record bearing the same number, name, and date of birth as provided in such registration information.

(c) If the elector does not comply with the requirements of this subsection (2), the county clerk and recorder shall not register the elector.

Source: L. 94: Entire part added, p. 1762, § 21, effective January 1, 1995. **L. 2003:** (1)(b.5) and (2) added, pp. 2076, 2077, §§ 11, 12, effective May 22. **L. 2004:** IP(1) and (1)(b.5)(I)(D) amended, p. 1053, § 4, effective May 21. **L. 2006:** (1)(b.5)(I)(D) and (2)(a) amended and (1.5) and (2)(a.5) added, pp. 2029, 2030, §§ 3, 4, 5, effective June 6. **L. 2007:** (1)(e) added and (1.5)(b) amended, p. 1777, §§ 9, 10, effective June 1; IP(1.5), (2)(a), and (2)(a.5) amended and (2)(c) added, p. 1969, § 6, effective August 3.

1-2-502. Form for agency registration. (1) In addition to the information required in section 1-2-501, the form used at a voter registration agency shall include:

(a) The question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(b) If the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

(c) Boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote, together with the statement, in close proximity to the boxes and in prominent type, "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

(d) The statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.".

(e) The statement, "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the secretary of state." The form shall also include the address and telephone number of the secretary of state.

(2) All agencies providing an opportunity to complete the voter registration forms shall keep copies of all records relating to the completion of the forms for two years. The forms shall not be considered public records but shall be available to the secretary of state for purposes of compiling data in compliance with the federal "National Voter Registration Act of 1993", 42 U.S.C. sec. 1973gg.

Source: L. 94: Entire part added, p. 1763, § 21, effective January 1, 1995.

1-2-503. Availability of forms. The application forms for mail voter registration shall be available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

Source: L. 94: Entire part added, p. 1764, § 21, effective January 1, 1995.

1-2-504. Voter registration agencies. (1) The following offices are designated as voter registration agencies:

(a) All offices that provide public assistance;

(b) All offices that provide state-funded programs primarily engaged in providing services to persons with disabilities;

(c) All recruitment offices of the armed forces of the United States; and

(d) Any other federal, state, local government, or nongovernment office that chooses to provide voter registration service or applications.

(2) The following agencies may provide application forms for mail voter registration:

(a) All offices of county clerk and recorders;

(b) All federal post offices; and

(c) Any other federal, state, local government, or nongovernment office that chooses to provide voter registration service or applications.

Source: L. 94: Entire part added, p. 1764, § 21, effective January 1, 1995.

1-2-505. Services at voter registration agencies - services to persons with disabilities. (1) At each voter registration agency, the following services shall be made available with each application made in person for service or assistance and with each recertification, renewal, or change of address form relating to the service or assistance:

(a) Distribution of mail voter registration application forms;

(b) Assistance to applicants in completing agency voter registration application forms, unless the applicant refuses such assistance; and

(c) Acceptance of completed agency voter registration application forms for transmittal to the appropriate county clerk and recorder.

(2) If a voter registration agency provides services to a person with a disability at the person's home, the agency shall provide the services described in subsection (1) of this section at the person's home.

Source: L. 94: Entire part added, p. 1764, § 21, effective January 1, 1995.

1-2-506. Prohibitions. (1) A person who provides the services described in section 1-2-505 shall not:

(a) Seek to influence an applicant's political preference or party registration;

(b) Display any political preference or party allegiance;

(c) Make any statement to an applicant or take any action, the purpose or effect of which is to discourage the applicant from registering to vote;

(d) Make any statement to an applicant or take any action, the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(2) A person who provides the services described in section 1-2-505 shall ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(3) No information relating to a declination to register to vote made in connection with an application completed at a voter registration agency may be used for any purpose other than voter registration.

Source: L. 94: Entire part added, p. 1765, § 21, effective January 1, 1995.

1-2-507. Transmittal of voter registration applications. A completed agency registration application accepted at a voter registration agency shall be transmitted to the county clerk and recorder for the county in which the agency is located not later than ten days after the date of acceptance; except that, if a registration application is accepted during the five days before the last day for registration to vote in an election, the application shall be transmitted to the county clerk and recorder for the county in which the agency is located not later than five days after the date of acceptance.

Source: L. 94: Entire part added, p. 1765, § 21, effective January 1, 1995. **L. 95:** Entire section amended, p. 826, § 20, effective July 1.

1-2-508. Effective date of voter registration. (1) The county clerk and recorder shall ensure that any eligible applicant is registered to vote in an election if:

(a) In the case of registration with a driver's license application, the valid voter registration application of the applicant is accepted by a driver's license examination facility no later than twenty-nine days before the date of an election;

(b) In the case of registration by mail, the valid voter registration application of the applicant is postmarked not later than twenty-nine days before the date of the election;

(c) In the case of registration by mail where the application has no postmark and the application is

received by a county clerk and recorder no later than five days after the close of registration, the date of registration shall be the date of the last day allowed for registration;

(d) In the case of registration at a voter registration agency, the valid agency voter registration application of the applicant is accepted at the voter registration agency not later than twenty-nine days before the date of the election; and

(e) In any other case, the valid voter registration application of the applicant is received by the appropriate county clerk and recorder not later than twenty-nine days before the date of the election.

(2) The effective date of a voter registration application or change of registration that is completed at the office of the county clerk and recorder or in the presence of a deputy registrar shall be the date received by the office of the county clerk and recorder or by the registrar. The effective date of an application or change of registration that is completed at a driver's license examination facility or voter registration agency shall be the date that the application or change is accepted by the facility or agency. The effective date of a voter registration application or change of registration that is completed by a mail registration form shall be the date of the postmark or receipt by the county clerk and recorder, whichever is earlier.

Source: L. 94: Entire part added, p. 1765, § 21, effective January 1, 1995. **L. 95:** (1) amended and (2) added, p. 826, § 21, effective July 1. **L. 97:** (1)(c) amended, p. 474, § 13, effective July 1. **L. 99:** (1)(a) and (1)(c) amended, p. 759, § 13, effective May 20.

1-2-509. Reviewing voter registration applications. (1) Upon receipt of an application, if the applicant resides in a county other than the county receiving the application, the county clerk and recorder shall within five days transmit the application to the clerk and recorder of the applicant's county; except that, if the application is received thirty days or less before an election, the application shall be transmitted as expeditiously as possible.

(2) Upon receipt of an application, the county clerk and recorder shall verify that the application is complete and accurate. If the application is complete and accurate, the county clerk and recorder shall notify the applicant of the registration. If the application is not complete or is inaccurate, the county clerk and recorder shall notify the applicant, stating the additional information required.

(3) Within ten business days after receipt of the application, the county clerk and recorder shall notify each applicant of the disposition of the application by nonforwardable mail. If within twenty business days after receipt of the application the notification is returned to the county clerk and recorder as undeliverable, the applicant shall not be registered. If the notification is not returned within twenty business days as undeliverable, then the applicant shall be deemed registered as of the date of the application; except that, if the applicant was notified that the application was not complete, then the applicant shall be deemed registered as of the date of the application if the additional information is provided at any time prior to the actual voting.

Source: L. 94: Entire part added, p. 1766, § 21, effective January 1, 1995. **L. 95:** (2) and (3) amended, p. 827, § 22, effective July 1. **L. 2005:** (3) amended, p. 1396, § 9, effective June 6; (3) amended, p. 1431, § 9, effective June 6.

1-2-510. Public disclosure of voter registration activities. (1) The secretary of state shall maintain for at least two years and shall make available for public inspection and copying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that the records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to subsection (1) of this section shall include lists of the names and addresses of all persons to whom confirmation notices are sent and information concerning whether or not each person has responded to the notice as of the date that inspection of the records is made.

(3) The secretary of state shall also be responsible for filing any reports or information concerning the implementation of the federal "National Voter Registration Act of 1993", 42 U.S.C. sec. 1973gg, with the federal election commission as may be required.

Source: L. 94: Entire part added, p. 1766, § 21, effective January 1, 1995. **L. 97:** (2) amended, p. 475, § 14, effective July 1.

1-2-511. Prosecutions of violations. Any person who believes a violation of this part 5 has occurred may file a written complaint no later than sixty days after the date of the violation with the secretary of state. If the secretary of state determines, after a hearing, that the violation has occurred, he or she shall so notify the attorney general, who may institute a civil action for relief, including a permanent or temporary injunction, a restraining order, or any other appropriate order, in the district court. Upon a proper showing that such person has engaged or is about to engage in any prohibited acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond by the court. If, within one hundred twenty days after a complaint is filed with the secretary of state, no civil action for relief is instituted by the attorney general, the complainant shall have a private right of action based on an alleged violation of this part 5 and may institute a civil action in district court for any appropriate remedy. Any such action shall be filed within one year from the date of the alleged violation.

Source: L. 94: Entire part added, p. 1767, § 21, effective January 1, 1995.

PART 6

CANCELLATION OF REGISTRATION

Editor's note: This part 6 was added with relocations in 1997 containing relocated provisions of some sections formerly located in parts 2 and 3 of this article. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

1-2-601. Withdrawal of registration. At any time that registration is permitted in the county clerk and recorder's office, any person who desires to withdraw or cancel his or her own registration may do so by filing with the county clerk and recorder a self-affirmation of withdrawal of registration, and the self-affirmation shall be used as the record of evidence to cancel the elector's registration record.

Source: L. 97: Entire part added with relocations, p. 465, § 1, effective July 1.

Editor's note: This section was formerly numbered as 1-2-214.

1-2-602. Deceased electors. (1) As soon as is practicable after the end of each month, the state registrar of vital statistics shall furnish the secretary of state with a report of all persons eighteen years of age or older who have died during the previous month. To the extent possible, persons on the report shall be identified by name, county of residence, date of birth, and social security number.

(2) The secretary of state shall forward to each county clerk and recorder monthly the information received from the state registrar of vital statistics concerning persons registered to vote in the county who have died.

(3) The county clerk and recorder shall cancel the registration of any elector who is deceased and of whose death the county clerk and recorder has received notice pursuant to subsection (2) of this section.

(3.5) The secretary of state may by electronic means cancel the registration of any elector who is deceased and of whose death the secretary has received notice pursuant to subsection (1) of this section.

(4) The county clerk and recorder shall cancel the registration of any elector who is deceased when

the county clerk and recorder receives written notice of the fact. The written notice shall be signed by a family member of the deceased. If the county clerk and recorder has sufficient proof that an elector is deceased, cancellation may be made without such written notice.

Source: L. 97: Entire part added with relocations, p. 465, § 1, effective July 1. **L. 2003:** (3.5) added, p. 2077, § 13, effective May 22.

Editor's note: This section was formerly numbered as 1-2-302(4) and (7) and 1-2-226(1) and (2).

1-2-603. Notification that elector has moved and registered in different county. (1) If the elector registers to vote in another county, the county clerk and recorder of the elector's new county of residence shall transfer the elector's registration record from the old county in accordance with the following requirements:

(a) If the elector provides a name, date of birth, and prior address and the county clerk and recorder can match the name, date of birth, and prior address to the elector's prior registration record, the elector's registration record shall be transferred from the old county.

(b) If the elector provides a name and date of birth but does not provide a prior address, the elector's registration record shall be transferred from the old county only if:

(I) The elector provides a driver's license or identification card number, and the county clerk and recorder of the new county of residence can match the name, date of birth, and driver's license or identification card number to the elector's prior registration record; or

(II) The elector provides a social security number, and the county clerk and recorder of the new county of residence can match the name, date of birth, and social security number to the elector's prior registration record.

(c) If the elector does not provide a prior address, driver's license number, or social security number, the registration record shall not be transferred from the old county unless the elector submits additional information that complies with the requirements of this subsection (1). The county clerk and recorder of the county of prior residence may send notice to the elector by forwardable mail to the elector's address of record. Any such notice shall have a returnable portion that has the return postage prepaid and is preaddressed to the sending county clerk and recorder, and shall include an area for the elector to indicate if the elector has moved to another county and wishes to have his or her registration record transferred from the old county.

(2) If a county clerk and recorder receives a notice from the secretary of state or from an election official in another state that the elector has registered to vote in another county, the county clerk and recorder of the county of prior residence shall cancel the registration record if the name and birth date or the name and social security number of the elector match.

Source: L. 97: Entire part added with relocations, p. 466, § 1, effective July 1. **L. 2009:** (1) amended, (HB 09-1018), ch. 158, p. 683, § 5, effective August 5.

Editor's note: (1) This section was formerly numbered as § 1-2-303(2) and (3).

(2) Subsection (1) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-2-604. Cancellation of electors with a multiple registration. (1) Based upon an examination of the secretary of state's master lists of registered electors, each county clerk and recorder shall generate a list containing the name of each elector who is registered in more than one precinct in the state and shall cancel from the county's master lists of registered electors the name of the elector wherever it appears, except where it corresponds to the elector's most recent date of registration.

(2) (Deleted by amendment, L. 2009, (HB 09-1018), ch. 158, p. 684, § 6, effective August 5, 2009.)

(3) (a) The county clerk and recorder may not cancel the registration record pursuant to subsection (1) of this section unless there is a match in the county's registration records and the statewide voter registration database with respect to, at a minimum, the following types of identifying information:

(I) The elector's name, date of birth, and prior residence; or

(II) The elector's name, date of birth, and driver's license number or social security number.

(b) If the county clerk and recorder is not able to cancel the registration record pursuant to paragraph (a) of this subsection (3), the county clerk and recorder shall send a notice to the elector whose record the clerk and recorder intends to cancel. The notice shall be sent to that elector's address of record, shall have a returnable portion that has the return postage prepaid and that is preaddressed to the sending county clerk and recorder, and shall include an area for the elector to indicate if the elector has moved to another county and wishes to have his or her registration record transferred from the old county.

Source: L. 97: Entire part added with relocations, p. 466, § 1, effective July 1. **L. 2009:** Entire section amended, (HB 09-1018), ch. 158, p. 684, § 6, effective August 5.

Editor's note: (1) This section was formerly numbered as §§ 1-2-302(5)(b) and 1-2-304(1).

(2) This section was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-2-605. Canceling registration - voter information card. (1) (a) (I) Communication by mail from the county clerk and recorder to the registered eligible electors of a county shall be in the form of a voter information card, including but not limited to the elector's name and address, precinct number, and polling place, which shall be mailed to the elector's address of record unless the elector has requested that the card be sent to his or her deliverable mailing address pursuant to section 1-2-204 (2) (k). The county clerk and recorder shall send a voter information card by forwardable mail to each active registered eligible elector of the county, as defined in section 1-1-104 (16), and by nonforwardable mail to each inactive registered eligible elector, except an elector whose previous communication from the county clerk and recorder was returned by the United States postal service as undeliverable or an elector whose registration record was marked "Inactive" by the county clerk and recorder pursuant to subsection (2) of this section before the general election of 2006.

(II) The voter information card shall inform the elector of whether he or she is designated as a permanent mail-in voter and shall have a returnable portion that allows the elector to request designation as a permanent mail-in voter pursuant to section 1-8-104.5.

(b) For all electors whose communication pursuant to paragraph (a) of this subsection (1) is returned by the United States postal service as undeliverable at the elector's voting address, the county clerk and recorder may mark the registration record of that elector with the word "Inactive".

(c) All electors whose communication pursuant to paragraph (a) of this subsection (1) is not returned to the county clerk and recorder as undeliverable shall be deemed "Active", and no mark shall be made on the electors' registration records.

(2) A registered elector who is deemed "Active" but who fails to vote in a general election shall have the elector's registration record marked "Inactive (insert date)" by the county clerk and recorder following the general election. In the case of a registered elector to whom the county clerk and recorder mailed a confirmation card pursuant to paragraph (a) of subsection (6) of this section no later than ninety days after the 2008 general election and was returned by the United States postal service as undeliverable, the county clerk and recorder shall mark the registration record of that elector with the words "Inactive - undeliverable".

(3) Any registered elector whose registration record has been marked "Inactive" shall be eligible to vote in any election where registration is required and the elector meets all other requirements.

(4) Any "Inactive" elector shall be deemed "Active" if:

(a) The elector updates the registration information with the county clerk and recorder; or

(b) The elector votes in any election conducted by a county clerk and recorder or any election for which the information has been provided to the clerk and recorder; or

(c) The elector applies for a mail-in ballot for any election which the county clerk and recorder conducts, regardless of whether or not the ballot is returned; or

(d) The elector completes, signs, and returns a confirmation card.

(5) If a mail or mail-in ballot that was mailed pursuant to the requirements of this article to an elector who has been deemed "Active" is returned to the county clerk and recorder by the United States postal service as undeliverable, the county clerk and recorder shall send to the elector's address of record, unless the elector has requested that such communication be sent to his or her deliverable mailing address pursuant to section 1-2-204 (2) (k), a notice pursuant to section 1-2-509 by forwardable mail and a postage prepaid, preaddressed form by which the elector may verify or correct the address information. If the elector verifies that he or she resides in a county other than the county mailing the mail or mail-in ballot, the county clerk and recorder shall forward the address information to the county clerk and recorder of the county in which the voter resides. If the elector fails to respond, the county clerk and recorder shall mark the registration record of that elector with the word "Inactive".

(6) (a) No later than ninety days after any general election, any registered elector whose registration record is marked "Inactive" and who has not previously been mailed a confirmation card shall be mailed a confirmation card by the county clerk and recorder.

(b) A confirmation card shall be mailed, shall have a place for an address change, shall be sent by forwardable mail to the elector's address of record, unless the elector has requested that such communication be sent to his or her deliverable mailing address pursuant to section 1-2-204 (2) (k), shall have a returnable portion that has the return postage prepaid and is preaddressed to the sending county clerk and recorder, and shall include a registration form to allow the elector to preregister in the county where the elector resides and to request designation as a permanent mail-in elector pursuant to section 1-8-104.5.

(7) If the county clerk and recorder receives no response to the confirmation card and the elector has been designated "Inactive" for two general elections since the confirmation card was mailed pursuant to the requirements of this article, the county clerk and recorder shall cancel the registration record of the elector.

(8) No later than ninety days following any general election, the county clerk and recorder shall furnish to the county chairpersons of the two major political parties a list containing the names, addresses, precinct numbers, and party affiliations of the electors whose names were canceled from the registration record pursuant to this section.

(9) As soon as is practicable after a general election, the county clerk and recorder shall transmit to the secretary of state, in a media format acceptable to the secretary of state, a list of the electors canceled from the registration records pursuant to this section.

(10) During the twenty-eight days prior to an election, if any previously registered elector finds that his or her registration record has been canceled during the prior six years pursuant to this section, the elector shall have the canceled notation deleted and shall be reinstated and given a "Certificate of Reinstatement" if the elector provides proof to the county clerk and recorder that he or she has not moved outside the county since the last three general elections. The "Certificate of Reinstatement" may be issued any time during the twenty-eight days before or on election day, and the elector may then vote at his or her precinct polling place or, if authorized by the county clerk and recorder, at the office of the county clerk and recorder. The county clerk and recorder shall not issue a provisional ballot in lieu of or to substitute for a "Certificate of Reinstatement" to an elector who is entitled to receive a "Certificate of Reinstatement" pursuant to this section.

(11) Notwithstanding any other provision of this section, requirements pertaining to the verification by a county clerk and recorder of the status of a registered elector who has been deemed "Inactive" in preparation for a mail ballot election shall be governed by the provisions of section 1-7.5-108.5.

Source: L. 97: Entire part added with relocations, p. 467, § 1, effective July 1. **L. 99:** (6)(a), (8), and (10) amended, p. 760, § 14, effective May 20; (1)(a), (5), (6)(b), and (7) amended, p. 279, § 4, effective August 4. **L. 2005:** (10) amended, p. 1396, § 10, effective June 6; (10) amended, p. 1431, § 10, effective June 6. **L. 2007:** (1)(a), (4)(c), and (6)(b) amended, p. 1777, § 11, effective June 1. **L. 2008:** (1)(a)(I) amended, p. 1875, § 1, effective June 2; (2) amended and (11) added, pp. 1742, 1743, §§ 1, 3, effective July 1. **L. 2009:** (5) amended, (HB 09-1216), ch. 165, p. 728, § 2, effective August 5.

Editor's note: (1) This section was formerly numbered as § 1-2-224.

(2) Subsection (5) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 183.

C.J.S. See 29 C.J.S., Elections, § 47.

Law reviews. For note, "Purged Voter Lists", see 44 Den. L.J. 279 (1967).

Annotator's note. Since § 1-2-605 is similar to § 1-2-224 as it existed prior to the 1997 amendment to article 2 of title 1, which resulted in the relocation of provisions, a relevant case decided under former provisions similar to that section has been included in the annotations to this section.

The provision for purging the registration book does not violate the equal protection clause of amendment 14, U.S. Const. Duprey v. Anderson, 184 Colo. 70, 518 P.2d 807 (1974).

Nor requirements of due process. The requirements of due process of law as set forth in § 25 of art. II, Colo. Const., and in amendment 14, U.S. Const., are not violated by the provision as it applies to persons whose names have been removed from the registration books. Duprey v. Anderson, 184 Colo. 70, 518 P.2d 807 (1974).

Purging procedure does not result in an invidious discrimination between qualified registered electors who exercise their right to vote in general elections and qualified registered electors who do not vote. Duprey v. Anderson, 184 Colo. 70, 518 P.2d 807 (1974).

Purging registration book is exclusively an administrative adjunct which is necessary in order to provide for the purity of elections and to guard against abuses. Duprey v. Anderson, 184 Colo. 70, 518 P.2d 807 (1974).

Prevention of fraud and other abuses is state interest in purging books. Any person who does not reregister may be presumed to be deceased, to have moved and registered at a new address, or to have no desire to vote at a forthcoming election. Thus, the election list becomes more authentic and is not as susceptible to fraudulent voting practices or other abuses of the franchise. This is the legitimate state interest involved in the purging procedure. Duprey v. Anderson, 184 Colo. 70, 518 P.2d 807 (1974).

Qualified electors whose names were purged from registration books were in no way barred from voting, for to vote, they are merely required to reregister. Duprey v. Anderson, 184 Colo. 70, 518 P.2d 807 (1974).

1-2-606. Cancellation by reason of criminal conviction in federal court. (1) If an elector whose residence is in the state of Colorado is convicted of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the secretary of state of Colorado. The notice shall include the name of the offender, the offender's age and residence address, the date of entry of the judgment, a description of the offenses of which the offender was convicted, and the sentence imposed by the court. The United States attorney shall additionally give the secretary of state written notice of the vacation of the judgment if the conviction is overturned.

(2) The secretary of state shall forward the information received pursuant to this section to the applicable county clerk and recorder of the county in which the offender resides.

(3) The county clerk and recorder shall cancel the registration of the elector as of the date of receipt of the information from the secretary of state, and the registration shall remain canceled until the offender reregisters to vote.

Source: L. 97: Entire part added with relocations, p. 470, § 1, effective July 1.

PART 7

VOTER REGISTRATION DRIVES

1-2-701. Registration of voter registration drive - training. (1) Before commencing a voter registration drive, a voter registration drive organizer shall file a statement of intent to conduct a voter registration drive with the secretary of state in the manner prescribed by the secretary of state by rules promulgated in accordance with article 4 of title 24, C.R.S. The voter registration drive organizer shall designate on the statement the agent of the voter registration drive, who shall be a resident of the state.

(2) A voter registration drive organizer shall fulfill the training requirements established by the secretary of state by rules promulgated in accordance with article 4 of title 24, C.R.S.

Source: L. 2005: Entire part added, p. 1396, § 11, effective June 6; entire part added, p. 1431, § 11, effective June 6.

1-2-702. Conducting a voter registration drive. (1) A voter registration drive organizer shall use the form of the voter registration application approved by the secretary of state by rule.

(2) A circulator working on a voter registration drive shall collect a voter registration application distributed by the voter registration drive and offered by an elector and deliver the application to the voter registration drive organizer. A voter registration drive organizer shall deliver the application to the county clerk and recorder of the county in which the elector resides according to the address indicated on the application. The application shall be delivered no later than fifteen business days after the application is signed, or, if the application is sent by mail, it shall be postmarked no later than fifteen business days after the application is signed; except that an application shall be delivered or mailed no later than the registration deadline set forth in section 1-2-201 (3), and an application signed less than thirty days before the registration deadline shall be delivered or postmarked no later than five business days after the application is signed.

(3) A voter registration drive organizer shall not compensate a circulator working on the voter registration drive based on the number of voter registration applications the circulator distributes or collects.

Source: L. 2005: Entire part added, p. 1397, § 11, effective June 6; entire part added, p. 1432, § 11, effective June 6. **L. 2006:** (2) amended, p. 2030, § 7, effective June 6. **L. 2007:** (2) amended, p. 1970, § 7, effective August 3.

1-2-703. Violations - penalties. (1) A voter registration drive organizer that conducts a voter registration drive without filing the statement of intent with the secretary of state in accordance with section 1-2-701 or without maintaining a designated agent in the state or that uses a voter registration application form other than the form approved by the secretary of state by rule shall be punished by a fine not to exceed five hundred dollars.

(2) A voter registration drive organizer that fails to fulfill the training requirements established by the secretary of state in accordance with section 1-2-701 (2) shall be punished by a fine not to exceed five hundred dollars.

(3) (a) A voter registration drive organizer that willfully fails to deliver a voter registration application to the proper county clerk and recorder within the time prescribed by section 1-2-702 (2)

shall be punished by a fine not to exceed fifty dollars for each business day of violation.

(b) A voter registration drive organizer that has been fined three times or more under paragraph (a) of this subsection (3) for failure to deliver a voter registration application to the proper county clerk and recorder in the manner and time prescribed by section 1-2-702 (2) shall be punished by an additional fine not to exceed one thousand dollars.

(c) A voter registration drive organizer that intentionally fails to deliver a voter registration application to the proper county clerk and recorder in the manner and time prescribed by section 1-2-702 (2) shall be punished by a fine not to exceed five thousand dollars.

(4) A voter registration drive organizer that compensates a circulator working on a voter registration drive based on the number of voter registration applications the circulator distributes or collects shall be punished by a fine not to exceed one thousand dollars.

Source: L. 2005: Entire part added, p. 1397, § 11, effective June 6; entire part added, p. 1432, § 11, effective June 6. **L. 2006:** (3) amended, p. 2031, § 8, effective June 6. **L. 2007:** Entire section amended, p. 1970, § 8, effective August 3.

ARTICLE 3

Political Party Organization

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980. This article was numbered as article 9 of chapter 49, C.R.S. 1963. For additional historical information concerning the repeal and reenactment of articles 1 to 13 of this title in 1980, see the editor's note immediately following the title heading for this title.

Cross references: For election offenses relating to political party organization, see part 3 of article 13 of this title.

1-3-100.3. Definitions.
1-3-101. Party affiliation required residence.
1-3-102. Precinct caucuses.
1-3-103. Party committees.
1-3-104. Political party vacancy committees.
1-3-105. Powers of central committees.
1-3-106. Control of party controversies.
1-3-107. Party platforms.
1-3-108. Use of party name.

1-3-100.3. Definitions. As used in this article:

(1) "Political party" means a major political party as defined in section 1-1-104 (22).

Source: L. 98: Entire section added, p. 256, § 3, effective April 13.

1-3-101. Party affiliation required - residence. (1) In order to vote at any precinct caucus, assembly, or convention of a political party, the elector shall be a resident of the precinct for thirty days, shall have registered to vote no later than twenty-nine days before the caucus, assembly, or convention, and shall be affiliated with the political party holding the caucus, assembly, or convention for at least two months as shown on the registration books of the county clerk and recorder; except that any registered elector who has attained the age of eighteen years or who has become a naturalized citizen during the two months immediately preceding the meeting may vote at any caucus, assembly, or convention even though the elector has been affiliated with the political party for less than two months.

(2) Notwithstanding subsection (1) of this section and section 1-2-101 (1) (b), an elector who moves from the precinct where registered during the twenty-nine days prior to any caucus shall be permitted to participate and vote at the caucus in the precinct of the elector's former residence but shall not be eligible for election as a delegate or for nomination as a precinct committeeperson in the former precinct.

(3) (a) No later than twenty-eight days prior to the date of the precinct caucus, the county clerk and recorder shall furnish without charge to each major political party in the county a list of the registered electors in the county who are affiliated with that political party.

(b) Repealed.

Source: L. 80: Entire article R&RE, p. 315, § 1, effective January 1, 1981. **L. 81:** Entire section amended, p. 302, § 1, effective April 29; (1) amended, p. 291, § 5, effective July 1. **L. 91:** Entire section amended, p. 618, § 28, effective May 1. **L. 92:** Entire article amended, p. 664, § 3, effective January 1, 1993. **L. 94:** (3) added, p. 1153, § 11, effective July 1; entire section amended, p. 1767, § 22, effective January 1, 1995. **L. 95:** (1) and (2) amended, p. 828, § 23, effective July 1. **L. 99:** Entire section amended, p. 760, § 15, effective May 20. **L. 2002:** (3) amended, p. 131, § 1, effective March 27. **L. 2007:** (3)(a) amended, p. 1988, § 2, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-101 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) The amendment to subsection (3) by House Bill 94-1286 was harmonized with the amendment to this section by House Bill 94-1294.

(3) Subsection (3)(b)(II) provided for the repeal of subsection (3)(b), effective July 1, 2002. (See L. 2002, p. 131.)

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 238. **C.J.S.** See 29 C.J.S., Elections, § 211.

1-3-102. Precinct caucuses. (1) (a) (I) Precinct committee persons and delegates to county assemblies shall be elected at precinct caucuses that shall be held in a public place or in a private home that is open to the public during the caucus in or proximate to each precinct at a time and place to be fixed by the county central committee or executive committee of each political party. Except as otherwise provided by subparagraph (III) of this paragraph (a), the precinct caucuses shall be held on the third Tuesday in March, in each even-numbered year, which day shall be known as "precinct caucus day".

(II) Repealed.

(III) In a year in which a presidential election will be held, a political party may, by decision of its state central committee, hold its precinct caucuses on the first Tuesday in February. The committee shall notify the secretary of state and the clerk and recorder of each county in the state of the decision within five days after the decision.

(b) Any private home in which a precinct caucus is to be held shall be accessible to persons with disabilities in accordance with the rules of the county central committee or executive committee of each political party. The rules shall specify guidelines for determining whether a private home is accessible to persons with disabilities for purposes of this subsection (1) and for determining controversies regarding such accessibility.

(2) (a) The participants at the precinct caucus shall also elect two precinct committeepersons. Any person eighteen years of age or older may be a candidate for the office of precinct committeeperson if he or she has been a resident of the precinct for thirty days and has been affiliated with the political party holding the precinct caucus for a period of at least two months preceding the date of the precinct caucus; except that any person who has attained the age of eighteen years or who has become a naturalized citizen during the two months immediately preceding the precinct caucus may be a candidate for the office of precinct committeeperson even though he or she has been affiliated with the political party for less than two months as shown on the registration book of the county clerk and recorder. The two people receiving the highest number of votes at the caucus for precinct committeeperson shall be elected as the precinct committeepersons of the precinct. If two or more candidates for precinct committeeperson receive an equal and the second highest number of votes, or if three or more candidates receive an equal and the highest number of votes, the election shall be determined by lot by those candidates. All disputes regarding the election of precinct committeepersons shall be determined by the credentials committees of the respective party assemblies. The names of the committeepersons elected shall be certified to the county assembly of the political party by the officers of the caucus. The county assembly shall ratify the list of committeepersons. The presiding officer and secretary of the county assembly shall file a certified list of the names and addresses, by precinct, of those persons elected as precinct committeepersons with the county clerk and recorder within four days after the date of the county assembly.

(b) Within ten days after the boundaries of an existing precinct are changed or a new precinct is created, the members of the party county central committee vacancy committee shall select members to fill the vacancies for precinct committeepersons.

(c) Repealed.

(d) The person elected as committeeperson at the caucus shall assume the office immediately following the caucus. Causes for removal of the elected committeeperson from office shall include, but not be limited to, the following:

(I) In the case of removal by the credentials committee at the county assembly, the person does not meet the qualifications for committeeperson;

(II) In the case of removal by the county central committee, the person has moved from the precinct or has changed affiliation.

(III) Repealed.

(3) and (4) Repealed.

Source: L. 80: Entire article R&RE, p. 315, § 1, effective January 1, 1981. **L. 81:** (2)(a) and (2)(b) amended, (2)(c) and (2)(d) added, and (3) and (4) repealed, pp. 304, 309, §§ 1, 12, effective January 1, 1982. **L. 82:** (2)(a) amended, p. 216, § 1, effective February 19. **L. 85:** (1) amended, p. 248, § 3, effective July 1. **L. 90:** (1) amended, p. 303, § 3, effective June 8. **L. 91:** (2)(a) amended, p. 618, § 29, effective May 1. **L. 92:** Entire article amended, p. 665, § 3, effective January 1, 1993. **L. 93:** (2)(c) and (2)(d)(III) repealed, p. 1404, § 28, effective July 1. **L. 94:** (2)(a) amended, p. 1768, § 23, effective January 1, 1995. **L. 95:** (2)(a) amended, p. 828, § 24, effective July 1. **L. 98:** (1) amended, p. 633, § 4, effective May 6. **L. 99:** (1) and (2)(a) amended, p. 761, § 16, effective May 20; (1) amended, p. 100, § 1, effective August 4; (2)(d)(II) amended, p. 159, § 6, effective August 4. **L. 2001:** (1) amended, p. 1001, § 2, effective August 8. **L. 2002:** (1)(a) amended, p. 132, § 2, effective eMarch 27. **L. 2005:** (1)(a)(I) amended, p. 1398, § 12, effective June 6; (1)(a)(I) amended, p. 1433, § 12, effective June 6. **L. 2007:** (1)(a)(I) amended and (1)(a)(III) added, p. 1988, § 3, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-206 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) Amendments to subsection (1) by Senate Bill 99-025 and Senate Bill 99-027 were harmonized.

(3) Subsection (1)(a)(II)(B) provided for the repeal of subsection (1)(a)(II), effective July 1, 2002. (See L. 2002, p. 132.)

ANNOTATION

Applied in Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

1-3-103. Party committees. (1) (a) At its own precinct caucus, each political party shall elect two committeepersons for each election precinct as provided in section 1-3-102. Each committeeperson shall hold the position for a term of two years after the date of the election, and each shall serve until a successor is duly elected or appointed and commences the term of office. In case of a vacancy in the office of precinct committeeperson, the members of the county central committee vacancy committee shall select a successor to fill the vacancy. The person selected shall be a resident of the precinct in which the vacancy occurred.

(b) (I) All of the precinct committeepersons of the political party in the county, all of the district captains and co-captains, if any, of the political party in the county, and the county party officers selected pursuant to paragraph (c) of this subsection (1), together with the elected county public officials, the state senators and representatives, the United States senators and representatives, the elected state public officials, and the district attorney, who are members of the party and who reside within the county, shall constitute the membership of the county central committee, but the multiple office shall not entitle a person to more than one vote, excluding proxies.

(II) In counties which have adopted a five-commissioner board or county home rule, such county central committee shall be constituted of all the precinct committeepersons from precincts in the county commissioner district, together with the officers selected pursuant to this subparagraph (II), and the state senators and representatives and the district attorney who are members of the party and who reside within the district. Such county central committee shall meet on the same date and select a chairperson and vice-chairperson in the same manner as the county central committee. Such central committee shall select a vacancy committee for the purpose of filling vacancies in the office of county commissioner held by members of the political party.

(c) Each county central committee shall meet on a date which falls between February 1 and February 15 of the odd-numbered years to organize by selecting a chairperson, a vice-chairperson, and a secretary and any other officers provided for in the county rules and shall select a vacancy committee authorized to

fill vacancies in the county central committee and the offices held by members of the county central committee and shall select a separate vacancy committee to fill vacancies in the office of county commissioner held by members of the political party.

(d) Except as provided in paragraph (d) of subsection (4), paragraph (b) of subsection (5), and paragraph (b) of subsection (6) of this section, all other central committees shall meet on a date which falls between February 15 and April 1 of the odd-numbered years to organize by electing a chairperson, a vice-chairperson, and a secretary and shall select a vacancy committee authorized to fill vacancies in the central committees and in district and state offices held by members of the political party.

(e) Repealed.

(2) (a) The state central committee shall consist of the chairpersons and vice-chairpersons of the several party county central committees, together with the elected United States senators, representatives in congress, governor, lieutenant governor, secretary of state, state treasurer, attorney general, members of the board of regents, members of the state board of education, state senators, and state representatives, and any additional members as provided for by the state central committee bylaws. Two additional members shall be allowed the political party from each county that polled at least ten thousand votes at the last preceding general election for its candidate for governor or president of the United States. Two additional members shall be allowed for each additional ten thousand votes or major portion thereof so polled in the county. The additional members shall be elected by the county central committee of the political party.

(b) Within ten days after the adjournment of the organizational meeting of the state central committee of any political party, the chairperson and secretary of the state central committee shall file under oath with the secretary of state a full and complete roll of the membership of the state central committee.

(3) (a) The chairpersons and vice-chairpersons of the several party county central committees entirely or partially, who reside within each congressional district, together with the elected congressperson, the elected state board of education member of the party for the congressional district, the elected board of regents member of the party for the congressional district, and the state senators and representatives of the party who reside within the congressional district, shall constitute the party congressional central committee.

(b) If, in any county, or portion thereof, within the congressional district, any political party has polled at least ten thousand votes at the last preceding general election for its candidate for governor or president of the United States, the county shall be entitled to two additional members of the congressional central committee of the political party. Two additional members shall be allowed for each additional ten thousand votes or major portion thereof so polled by the party in the county or portion thereof within the congressional district. The additional members shall reside within the congressional district and shall be elected by those members of the county central committee of the political party who reside within the congressional district. The additional members shall be as equally divided as possible between male and female.

(c) Other members of the congressional central committees may be provided for by the state central committee bylaws.

(d) Each party congressional district central committee shall elect its own chairperson, vice-chairperson, and secretary and shall adopt its own bylaws concerning its conduct, which shall include but need not be limited to requirements for eligibility to vote in the congressional district assembly.

(e) The chairperson of each party congressional district central committee shall fix the time and place of each meeting of the committee, shall fix the time and place of its congressional district assembly, and shall preside over each meeting and the congressional district assembly.

(4) (a) The chairpersons and vice-chairpersons of the several party county central committees, who reside within each judicial district, together with the elected district attorney of the party for the judicial district, shall constitute the judicial district central committee.

(b) If, in any county within the judicial district, any political party has polled at least ten thousand votes at the last preceding general election for its candidate for governor or president of the United States, the county shall be entitled to two additional members of the judicial district central committee of the political party. Two additional members shall be allowed for each additional ten thousand votes or major portion thereof polled in the county. The additional members shall be elected by those members of the county central committee of the political party who reside within the judicial district. The additional members shall be as equally divided as possible between male and female.

(c) Other members of the judicial district central committee may be provided for by the state central committee bylaws.

(d) When a judicial district is comprised of one county or a portion of one county, the judicial district central committee shall consist of all elected precinct committeepersons, the elected district attorney, and the chairperson, the vice-chairperson, and the secretary of the county central committee, all of whom are of the party and reside in that judicial district. The committee shall meet on the same date and select a chairperson and vice-chairperson in the same manner as a party county central committee.

(e) Each party judicial district central committee shall elect its own chairperson, vice-chairperson, and secretary and shall adopt its own bylaws concerning its conduct, which shall include but need not be limited to requirements for eligibility to vote in the judicial district assembly.

(f) The chairperson of each party judicial district central committee shall fix the time and place of each meeting of the committee, shall fix the time and place of its district assembly, and shall preside over each meeting and the judicial district assembly.

(5) (a) When a state senatorial district is comprised of one or more whole counties or of a part of one county and all or a part of one or more other counties, a state senatorial central committee shall consist of the chairpersons, vice-chairpersons, and secretary of the several party county central committees, who reside within the state senatorial district. If any of those officers do not reside in the state senatorial district, replacements shall be provided who do reside in the district. The state senatorial central committee shall also include the elected state senator of the party for the state senatorial district, the state representatives of the party who reside within the state senatorial district, and a chairperson, vice-chairperson, and secretary of the state senatorial central committee, who may or may not be elected from among, but shall be elected by, the chairpersons, vice-chairpersons, and secretary, the state senator, and the state representatives.

(b) When a state senatorial district is comprised of a portion of one county, a state senatorial central committee shall consist of the elected precinct committeepersons, the elected state senator, the elected state representatives, and a chairperson, vice-chairperson, and secretary of the state senatorial central committee, all of whom are of the party and reside in that senatorial district. In addition, the chairperson, vice-chairperson, and secretary of the party county central committee shall be members of each state senatorial central committee, who reside within the senatorial district. The chairperson, vice-chairperson, and secretary of the state senatorial central committee may or may not be elected from among, but shall be elected by, the state senatorial central committee. The committee shall meet on the same date and select a chairperson and vice-chairperson in the same manner as the party county central committee.

(6) (a) When a state representative district is comprised of one or more whole counties or of a part of one county and all or a part of one or more other counties, a state representative central committee shall consist of the chairpersons, vice-chairpersons, and secretary of the several party county central committees, who reside within the state representative district. If any of those officers do not reside in the state representative district, replacements shall be provided who do reside in the district. The state representative central committee shall also include the elected state representative of the party for the state representative district, each state senator of the party who resides within that representative district, and a chairperson, vice-chairperson, and secretary of the state representative central committee, who may or may not be elected from among, but shall be elected by, the chairpersons, vice-chairpersons, and

secretary, the state representative, and the state senators.

(b) When a state representative district is comprised of a portion of one county, a state representative central committee shall consist of the elected precinct committeepersons, the elected state representative, the elected state senators, and a chairperson, vice-chairperson, and secretary of the state representative central committee, all of whom are of the party and reside in that state representative district. In addition, the chairperson, vice-chairperson, and secretary of the party county central committee, who reside within the state representative district, shall be members of the state representative central committee. The chairperson, vice-chairperson, and secretary of the state representative district central committee may or may not be elected from among, but shall be elected by, the state representative central committee. The committee shall meet on the same date and select a chairperson and vice-chairperson in the same manner as the party county central committee.

(7) No later than thirty days after the organizational meetings authorized by this section, the secretary of each party central committee prescribed by this section shall file with the secretary of state a list of the names, addresses, and telephone numbers of each of the officers elected, together with a list of the names, addresses, and telephone numbers of the vacancy committee selected.

(8) All references to elected public officials in this article shall include those public officials appointed to fill vacancies in elective offices.

(9) (a) No later than ninety days after the organization of the state central committees of the two major political parties in each odd-numbered year, each committee shall adopt in its bylaws or rules its general guidelines and regulations for all county party matters. Such bylaws or rules shall establish a procedure for the selection of delegates to any party assembly that is consistent with party practice. Any method under such procedure for choosing or allocating delegates in a county based on the number of votes cast at an election for a particular candidate shall be uniform among the counties so that all types of ballots are counted or not counted for purposes of determining the number of votes cast. Any county central committee may adopt its own rules and regulations in conformance with those of the state central committee. In the absence of county rules pertaining to specific items, the party's state central committee's guidelines, rules, and regulations shall apply. Each state central committee shall file its party's bylaws or rules with the secretary of state no later than the first Monday in February in each even-numbered year and, if filed prior to that date, the bylaws or rules may be amended until that date. No bylaw or rule may be filed or amended after the first Monday in February in each even-numbered year. Where the bylaws or rules are not filed in accordance with this section, the party's state central committee, as well as the party's county central committee, shall be subject to the code through the general election of the same year.

(b) Repealed.

(10) (a) Each party state senatorial central committee and each party state representative central committee shall elect its own chairperson, vice-chairperson, and secretary and adopt its own bylaws concerning its conduct, which shall include, but not be limited to, the listing of requirements for eligibility to vote in the state senatorial or state representative district assembly.

(b) The chairperson of each party state senatorial central committee and each party state representative central committee shall fix the time and place of meetings of the central committee, shall fix the time and place of its district assembly, and shall preside over the meetings and district assembly.

Source: L. 80: Entire article R&RE, pp. 316, 421, §§ 1, 1, effective January 1, 1981. **L. 81:** (1)(a), (1)(b), (4)(d), (5)(b), and (6)(b) amended, p. 305, § 2, effective January 1, 1982. **L. 82:** (1)(e) added, p. 218, § 1, effective April 2. **L. 83:** (1)(b)(II), (1)(c), (1)(d), and (7) amended, p. 360, § 1, effective May 20. **L. 85:** (3)(b) and (4)(b) amended and (3)(d), (3)(e), (4)(e), and (4)(f) added, pp. 255, 256, §§ 5, 6, effective May 31. **L. 87:** (5) and (6) amended, p. 284, § 5, effective June 26. **L. 89:** (9) amended, p. 313, § 1, effective April 12; (3)(a), (4)(a), (5), and (6) amended, p. 301, § 5, effective May 9. **L. 91:** (5)(a), (6)(a), and (9) amended, p. 619, § 30, effective May 1. **L. 92:** (9) amended, p. 591, § 2, effective April 10; entire article amended, p. 666, § 3, effective January 1, 1993. **L. 93:** (2)(b) amended, p. 1765, § 2, effective June 6. **L. 96:** (9) amended, p. 1738, § 19, effective July 1. **L. 98:** (9) amended, p. 814, § 1, effective August 5. **L. 99:** (7) and (9) amended, p. 761, § 17, effective May 20.

L. 2002: (9) amended, p. 132, § 3, effective March 27.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-108 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) Subsection (1)(e) provided for the repeal of subsection (1)(e), effective January 5, 1985. (See L. 82, p. 218.)

(3) Amendments to subsection (9) by Senate Bill 92-194 were harmonized with House Bill 92-1333.

(4) Subsection (9)(b)(III) provided for the repeal of subsection (9)(b), effective July 1, 2002. (See L. 2002, p. 132.)

Cross references: For state senatorial districts, see § 2-2-102; for state representative districts, see § 2-2-202.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 199.

C.J.S. See 29 C.J.S., Elections, § 154.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

It is the duty of the state central committee of a political party to recognize a county chairman as one of its members. People ex rel. Vick Roy v. Republican State Cent. Comm., 75 Colo. 312, 226 P. 656 (1924).

Filing roll of members not condition precedent to determine factional disputes. The filing of a roll of members of the state central committee of a political party with the secretary of state, as required by this section, is not a condition precedent to the exercise by the committee of the power to determine factional disputes in subordinate divisions of the party. People ex rel. Lowry v. Dist. Court, 32 Colo. 15, 74 P. 896 (1903).

Faction estopped to deny authority. Where it appears that a faction challenging the power of the committee upon that ground has heretofore invoked the jurisdiction of the committee to act upon the controversy, it is estopped to deny the committee's authority. People ex rel. Lowry v. Dist. Court, 32 Colo. 15, 74 P. 896 (1903).

1-3-104. Political party vacancy committees. All vacancies in state, congressional, judicial, senatorial, representative, or county commissioner party central committees shall be filled by the respective party county central committees pursuant to section 1-3-103.

Source: L. 80: Entire article R&RE, p. 320, § 1, effective January 1, 1981. **L. 92:** Entire article amended, p. 671, § 3, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-110 (2) as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 167.

1-3-105. Powers of central committees. (1) Subject to the provisions of section 1-3-106 (2), the state central committee has the power to make all rules for party government.

(2) Any state, congressional, judicial, senatorial, representative, county commissioner, or county central committee may select a managing or executive committee and may authorize the executive committee to exercise any and all powers conferred upon the respective central committees.

Source: L. 80: Entire article R&RE, p. 320, § 1, effective January 1, 1981. **L. 92:** Entire article amended, p. 671, § 3, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-110 (1) and (3) as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 169.

1-3-106. Control of party controversies. (1) The state central committee of any political party in this state has full power to pass upon and determine all controversies concerning the regularity of the organization of that party within any congressional, judicial, senatorial, representative, or county commissioner district or within any county and also concerning the right to the use of the party name. The state central committee may make rules governing the method of passing upon and determining controversies as it deems best, unless the rules have been provided by the state convention of the party as provided in subsection (2) of this section. All determinations upon the part of the state central committee shall be final.

(2) From the time the state convention of the party convenes until the time of its final adjournment, the state convention has all the powers given by subsection (1) of this section to the state central committee, but not otherwise. The state convention of the party may also provide rules that shall govern the state central committee in the exercise of the powers conferred upon the committee in subsection (1) of this section.

Source: L. 80: Entire article R&RE, p. 320, § 1, effective January 1, 1981. **L. 92:** Entire article amended, p. 671, § 3, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-109 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For congressional districts, see § 2-1-101.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 202.

C.J.S. See 29 C.J.S., Elections, § 169.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The power granted to the state central committee of a political party to determine party controversies is constitutional. This grant of power was not in violation of the former provisions concerning district court jurisdiction, now § 9 of art. VI, Colo. Const., on the grounds that it divests the district courts of jurisdiction in such causes and confers it upon another tribunal, as the district courts have no such jurisdiction in the absence of a statute conferring it. People ex rel. Lowry v. Dist. Court, 32 Colo. 15, 74 P. 896 (1903).

And the committee, or the state convention while in session, has exclusive jurisdiction to determine all controversies between factions of the same party as to which is the regular organization and entitled to the party name and to make and file nominations for office under the party name within any district, county, or city of the state. People ex rel. Lowry v. Dist. Court, 32 Colo. 15, 74 P. 896 (1903).

Factional disputes of subordinate divisions of a political party must be referred to the state central committee of that political party. People ex rel. Lowry v. Dist. Court, 32 Colo. 15, 74 P. 896 (1903).

And the courts have no jurisdiction in such factional and internal disputes between members of the same party although the committee may not have passed thereon. People ex rel. Lowry v. Dist. Court, 32 Colo. 15, 74 P. 896 (1903).

And prohibition lies to prevent court from taking further action. Where a district court is proceeding without jurisdiction to determine a factional dispute between members of the same political party, and the parties objecting to such proceeding have no speedy and adequate remedy at law, on petition to supreme court a writ of prohibition will issue to prevent the court from taking any further action in the matter except to dismiss the proceedings. People ex rel. Lowry v. Dist. Court, 32 Colo. 15, 74 P. 896 (1903).

1-3-107. Party platforms. (1) Any assembly or convention of any political party may formulate, adopt, and publish a platform for the political subdivision which the assembly or convention represents.

(2) Repealed.

Source: L. 80: Entire article R&RE, p. 321, § 1, effective January 1, 1981. **L. 85:** (2) repealed, p. 270, § 37, effective May 31. **L. 92:** Entire article amended, p. 672, § 3, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-111 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-3-108. Use of party name. No person, group of persons, or organization shall use the name or address of a political party, in any manner, unless the person, group of persons, or organization has received permission to use the name or address from the executive committee of the political party.

Source: L. 87: Entire section added, p. 285, § 6, effective June 26. **L. 92:** Entire article amended, p. 672, § 3, effective January 1, 1993.

ARTICLE 4

Elections - Access to Ballot by Candidates

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980. This article was numbered as articles 10 and 11 of chapter 49, C.R.S. 1963. For additional historical information concerning the repeal and reenactment of articles 1 to 13 of this title in 1980, see the editor's note immediately following the title heading for this title.

Cross references: For election offenses relating to access to ballot by candidates, see part 4 of article 13 of this title.

Law reviews: For article, "Constitutional Law", which discusses a Tenth Circuit decision dealing with minor party ballot access, see 61 Den. L.J. 217 (1984); for article, "Constitutional Law", which discusses a Tenth Circuit decision dealing with minor party ballot access, see 62 Den. U. L. Rev. 101 (1985).

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PART 1

PRIMARY ELECTIONS

1-4-101. Primary election nominations made. (1) Except as provided in section 1-4-104.5, a primary election shall be held at the regular polling places in each precinct on the second Tuesday of August in even-numbered years to nominate candidates of political parties to be voted for at the succeeding general election. Except as provided by section 1-4-1304 (1.5), only a major political party, as defined in section 1-1-104 (22), shall be entitled to nominate candidates in a primary election.

(2) Each political party that is entitled to participate in the primary election shall have a separate party ballot. The primary election of all political parties shall be held at the same time and at the same polling places and shall be conducted by the same election officials.

(3) All nominations by major political parties for candidates for United States senator, representative in congress, all elective state, district, and county officers, and members of the general assembly shall be made by primary elections; except that, for general elections occurring after January 1, 2001, nominations by major political parties for candidates for lieutenant governor shall not be made by primary elections and shall be made pursuant to section 1-4-502 (3). Neither the secretary of state nor any county clerk and recorder shall place on the official general election ballot the name of any person as a candidate of any major political party who has not been nominated in accordance with the provisions of this article, or who has not been affiliated with the major political party for at least twelve months unless otherwise provided by law, or who does not meet residency requirements for the office, if any. The information found on the voter registration record of the county of current or previous residence of the person seeking to be placed on the ballot is admissible as prima facie evidence of compliance with this article.

(4) Except as otherwise provided in this code, all primary elections shall be conducted in the same manner as general elections insofar as the general election provisions are applicable, and the election officers for primary elections have the same powers and shall perform the same duties as those provided by law for general elections.

(5) All expenses incurred in the preparation or conduct of the primary election shall be paid out of the treasury of the county or state, as the case may be, in the same manner as for general elections.

Source: L. 80: Entire article R&RE, p. 321, § 1, effective January 1, 1981. **L. 81:** (1) amended, p. 307, § 3, effective January 1, 1982. **L. 83:** (3) amended, p. 350, § 9, effective July 1. **L. 85:** (1) amended, p. 248, § 4, effective July 1. **L. 86:** (3) amended, p. 396, § 6, effective April 17. **L. 88:** (3) amended, p. 293, § 1, effective May 29. **L. 89:** (3) amended, p. 314, § 2, effective April 12. **L. 91:** (3) amended, p. 620, § 31, effective May 1. **L. 92:** Entire part amended, p. 672, § 4, effective January 1, 1993. **L. 98:** (1) to (3) amended, p. 256, § 4, effective April 13. **L. 99:** (3) amended, p. 159, § 7, effective August 4. **L. 2000:** (3) amended, p. 2027, § 1, effective August 2. **L. 2003:** (1) and (2) amended, p. 1309, § 4, effective April 22. **L. 2009:** (1) amended, (HB 09-1015), ch. 259, p. 1183, § 1, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are the same as those contained in 1-14-202 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) Subsection (1) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

Cross references: For the definition of "political party", see § 1-1-104 (25); for the conduct of primary elections, see part 2 of article 7 of this title.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 203, 204, 227.

C.J.S. See 29 C.J.S., Elections, § 200.

The primary election law was intended to and did take from political bosses the right to control in the nominating of candidates for office; that it had surrounded the primary election with all the safeguards provided for general elections; and that the persons who are chosen by the voters to represent them, in matters preliminary to nominations, are entitled to hold the position for which they have been so chosen during the term prescribed by law. People ex rel. Vick Roy v. Republican State Cent. Comm., 75 Colo. 312, 226 P. 656 (1924) (concurring opinion) (decided under former law).

Compliance with residence requirement can be proven by means other than the voter registration page. Romero v. Sandoval, 685 P.2d 772 (Colo. 1984).

1-4-102. Methods of placing names on primary ballot. All candidates for nominations to be made at any primary election shall be placed on the primary election ballot either by certificate of designation by assembly or by petition.

Source: L. 80: Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-203 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-4-103. Order of names on primary ballot. Candidates designated and certified by assembly for a particular office shall be placed on the primary election ballot in the order of the vote received at the assembly. The candidate receiving the highest vote shall be placed first in order on the ballot, followed by the candidate receiving the next highest vote. To qualify for placement on the primary election ballot, a candidate must receive thirty percent or more of the votes of the assembly. The names of two or more candidates receiving an equal number of votes for designation by assembly shall be placed on the primary ballot in the order determined by lot in accordance with section 1-4-601 (2). Candidates by petition for any particular office shall follow assembly candidates and shall be placed on the primary election ballot in an order established by lot.

Source: L. 80: Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 86:** Entire section amended, p. 1214, § 1, effective May 30. **L. 87:** Entire section amended, p. 286, § 7, effective June 26. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-14-209 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 218.

The fact that several candidates have been designated by the party assembly does not preclude a petition candidate from having his petition accepted by the secretary of state (or county clerk, as the case may be) and his name listed as a candidate for his party's nomination on the primary ballot. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968) (decided under former law).

Petitioner's name allowed to appear on ballot. Where the secretary of state accepted and approved the petition filed by petitioner and no objections were filed as to the validity of his petition, there was no issue in reference to his right to appear on the primary ballot as a candidate by petition and his name did appear. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968) (decided under former law).

1-4-104. Party nominees. Candidates voted on for offices at primary elections who receive a plurality of the votes cast shall be the respective party nominees for the respective offices. If more than one office of the same kind is to be filled, the number of candidates equal to the number of offices to be filled receiving the highest number of votes shall be the nominees of the political party for the offices.

The names of the nominees shall be printed on the official ballot prepared for the ensuing general election.

Source: L. 80: Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993. **L. 98:** Entire section amended, p. 256, § 5, effective April 13. **L. 2003:** Entire section amended, p. 1309, § 5, effective April 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-15-109 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-4-104.5. Primary election canceled - when. (1) If, at the close of business on the sixtieth day before the primary election, there is not more than one candidate for any political party who has been nominated in accordance with this article or who has filed a write-in candidate affidavit of intent pursuant to section 1-4-1101 for any office on the primary election ballot, the designated election official may cancel the primary election and declare each candidate the party nominee for that office at the general election. For purposes of other applicable law, such nominee shall be deemed a candidate in and the winner of the primary election. The name of each nominee shall be printed on the official ballot prepared for the ensuing general election.

(2) If a major political party has more than one candidate nominated for any office on the primary election ballot, the primary election shall be conducted as provided in section 1-4-101.

(3) If, at the close of business on the sixtieth day before the primary election, there is not more than one candidate for each major political party who has been nominated in accordance with this article for any office on the primary election ballot and a minor political party has more than one candidate nominated for any such office, the primary election shall be conducted as provided in section 1-4-101 for the nomination of the minor political party candidate only.

Source: L. 2009: Entire section added, (HB 09-1015), ch. 259, p. 1183, § 2, effective August 5.

Editor's note: This section was added in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-4-105. Defeated candidate ineligible. No person who has been defeated as a candidate in a primary election shall be eligible for election to the same office by ballot or as a write-in candidate in the next general election unless the party vacancy committee nominates that person.

Source: L. 80: Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 91:** Entire section amended, p. 620, § 32, effective May 1. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-110 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 204.

C.J.S. See 29 C.J.S., Elections, § 240.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

A defeated candidate in a primary election is not barred from being named as a candidate to fill a vacancy occasioned by the death of the regular nominee for the office. Armstrong v. Simonson, 84 Colo. 472, 271 P. 627 (1928).

PART 2

GENERAL ELECTIONS

1-4-201. Time of holding general election. A general election shall be held in all precincts in this state on the Tuesday succeeding the first Monday of November in every even-numbered year.

Source: L. 80: Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-16-101 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For the hours of voting, see § 1-7-101.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 1; 26 Am. Jur.2d, Elections, §§ 265-267.

C.J.S. See 29 C.J.S., Elections, §§ 141, 142.

Law reviews. For note, "Equitable Supervision of Elections", see 9 Rocky Mt. L. Rev. 279 (1937).

1-4-202. United States senators. At the general election in 1984 and every six years thereafter, one United States senator shall be elected for the next term; and, at the general election in 1986 and every six years thereafter, one United States senator shall be elected for the next term.

Source: L. 80: Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-16-104 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Law reviews. For article, "The Constitutionality of Term Limitation", see 19 Colo. Law. 2193 (1990).

1-4-203. Representatives in congress. At every general election, the number of representatives in congress to which the state is entitled shall be elected.

Source: L. 80: Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-16-105 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For congressional districts, see § 2-1-101.

ANNOTATION

Law reviews. For article, "Reapportionment, The Courts, and the Voting Rights Act: A Resegregation of the Political Process?", see 56 U. Colo. L. Rev. 1 (1984). For article, "The Constitutionality of Term Limitation", see 19 Colo. Law. 2193 (1990).

1-4-204. State and district officers. At the general election in 1982 and every fourth year thereafter, the following state officers shall be elected: One governor, one lieutenant governor, one secretary of state, one state treasurer, and one attorney general. The lieutenant governor shall be elected jointly with the governor. At every general election, the number of members of the state house of representatives to which each representative district is entitled shall be elected in that district. Candidates for the offices of regents of the university of Colorado, state senators, members of the state board of education, and district attorneys shall be voted on at the general election immediately prior to the expiration of the regular terms for those offices.

Source: L. 80: Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-16-102 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For terms of office for regents of the university of Colorado, see § 12 of art. IX, Colo. Const.; for terms of office for state senators, see § 2-2-103; for terms of office for members of the state board of education, see § 22-2-105; for terms of office for district attorneys, see § 13 of art. VI, Colo. Const.; for the election of presidential electors, see § 1-4-301; for the election of state officers, see §§ 1, 3, and 4 of art. IV, Colo. Const.; for the election of district judges, see §§ 10 and 11 of art. VI, Colo. Const.; for the election of district attorneys, see § 13 of art. VI, Colo. Const.; for the division of county into districts for the purpose of electing county commissioners, see § 30-10-306.

ANNOTATION

Law reviews. For article, "The Constitutionality of Term Limitation", see 19 Colo. Law. 2193 (1990).

1-4-205. County commissioners. (1) (a) Members of the board of county commissioners shall be elected in each county, excluding a city and county, for a term of four years.

(b) No person shall be a county commissioner unless that person is a registered elector and has resided in the district for at least one year prior to the election.

(2) Each county having a population of less than seventy thousand shall have three county commissioners, any two of whom shall constitute a quorum for the transaction of business. One commissioner shall be elected at the general election in 1982 and every four years thereafter, and two commissioners shall be elected at the general election in 1984 and every four years thereafter.

(3) (a) In each county having a population of seventy thousand or more, the board of county commissioners may consist either of three members, any two of whom shall constitute a quorum for the transaction of business, or of five members, any three of whom shall constitute a quorum for the transaction of business.

(b) If the board consists of three commissioners, they shall be elected as provided in subsection (2) of this section and as provided in section 30-10-306.7 (5), C.R.S.

(c) In any county having a population of seventy thousand or more, the membership of the board of county commissioners may be increased from three to five members pursuant to section 30-10-306.5, C.R.S., or decreased from five to three members pursuant to section 30-10-306.7 (2) (a) (II), C.R.S.

Source: L. 80: Entire article R&RE, p. 323, § 1, effective January 1, 1981. **L. 88:** (3)(b) and (3)(c) amended, p. 1113, § 3, effective April 9; (1) amended, p. 297, § 1, effective January 1, 1989. **L. 92:** Entire part amended, p. 674, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-16-106 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For election and terms of county officers, see §§ 6 and 8 of art. XIV, Colo. Const.; for statutes relating to county officers generally, see article 10 of title 30.

ANNOTATION

Law reviews. For article, "Colorado's Program to Improve Court Administration", see 38 Dicta 1 (1961).

Courts would not inquire into county's increase in commissioners. Where a county entitled to increase the number of its commissioners from three to five, did make such increase, and the people of the county acquiesced therein and thereafter elected successors to the added members of the board so as to keep the number at five, in an action brought by private individuals twenty years after such increase was made to test the right of the successors of the added members of the board to the office, the courts will not inquire into the regularity of the proceeding making such increase. People ex rel. Lankford v. Long, 32 Colo. 486, 77 P. 251 (1904).

And court action was not maintainable. In an action against two county commissioners jointly to test their right to hold their offices on the ground that the board was illegally increased from three to five members and that respondents were the successors in office of the two illegally added members of the board, where it appears that one of the respondents was not a successor of either of the added members of the board, a joint action could not be maintained against respondents. People ex rel. Lankford v. Long, 32 Colo. 486, 77 P. 251 (1904).

1-4-206. Other county officers. At the general election in 1982 and every four years thereafter, one county clerk and recorder, who shall be ex officio recorder of deeds and clerk of the board of county commissioners; one sheriff qualified pursuant to section 30-10-501.5, C.R.S.; one coroner qualified pursuant to section 30-10-601.5, C.R.S.; one treasurer, who shall be collector of taxes; one county superintendent of schools, unless the office of county superintendent of schools is abolished at a general election; one county surveyor; and one county assessor shall be elected in each county, excluding a city and county. The term of office of all such officials shall be four years.

Source: L. 80: Entire article R&RE, p. 323, § 1, effective January 1, 1981. **L. 90:** Entire section amended, p. 304, § 5, effective June 8. **L. 92:** Entire part amended, p. 674, § 4, effective January 1, 1993. **L. 2003:** Entire section amended, p. 1830, § 1, effective August 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-16-107 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For county officers, election, term, and salary, see § 8 of art. XIV, Colo. Const.

PART 3

PRESIDENTIAL ELECTIONS

1-4-301. Time of holding presidential elections. At the general election in 1984 and every fourth year thereafter, the number of presidential electors to which the state is entitled shall be elected.

Source: L. 80: Entire article R&RE, p. 323, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 674, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-16-103 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-4-302. Party nominations to be made by convention. (1) Any convention of delegates of a political party or any committee authorized by resolution of the convention may nominate presidential electors.

(2) All nominations for vacancies for presidential electors made by the convention or a committee authorized by the convention shall be certified by affidavit of the presiding officer and secretary of the convention or committee.

Source: L. 80: Entire article R&RE, p. 323, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 675, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-14-107 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For methods of nomination, see §§ 1-4-502 and 1-4-503; for protests of designations and nominations, see § 1-4-909.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 225. **C.J.S.** See 29 C.J.S., Elections, § 185.

1-4-303. Nomination of unaffiliated candidates. (1) No later than one hundred forty days before the general election, a person who desires to be an unaffiliated candidate for the office of president or vice president of the United States shall submit to the secretary of state either a notarized candidate's statement of intent together with a nonrefundable filing fee of five hundred dollars or a petition for nomination pursuant to the provisions of section 1-4-802 and shall include either on the petition or with the filing fee the names of registered electors who are thus nominated as presidential electors. The acceptance of each of the electors shall be endorsed as appended to the first or last page of the nominating petition or the filing fee.

(2) Notwithstanding the amount specified for the fee in subsection (1) of this section, the secretary of state by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the secretary of state by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

Source: L. 80: Entire article R&RE, p. 324, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 675, § 4, effective January 1, 1993. **L. 95:** Entire section amended, p. 885, § 1, effective July 1; entire section amended, p. 860, § 114, effective July 1. **L. 98:** Entire section amended, p. 1317, § 4, effective June 1. **L. 99:** (1) amended, p. 762, § 18, effective May 20. **L. 2005:** (1) amended, p. 1398, § 13, effective June 6; (1) amended, p. 1433, § 13, effective June 6.

Editor's note: Amendments to this section by House Bill 95-1022 and House Bill 95-1241 were harmonized.

1-4-304. Presidential electors. (1) The presidential electors shall convene at the capital of the state, in the office of the governor at the capitol building, on the first Monday after the second Wednesday in the first December following their election at the hour of 12 noon and take the oath required by law for presidential electors. If any vacancy occurs in the office of a presidential elector because of death, refusal to act, absence, or other cause, the presidential electors present shall immediately proceed to fill the vacancy in the electoral college. When all vacancies have been filled, the presidential electors shall proceed to perform the duties required of them by the constitution and laws of the United States. The vote for president and vice president shall be taken by open ballot.

(2) The secretary of state shall give notice in writing to each of the presidential electors of the time and place of the meeting at least ten days prior to the meeting.

(3) The secretary of state shall provide the presidential electors with the necessary blanks, forms, certificates, or other papers or documents required to enable them to properly perform their duties.

(4) If desired, the presidential electors may have the advice of the attorney general of the state in regard to their official duties.

(5) Each presidential elector shall vote for the presidential candidate and, by separate ballot, vice-presidential candidate who received the highest number of votes at the preceding general election in this state.

Source: L. 80: Entire article R&RE, p. 324, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 675, § 4, effective January 1, 1993. **L. 2001:** (5) amended, p. 1002, § 3, effective August 8.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are the same as those contained in 1-17-101 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 6.

1-4-305. Compensation. Every presidential elector of this state who attends and votes for those officers at the time and place appointed by law is entitled to receive the sum of five dollars per day for each day's attendance at the election and fifteen cents per mile for each mile traveled in going to and returning from the place where the electors meet, by the most usual route traveled, to be paid out of the general fund. The controller shall audit the amount and draw a warrant for the same.

Source: L. 80: Entire article R&RE, p. 324, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 675, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are the same as those contained in 1-17-102 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

PART 4

CONGRESSIONAL VACANCY ELECTIONS

1-4-401. Time of congressional vacancy elections. (1) Except as provided in section 1-4-401.5, when any vacancy occurs in the office of representative in congress from this state, the governor shall set a day to hold an election to fill the vacancy and cause notice of the election to be given as required in part 2 of article 5 of this title; but no congressional vacancy election shall be held during the ninety days prior to a general election or less than seventy-five days or more than ninety days after the vacancy occurs.

(2) A congressional vacancy election shall be conducted and the results thereof surveyed and certified in all respects as nearly as practicable in like manner as for general elections, except as otherwise provided in this code.

Source: L. 80: Entire article R&RE, p. 324, § 1, effective January 1, 1981. **L. 83:** (1) amended, p. 350, § 10, effective July 1. **L. 92:** Entire part amended, p. 676, § 4, effective January 1, 1993. **L. 93:** (1) amended, p. 1765, § 3, effective June 6. **L. 95:** (1) amended, p. 829, § 25, effective July 1. **L. 2008:** (1) amended, p. 409, § 2, effective August 5.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-11-101 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For registration for congressional vacancy elections, see § 1-2-210; for the power of the county central committee to fill vacancies, see § 1-3-104; for filling vacancies to serve as judges of elections, see § 1-6-113.

ANNOTATION

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 29 C.J.S., Elections, §§ 3, 134.

1-4-401.5. Special congressional vacancy election - continuity in representation - rules. (1) In the event of a declaration by the speaker of the United States house of representatives pursuant to 2 U.S.C. sec. 8 (b) that vacancies exist in more than one hundred of the offices of representatives in congress and where one or more of those vacancies is in the office of representative in congress from this state, the governor shall issue a proclamation setting a day to hold a special congressional vacancy election. The special congressional vacancy election shall be conducted on a Tuesday not more than forty-nine days after the date of the declaration, unless a general election for the office is to be held within seventy-five days of the date of the declaration.

(2) Candidates at the special congressional vacancy election shall be nominated by the party congressional central committee selected pursuant to section 1-3-103 (3) not later than ten days after the declaration by the speaker of the United States house of representatives described in subsection (1) of this section.

(3) A person who desires to be an unaffiliated candidate at the special congressional vacancy election shall submit to the secretary of state a notarized candidate's statement of intent together with a nonrefundable filing fee of five hundred dollars.

(4) The secretary of state shall have the authority to promulgate rules as may be necessary to administer and enforce any provision of this section or to adjust statutory deadlines to ensure that a special congressional vacancy election is held within the time required by this section and 2 U.S.C. sec. 8 (b).

Source: L. 2008: Entire section added, p. 409, § 3, effective August 5.

1-4-402. Nominations of political party candidates. (1) (a) Any convention of delegates of a political party or any committee authorized by resolution of the convention shall nominate a candidate to fill a vacancy in the unexpired term of a representative in congress. A state central committee, its managing or executive committee selected pursuant to section 1-3-105 (2), or any other committee designated by the bylaws of the state central committee to convene a convention to nominate a candidate to fill a vacancy in the unexpired term of a representative in congress shall convene the convention and shall provide the procedure for the nomination of the candidate. A copy of the notice of election, as set by the governor and filed with the secretary of state, shall be sent by certified mail to the state chairperson of each political party.

(b) Upon receipt of the notice, the state chairperson shall issue a call for the state convention, stating the number of delegates from each county and the method of their selection.

(c) No convention shall be held later than the twentieth day from the date of the order issued by the governor.

(d) (I) Any candidate nominated by a political party shall have been affiliated with the party for at least twelve consecutive months prior to the date the convention begins, as shown on the voter registration book of the county clerk and recorder.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (d), if a political party has established a rule regarding the length of affiliation which is necessary to be eligible for nomination by convention for the office of representative in congress, the party rule shall apply.

(2) The nomination to fill the vacancy in the unexpired term of a representative in congress made by the political party convention or a committee authorized by the convention shall be certified by affidavit of the presiding officer and secretary of the convention or committee.

Source: L. 80: Entire article R&RE, p. 325, § 1, effective January 1, 1981. **L. 83:** Entire section amended, p. 362, § 1, effective January 14; (1) amended, p. 351, § 11, effective July 1. **L. 88:** (1)(d) amended, p. 293, § 2, effective May 29. **L. 92:** Entire part amended, p. 676, § 4, effective January 1, 1993. **L. 99:** (1)(d)(II) amended, p. 160, § 8, effective August 4.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-107 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For methods of nomination, see §§ 1-4-502 and 1-4-503; for protests of designations and nominations, see § 1-4-909.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 214, 215.

C.J.S. See 29 C.J.S., Elections, § 178.

1-4-403. Nomination of unaffiliated candidates for congressional vacancy election. (1) Except as provided in section 1-4-401.5, candidates for congress at a congressional vacancy election who do not wish to affiliate with a major political party may be nominated pursuant to the provisions of section 1-4-802.

(2) Petitions must be filed by 3 p.m. on the thirtieth day after the date of the order issued by the governor.

Source: L. 80: Entire article R&RE, p. 325, § 1, effective January 1, 1981. **L. 83:** Entire section R&RE, p. 351, § 12, effective July 1. **L. 92:** Entire part amended, p. 677, § 4, effective January 1, 1993. **L. 99:** Entire section amended, p. 762, § 19, effective May 20. **L. 2008:** (1) amended, p. 410, § 4, effective August 5.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-14-107 (5) as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Annotator's note. The following annotations are taken from a case decided under former provisions similar to this section.

The provision for acceptance of a nomination is so plain that it needs no construction other than that which its own language imports. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

All nominees of minor political parties are required to file an acceptance. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

And if they do not file an acceptance within the specified time, their failure to do so is equivalent to an express declination. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

And such nomination will be treated as vacant. O'Connor v. Smithers, 45 Colo. 23, 99 P.46 (1908).

The certificate of nomination has no force or effect if not filed within the time required by law. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

Although nominee has already accepted a nomination for the same office upon another ticket, the secretary of state is justified in refusing to certify it for a place on the ballot where nominee fails to file his acceptance. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

Without an express written acceptance there is just as much a vacancy as if a nominee by convention should expressly decline to accept. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

1-4-404. Nomination and acceptance of candidate. Any person nominated in accordance with this article shall file a written acceptance with the secretary of state by mail or hand delivery. The written acceptance must be postmarked or received by the secretary of state within ten business days after the adjournment of the assembly. If an acceptance is not filed within the specified time, the candidate shall be deemed to have declined the nomination, and the nomination shall be treated as a vacancy to be filled as provided in section 1-4-1002 (3) and (5).

Source: L. 83: Entire section added, p. 351, § 13, effective July 1. **L. 92:** Entire part amended, p. 677, § 4, effective January 1, 1993. **L. 95:** Entire section amended, p. 829, § 26, effective July 1.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision for acceptance of a nomination is so plain that it needs no construction other than that which its own language imports. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

All nominees of minor political parties are required to file an acceptance. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

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Although nominee has already accepted a nomination for the same office upon another ticket, the secretary of state is justified in refusing to certify it for a place on the ballot where nominee fails to file his acceptance. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

Without an express written acceptance there is just as much a vacancy as if a nominee by convention should expressly decline to accept. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

PART 5

QUALIFICATIONS AND METHODS OF NOMINATION

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this part 5 was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 5 prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of articles 1 to 13 for 1980 and this part 5 for 1992, see the comparative tables located in the back of the index.

1-4-501. Only eligible electors eligible for office. (1) No person except an eligible elector who is at least eighteen years of age, unless another age is required by law, is eligible to hold any office in this state. No person is eligible to be a designee or candidate for office unless that person fully meets the qualifications of that office as stated in the constitution and statutes of this state on or before the date the term of that office begins. The designated election official shall not certify the name of any designee or candidate who fails to swear or affirm under oath that he or she will fully meet the qualifications of the office if elected and who is unable to provide proof that he or she meets any requirements of the office relating to registration, residence, or property ownership. The information found on the person's voter registration record is admissible as prima facie evidence of compliance with this section.

(2) No person is eligible to be a candidate for more than one office at one time; except that this subsection (2) does not apply to memberships on different special district boards. This subsection (2) shall not prohibit a candidate or elected official of any political subdivision from being a candidate or member of the board of directors of any special district or districts in which he or she is an eligible elector, unless otherwise prohibited by law.

(3) The qualification of any candidate may be challenged by an eligible elector of the political subdivision within five days after the designated election official's statement is issued that certifies the candidate to the ballot. The challenge shall be made by verified petition setting forth the facts alleged concerning the qualification of the candidate and shall be filed in the district court in the county in which the political subdivision is located. The hearing on the qualification of the candidate shall be held in not

less than five nor more than ten days after the date the election official's statement is issued that certifies the candidate to the ballot. The court shall hear the testimony and other evidence and, within forty-eight hours after the close of the hearing, determine whether the candidate meets the qualifications for the office for which the candidate has declared. Provisions of section 13-17-101, C.R.S., regarding frivolous, groundless, or vexatious actions shall apply to this section.

Source: L. 92: Entire part R&RE, p. 677, § 5, effective January 1, 1993. **L. 94:** (2) amended, p. 1153, § 12, effective July 1. **L. 95:** Entire section amended, p. 829, § 27, effective July 1.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-501 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For electors only eligible to office, see also § 6 of art. VII, Colo. Const.; for disqualifications from holding office of trust or profit, see § 4 of art. XII, Colo. Const.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 251.

C.J.S. See 29 C.J.S., Elections, § 236.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

One obtaining office illegally, guilty only of misdemeanor, not disqualified. People ex rel. Thomas v. Goddard, 8 Colo. 432, 7 P. 301 (1885).

Section does not conflict with § 4 of art. V, Colo. Const. Romero v. Sandoval, 685 P.2d 772 (Colo. 1984).

Compliance with residency requirement can be proven by means other than the voter registration page. Romero v. Sandoval, 685 P.2d 772 (Colo. 1984).

1-4-502. Methods of nomination for partisan candidates. (1) Except as otherwise provided in paragraphs (b) and (c) of subsection (3) of this section, nominations for United States senator, representative in congress, governor, lieutenant governor, secretary of state, state treasurer, attorney general, member of the state board of education, regent of the university of Colorado, member of the general assembly, district attorney, and all county officers to be elected at the general election may be made by primary election by major political parties, by petition for nomination as provided in section 1-4-802, or by a minor political party as provided in section 1-4-1304.

(2) Nominations for presidential electors to be elected at the general election and for candidates to fill vacancies to unexpired terms of representatives in congress to be elected at a congressional vacancy election may be made by a convention of a political party, or by a committee authorized by the convention, or by petition for nomination of an unaffiliated candidate as provided in parts 8 and 9 of this article.

(3) For general elections occurring after January 1, 2001:

(a) The nomination of a major political party for lieutenant governor shall be made by the party's candidate for governor. No later than seven days following the primary election, the party's candidate for governor shall select a candidate for lieutenant governor. Other nominations for the office of lieutenant governor may be made by petition for nomination of an unaffiliated candidate as provided in section 1-4-802 or by a minor political party as provided in section 1-4-1304 (2).

(b) No person shall be eligible for a major political party nomination for lieutenant governor unless such person is a registered elector and has been affiliated, for a period of at least twelve months immediately preceding the date of the nomination, with the major political party making the nomination as shown in the record books of the county clerk and recorder.

(c) Any person nominated as the candidate for lieutenant governor of a major political party pursuant to paragraph (a) of this subsection (3) shall file a written acceptance with the secretary of state

by mail or hand delivery. The written acceptance must be postmarked or received by the secretary of state within thirty days after the primary election. If an acceptance is not filed within the required time, the candidate shall be deemed to have declined the nomination, and the nomination shall be treated as a vacancy to be filled as provided in section 1-4-1002 (2.3) (a).

Source: L. 92: Entire part R&RE, p. 677, § 5, effective January 1, 1993. **L. 95:** Entire section amended, p. 860, § 115, effective July 1. **L. 98:** (1) amended, p. 256, § 6, effective April 13. **L. 2000:** (1) amended and (3) added, p. 2027, § 2, effective August 2. **L. 2003:** (1) amended, p. 1309, § 6, effective April 22.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-502 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-201 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For party nominations by convention, see § 1-4-701.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 221-225.

1-4-503. Method of nomination for nonpartisan candidates. Except as provided for the nomination of special district directors in section 32-1-804.3, C.R.S., nominations for all elected nonpartisan local government officials shall be by petition for nomination as provided in part 8 of this article.

Source: L. 92: Entire part R&RE, p. 678, § 5, effective January 1, 1993. **L. 99:** Entire section amended, p. 450, § 4, effective August 4.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-502 and 1-4-801 as said sections existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-201 and 1-14-301 as said sections existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For filing of petitions and certificates of designation of assembly, see § 1-4-604.

1-4-504. Documents are public records. All certificates of designation, petitions, certificates of nomination, acceptances, declinations, and withdrawals are public records as soon as they are filed and are open to public inspection under proper regulation. When a copy of any document is presented at the time the original is filed or at any time thereafter and a request is made to have a copy compared and certified, the officer with whom the document is filed shall forthwith compare the copy with the original on file and, if necessary, correct the copy and certify and deliver the copy to the person who presented it upon the payment in advance of the copy and certification charge. All filed documents shall be preserved pursuant to section 1-7-802, unless otherwise ordered or restrained by some court.

Source: L. 92: Entire part R&RE, p. 678, § 5, effective January 1, 1993.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-4-503 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are the same as those contained in 1-14-112 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For statutes pertaining to public records generally, see article 72 of title 24; for filing of petitions and certificates of designation of assembly, see § 1-4-604.

PART 6

POLITICAL PARTY DESIGNATION FOR PRIMARY ELECTION

1-4-601. Designation of candidates for primary election. (1) Assemblies of the major political parties may make assembly designations of candidates for nomination on the primary election ballot. An assembly shall be held no later than seventy days preceding the primary election.

(2) An assembly shall take no more than two ballots for party candidates for each office to be filled at the next general election. Every candidate receiving thirty percent or more of the votes of all duly accredited assembly delegates who are present and voting on that office shall be certified by affidavit of the presiding officer and secretary of the assembly. If no candidate receives thirty percent or more of the votes of all duly accredited assembly delegates who are present and voting, a second ballot shall be cast on all the candidates for that office. If on the second ballot no candidate receives thirty percent or more of the votes cast, the two candidates receiving the highest number of votes shall be certified as candidates for that office by the assembly. The certificate of designation by assembly shall state the name of the office for which each person is a candidate and the candidate's name and address, shall designate in not more than three words the name of the political party which the candidate represents, and shall certify that the candidate has been a member of the political party for the period of time required by party rule or by law if the party has no such rule. The candidate's affiliation, as shown on the registration books of the county clerk and recorder, is prima facie evidence of political party membership. The certificate of designation shall indicate the order of the vote received at the assembly by candidates for each office, but no assembly shall declare that any one candidate has received the nomination of the assembly. The certificate of designation shall be filed in accordance with section 1-4-604. If two or more candidates receiving designation under the provisions of this subsection (2) have received an equal number of votes, the order of certification of designation shall be determined by lot by the candidates. The assembly shall select a vacancy committee for vacancies in designation or nomination only.

(3) (a) Except as provided in paragraph (b) of this subsection (3), no later than four days after the adjournment of the assembly, each candidate designated by assembly shall file a written acceptance with the officer with whom the certificate of designation is filed. This acceptance may be transmitted by facsimile transmission. If the acceptance is transmitted by facsimile transmission, the original acceptance must also be filed and postmarked no later than ten days after the adjournment of the assembly. The acceptance shall state the candidate's name in the form in which it is to appear on the ballot. The name may include one nickname. If an acceptance is not filed within the specified time, the candidate shall be deemed to have declined the designation; except that the candidate shall not be deemed to have declined the designation and shall be included on the primary ballot if late filing of an acceptance is caused by the failure to timely file a certificate of designation or the failure to file such acceptance with such certificate of designation, as required by section 1-4-604 (1) (a).

(b) The written acceptance of a candidate nominated by assembly for any national or state office or for member of the general assembly, district attorney, or district office greater than a county office shall be filed by the presiding officer or secretary of such assembly with the certificate of designation of such assembly, as required by section 1-4-604 (1) (a). Nothing in this paragraph (b) shall prohibit a candidate from filing an acceptance of nomination directly with the officer with whom the certificate of designation is filed following written notice of such filing by the candidate to the presiding officer of the political party holding such assembly.

(4) (a) No person is eligible for designation by assembly as a candidate for nomination at any primary election unless the person has been affiliated with the political party holding the assembly for a period of at least twelve months immediately preceding the date of the assembly, as shown by the registration books of the county clerk and recorder, unless otherwise provided by party rules.

(b) Repealed.

(5) As used in this section, "political party" means a major political party as defined in section 1-1-104 (22).

Source: L. 80: Entire article R&RE, p. 326, § 1, effective January 1, 1981. **L. 81:** (1) and (3) amended, p. 310, § 1, effective March 27. **L. 83:** (2) amended, p. 352, § 16, effective July 1. **L. 87:** (2) amended, p. 286, § 8, effective June 26. **L. 88:** (4) amended, p. 294, § 3, effective May 29. **L. 89:** (4)(b) repealed, p. 314, § 3, effective April 12; (1) and (2) amended, p. 302, § 7, effective May 9. **L. 92:** Entire part amended, p. 678, § 6, effective January 1, 1993. **L. 94:** (4)(a) amended, p. 1153, § 13, effective July 1. **L. 98:** (5) added, p. 257, § 7, effective April 13. **L. 99:** (3) amended, p. 285, § 1, effective April 13; (1) and (3) amended, p. 762, § 20, effective May 20; (2) amended, p. 160, § 9, effective August 4. **L. 2005:** (1) amended, p. 1398, § 14, effective June 6; (1) amended, p. 1433, § 14, effective June 6.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-204 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) Amendments to subsection (3) by Senate Bill 99-025 and House Bill 99-1225 were harmonized.

Cross references: For the definition of assembly, see § 1-1-104 (1.3); for designation of candidates by petition, see § 1-4-603.

ANNOTATION

I. General Consideration.
II. Certification of Candidate's Designation.
III. Twelve-Month Affiliation Requirement.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 234-236.

C.J.S. See 29 C.J.S., Elections, §§ 205, 206.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Applied in Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

II. CERTIFICATION OF CANDIDATE'S DESIGNATION.

It is the duty of the presiding officer and the secretary of the assembly to certify the candidate's designation. Murphey v. Trott, 160 Colo. 336, 417 P.2d 234 (1966).

They must also certify that the candidate has been registered with the political party for the required time. Murphey v. Trott, 160 Colo. 336, 417 P.2d 234 (1966).

III. TWELVE-MONTH AFFILIATION REQUIREMENT.

In order to have been an eligible candidate for designation a person must have been "affiliated with" that particular political party for the 12 months immediately preceding the date of the assembly. Murphey v. Trott, 160 Colo. 336, 417 P.2d 234 (1966).

And in order to have been affiliated with a political party for the 12 months immediately preceding the assembly of that party, the petitioner for a party candidacy must have filed in the new county to which he had moved the certificate proving his prior affiliation at the time he registered in the new county. Murphey v. Trott, 160 Colo. 336, 417 P.2d 234 (1966).

Affiliation provisions mandatory. Unless a person comes under the affiliation provisions, he may not be designated as a party candidate even though he may have been mistakenly designated by a county assembly as a primary nominee and even though he may have been selected by the voters at the primary election to be the party candidate. Ray v. Mickelson, 196 Colo. 325, 584 P.2d 1215 (1978).

Also the provisions for designation of candidates by assembly by petition require registration of a person on the books of the county clerk and recorder as a member of a particular political party as a condition of eligibility for designation as a candidate of that party for public office. Anderson v. Kilmer, 134 Colo. 270, 302 P.2d 185 (1956).

And candidate not eligible if he does not meet this requirement. Under the provisions for designation of candidates by assembly and by petition, a person who has not been registered as a member of the political party under which he seeks designation for public office, for a period of one year prior to the date of the party assembly, is not eligible for designation as a candidate. Anderson v. Kilmer, 134 Colo. 270, 302 P.2d 185 (1956).

It is clear that the clerk's record must itself indicate the affiliation of the person with the political party for at least one year prior to the date of the assembly. Spain v. Fischahs, 143 Colo. 464, 354 P.2d 502 (1960).

Also, the record of the clerk and recorder cannot be supplemented or enlarged in any way by parol evidence. Spain v. Fischahs, 143 Colo. 464, 354 P.2d 502 (1960).

1-4-602. Delegates to party assemblies. (1) (a) (I) County assemblies shall be held not less than ten days nor more than thirty days after precinct caucuses held on the third Tuesday in March. If a political party holds its precinct caucuses on the first Tuesday in February in a year in which a presidential election will be held, the county assemblies of the political party shall be held not less than fifteen days nor more than forty days after the precinct caucuses. The county central committee or executive committee shall fix the number of delegates from each precinct to participate in the county assembly pursuant to the procedure for the selection of delegates contained in the state party central committee's bylaws or rules. The persons receiving the highest number of votes at the precinct caucus shall be the delegates to the county assembly from the precinct. If two or more candidates receive an equal number of votes for the last available place in the election of delegates to county assemblies at the precinct caucuses, the delegate shall be determined by lot by the candidates. Except as provided in subsections (2) and (6) of this section, delegates to all other party assemblies shall be selected by the respective county assemblies from among the members of the county assemblies pursuant to the state party central committee's bylaws or rules.

(II) Repealed.

(b) In determining the number of delegates from precincts which have been created or split since the previous general election, the county central committee or executive committee may allocate delegates based on the number of registered voters affiliated with the political party, pursuant to the state party central committee's bylaws or rules.

(2) (a) In each state senatorial and representative district comprised of a portion of one county only, persons elected at precinct caucuses as delegates to the county assemblies shall serve also as delegates to the senatorial and representative district assemblies.

(b) In each state senatorial and representative district comprised of one or more whole counties and a portion of one or more counties or comprised of portions of two or more counties, the number of delegates to the senatorial and representative district assemblies shall be apportioned among the counties by the party's senatorial or representative central committee according to the vote in the county or portion of a county for that party's candidate for governor or president in the last general election, pursuant to the state party central committee's bylaws or rules.

(3) All questions regarding the qualifications of any delegate or the conduct of any precinct caucus at which the delegates were voted on shall be determined by the credentials committees of the respective party county, representative, and senatorial assemblies.

(4) (a) All places established for holding precinct caucuses shall be designated by a sign conspicuously posted no later than twelve days before the precinct caucuses. The sign shall be substantially in the following form: "Precinct caucus place for precinct no. ....." The lettering on the sign and the precinct number shall be black on a white background with all letters and numerals at least four inches in height. Any precinct caucus subsequently removed and held in a place other than the place stated on the sign is null and void.

(b) Repealed.

(5) As used in this section, "delegate" means a person who is a registered elector, has been a resident of the precinct for thirty days prior to the caucus, and has been affiliated with the political party holding the caucus for at least two months, as shown on the registration books of the county clerk and recorder; except that any registered elector who has attained the age of eighteen years during the two months immediately preceding the caucus or any registered elector who has become a naturalized citizen during the two months immediately preceding the caucus may be a delegate even though the elector has been affiliated with the political party for less than two months as shown on the registration books of the county clerk and recorder. A delegate who moves from the precinct where registered during the twenty-nine days prior to any caucus shall become ineligible to serve as a delegate from that precinct.

(6) In each state senatorial and representative district comprised of all or parts of more than one county, persons elected at precinct caucuses as delegates to the county assemblies from precincts within

the senatorial or representative district shall also serve as delegates to the senatorial and representative district assemblies if the senatorial or representative district central committee, by resolution adopted prior to the holding of the precinct caucuses in the year for which the resolution is to be effective, chooses to have the delegates to its district assembly in that year elected as provided in this subsection (6); except that selection of delegates under this subsection (6) shall be in conformance with the procedure established in the state party central committee's bylaws or rules. As a part of the resolution, the senatorial or representative central committee may determine the total number of delegate votes to be cast at the senatorial or representative district assembly, apportion them by county among the portions of the district which lie in separate counties upon an equitable basis determined by party bylaws or rules, and, upon the basis of the apportionment, determine the factor necessary to apportion equally among the delegates from the precincts within the district in each county the total votes to be cast by delegates from the portion of the district lying within that county.

Source: L. 80: Entire article R&RE, p. 326, § 1, effective January 1, 1981. **L. 82:** (5) amended, p. 217, § 2, effective February 19. **L. 85:** (1) amended, p. 256, § 8, effective May 31; (1) amended, p. 248, § 5, effective July 1. **L. 91:** (5) amended, p. 620, § 34, effective May 1. **L. 92:** Entire part amended, p. 679, § 6, effective January 1, 1993. **L. 94:** (5) amended, p. 1768, § 24, effective January 1, 1995. **L. 95:** (5) amended, p. 830, § 28, effective July 1. **L. 96:** (1), (2)(b), and (6) amended, p. 1738, § 20, effective July 1. **L. 98:** (1) amended, p. 633, § 5, effective May 6. **L. 99:** (1)(a), (4), and (5) amended, p. 763, § 21, effective May 20; (1)(a) amended, p. 100, § 2, effective August 4. **L. 2002:** (1)(a) and (4) amended, p. 133, § 4, effective March 27. **L. 2005:** (1)(a)(I) amended, p. 1398, § 15, effective June 6; (1)(a)(I) amended, p. 1433, § 15, effective June 6. **L. 2007:** (1)(a)(I) amended, p. 1989, § 4, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-14-205 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) Amendments to subsection (1) by Senate Bill 85-86 and House Bill 85-1063 were harmonized.

(3) Amendments to subsection (1)(a) by Senate Bill 99-025 and Senate Bill 99-027 were harmonized.

(4) Subsection (1)(a)(II)(B) provided for the repeal of subsection (1)(a)(II), effective July 1, 2002. (See L. 2002, p. 133.)

(5) Subsection (4)(b)(II) provided for the repeal of subsection (4)(b), effective July 1, 2002. (See L. 2002, p. 133.)

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 198.

Applied in Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

1-4-603. Designation of major political party candidates by petition. Candidates for major political party nominations for the offices specified in section 1-4-502 (1) that are to be made by primary election may be placed on the primary election ballot by petition, as provided in part 8 of this article.

Source: L. 80: Entire article R&RE, p. 328, § 1, effective January 1, 1981. **L. 83:** (3), (6), and (8) amended, p. 353, § 17, effective July 1. **L. 85:** (2)(a), (2)(b), (3), (4), and (8) amended and (2)(d) added, p. 257, § 9, effective May 31. **L. 88:** (2)(a) and (2)(b) amended, p. 297, § 2, effective January 1, 1989. **L. 89:** (3) amended and (5.5) and (9) added, p. 302, § 8, effective May 9. **L. 91:** (2) amended, p. 621, § 35, effective May 1. **L. 92:** Entire part amended, p. 681, § 6, effective January 1, 1993. **L. 98:** Entire section amended, p. 257, § 8, effective April 13. **L. 2000:** Entire section amended, p. 2028, § 3, effective August 2.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-207 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

I. General Consideration.
II. Electors Signing Petition.
III. Oath and Affidavit.
IV. Affiliation Required.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 241-245.

C.J.S. See 29 C.J.S., Elections, §§ 195-199.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

In addition to nominees designated by party assembly, a party member desirous of the party's nomination at the primary election may become a candidate by filing a petition signed by the requisite number of the electors of his party residing within the district from which he seeks to be elected. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

And it is permissible and possible for several candidates for the party's nomination to be placed on the primary ballot by this procedure. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

The purpose in allowing nominations by individuals is to confer upon electors the right to place candidates in nomination under some party name which they might choose, representing a principle which they desired to support at the polls. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

II. ELECTORS SIGNING PETITION.

Certificates not having the requisite number of names have no effect to nominate candidates, and can only be made valid by the addition of names within the time required by law to make nominations by individuals. Whipple v. Kleckner, 25 Colo. 423, 55 P. 163 (1898); O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

All duplicate names on certificates for the same candidates for the same office must be eliminated. The certificates nominating candidates for the legislative and senatorial districts did not contain the requisite number of names to make a nomination by individuals, for the obvious reason that all duplicate names on these certificates for the same candidates for the same office must be eliminated. Hence, they were invalid. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

III. OATH AND AFFIDAVIT.

Voter must not only sign petition but must also sign the oath, and a failure so to do invalidates the certificate. Cowie v. Means, 39 Colo. 1, 88 P. 485 (1906).

The signature of the elector, statement of residence, and the oath that the subscriber is an elector are matters of substance. Cowie v. Means, 39 Colo. 1, 88 P. 485 (1906).

Each requirement is to be a check upon the making of false or fraudulent certificates, and to enable anyone inspecting a certificate to discover the residence of the subscriber. Cowie v. Means, 39 Colo. 1, 88 P. 485 (1906).

The oath required is a matter of substance, as affording prima facie proof that the persons so subscribing the certificate did, in fact, subscribe the certificate, and are, in fact, electors of the state. Cowie v. Means, 39 Colo. 1, 88 P. 485 (1906).

These requirements are essential. Cowie v. Means, 39 Colo. 1, 88 P. 485 (1906).

Where no affidavit is made, the alleged certificate of nomination is void and of no force or effect, and no duty rested upon defendant as town clerk to file same or place the names of the candidates mentioned therein upon the ballot. Ballew v. Hartman, 118 Colo. 476, 196 P.2d 870 (1948).

Petitions for nomination of candidates held insufficient, where the affidavit attached to each, although sworn to, was not signed by the signers of the petition. Cowie v. Means, 39 Colo. 1, 88 P. 485 (1906); Stephen v. Lail, 80 Colo. 49, 248 P. 1012 (1926).

Where the original petition is void because the oath was not signed by the voters, that portion of it assuming to appoint a committee to fill vacancies is likewise void, and such alleged committee has no power to act. Cowie v. Means, 39 Colo. 1, 88 P. 485 (1906).

IV. AFFILIATION REQUIRED.

The provisions for designation of candidates by petition and by party assembly require that a person shall be affiliated for one year with the party in which he seeks to become a candidate for public office. Anderson v. Kilmer, 134 Colo. 270, 302 P.2d 185 (1956).

And the county clerk's record must indicate the affiliation of that person with the political party for at least one year prior to the date of the assembly at which he seeks designation as a candidate for office. Spain v. Fischahs, 143 Colo. 464, 354 P.2d 502 (1960).

The record of the county clerk cannot be supplemented or enlarged by parol evidence. Spain v. Fischahs, 143 Colo. 464, 354 P.2d 502 (1960).

1-4-604. Filing of petitions and certificates of designation by assembly - legislative declaration. (1) (a) Every petition or certificate of designation by assembly in the case of a candidate for nomination for any national or state office specified in section 1-4-502 (1), or for member of the general assembly, district attorney, or district office greater than a county office, together with the written acceptances signed by the persons designated or nominated by such assembly described in section 1-4-601 (3), shall be filed by the presiding officer or secretary of such assembly and received in the office of the secretary of state.

(b) A copy of each such certificate of designation shall be transmitted by the presiding officer or secretary of each assembly to the state central committee of the political party holding such assembly within three days after the adjournment of such assembly.

(2) Every petition or certificate of designation by assembly in the case of a candidate for nomination for any elective office other than the offices specified in paragraph (a) of subsection (1) of this section shall be filed in the office of the county clerk and recorder of the county where the person is a candidate.

(3) Certificates of designation by assembly shall be filed no later than four days after the adjournment of the assembly. Certificates of designation may be transmitted by facsimile transmission; however, the original certificate must also be filed and postmarked no later than ten days after the adjournment of the assembly.

(4) (Deleted by amendment, L. 99, p. 764, § 22, effective May 20, 1999.)

(5) Late filing of the certificate of designation shall not deprive candidates of their candidacy.

(6) (a) No later than four days after the adjournment of the assembly, the state central committee of each political party, utilizing the information described in paragraph (b) of subsection (1) of this section, shall file with the secretary of state a compilation of the certificates of designation of each assembly that nominated candidates for any national or state office or for member of the general assembly, district attorney, or district office greater than a county office. Such a compilation of certificates of designation may be transmitted by facsimile transmission; however, the original compilation must also be filed and postmarked no later than ten days after the adjournment of the assembly.

(b) The secretary of state shall compare such party compilation of certificates of designation with the certificates of designation filed by each such assembly with the secretary of state's office pursuant to paragraph (a) of subsection (1) of this section. In the event that a certificate of designation appearing on such party compilation has not been filed pursuant to paragraph (a) of subsection (1) of this section, the secretary of state shall notify the state central committee of such party not less than fifty-seven days before the primary election of an assembly's failure to file such certificate of designation.

(c) A state central committee that receives notification pursuant to paragraph (b) of this subsection (6) shall file, or direct the presiding officer of the assembly to file, the certificate of designation, together with any written acceptances, not less than fifty-six days before the primary election.

(d) The general assembly hereby finds and declares that it is beneficial to improve the procedure and timeliness for communicating the designation of candidates for the primary election ballot by political party assemblies between the officers of such assemblies, the state central committee of each political party, and the secretary of state. The general assembly further finds that prescribing certain additional review processes for the documentation evidencing designations and nominations of candidates that are not onerous will serve to minimize the likelihood of a candidate being deprived of his or her candidacy and of an erroneous primary election ballot. The general assembly further encourages the responsible officials to engage in the enhanced communication and review described in this subsection (6) well in advance of statutorily prescribed deadlines or ballot certification dates, if possible, in order to maximize the time for giving notice and resolving any issues that may arise from the primary ballot nomination process.

Source: L. 80: Entire article R&RE, p. 329, § 1, effective January 1, 1981. **L. 81:** Entire section amended, p. 310, § 2, effective March 27. **L. 87:** Entire section amended, p. 287, § 9, effective June 26. **L. 89:** Entire section amended, p. 303, § 9,

effective May 9. **L. 92:** Entire part amended, p. 682, § 6, effective January 1, 1993. **L. 99:** Entire section amended, p. 286, § 2, effective April 13; entire section amended, p. 764, § 22, effective May 20. **L. 2000:** (1)(a) amended, p. 2028, § 4, effective August 2.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-208 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) (a) Amendments to this section by Senate Bill 99-025 and House Bill 99-1225 were harmonized.

(b) An amendment to this section by Senate Bill 99-025 struck the language contained in subsection (4) as amended by House Bill 99-1225.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 291-297.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Although boundaries of judicial district are coincident with those of county, certificate should be filed with secretary of state. Under the provision that a certificate of nomination for an office to be filled by the voters of a district office greater than a county office shall be filed with the secretary of state, a certificate of nomination for the office of district attorney of a judicial district should be filed with the secretary of state, notwithstanding the boundaries of the district were coincident with those of the county. Brown v. Van Cise, 69 Colo. 242, 193 P. 495 (1920).

Clerk who wrongfully refuses to accept certificate may be commanded to file certificate as of the date of presentment. The county clerk had wrongfully refused to accept a certificate making nominations for an approaching election. In view of the brief time intervening between the hearing and the day appointed for the election, the court, to avoid the delays which must attend a remand of the cause, gave judgment commanding the county clerk to file the certificate as of the date upon which it was presented, and proceed in the matter as required by law. McBroom v. Brown, 53 Colo. 412, 127 P. 957 (1912).

Petitioner's name allowed to appear on ballot. Where the secretary of state accepted and approved the petition filed by petitioner, and no objections were filed as to the validity of his petition, there was no issue in reference to his right to appear on the primary ballot as a candidate by petition and his name did appear. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

1-4-605. Order of names on primary ballot. Candidates designated and certified by assembly for a particular office shall be placed on the primary election ballot in the order of the vote received at the assembly. The candidate receiving the highest vote shall be placed first in order on the ballot, followed by the candidate receiving the next highest vote, and so on until all of the candidates designated have been placed on the ballot. The names of two or more candidates receiving an equal number of votes for designation by assembly shall be placed on the primary ballot in the order determined by lot in accordance with section 1-4-601 (2). Candidates by petition for any particular office shall follow assembly candidates and shall be placed on the primary election ballot in an order established by lot.

Source: L. 80: Entire article R&RE, p. 329, § 1, effective January 1, 1981. **L. 85:** Entire section amended, p. 258, § 10, effective May 31. **L. 92:** Entire part amended, p. 683, § 6, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are the same as those contained in 1-14-209 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 25 C.J.S., Elections, § 205.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Petitioner's name allowed to appear on ballot. Where the secretary of state accepted and approved the petition filed by petitioner and no objections were filed as to the validity of his petition, there was no issue in reference to his right to appear on the primary ballot as a candidate by petition and his name did appear. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

The fact that several candidates have been designated by the party assembly does not preclude a petition candidate from having his petition accepted by the secretary of state (or county clerk, as the case may be) and his name listed as a candidate for his party's nomination on the primary ballot. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

PART 7

CONVENTIONS - POLITICAL PARTY NOMINATIONS

1-4-701. Party nominations to be made by convention. (1) Any convention of delegates of a political party or any committee authorized by resolution of the convention may nominate candidates for vacancies to unexpired terms of representatives in congress and for presidential electors and also may select delegates to national political conventions.

(2) (a) The certificate of nomination shall contain the name of the office for which each person is nominated and the person's name and address and shall designate, in not more than three words, the political party which the convention or committee represents.

(b) No certificate of nomination shall contain the names of more candidates for any office than there are offices to fill. If any certificate does contain the names of more candidates than there are offices to fill, only those names which come first in order on the certificate and are equally numbered with the number of offices to be filled shall be taken as nominated. No person shall sign more than one certificate of nomination for any office.

(c) When the nomination is made by a committee, the certificate of nomination shall also contain a copy of the resolution passed at the convention which authorized the committee to make the nomination.

(d) In the case of presidential electors, the names of the candidates for president and vice president may be added to the name of the political party in the certificate of nomination.

(3) Certificates of nomination shall be received and filed with the secretary of state no later than sixty days before the general or congressional vacancy election.

(4) Any person nominated in accordance with this section by either of the two major political parties shall be deemed to have accepted the nomination unless the candidate files with the secretary of state a written declination of the nomination no later than four days after the adjournment of the convention. The declination may be transmitted by facsimile transmission no later than four days after the adjournment of the convention. If the declination is transmitted by facsimile transmission, the original declination must also be filed and postmarked no later than ten days after the adjournment of the convention.

Source: L. 80: Entire article R&RE, p. 329, § 1, effective January 1, 1981. **L. 85:** (3) amended, p. 248, § 6, effective July 1. **L. 88:** (4) amended, p. 1429, § 1, effective June 11. **L. 92:** Entire part amended, p. 683, § 6, effective January 1, 1993. **L. 99:** (3) and (4) amended, p. 764, § 23, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-107 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For methods of nomination, see §§ 1-4-502 and 1-4-503; for objections to nominations, see § 1-4-909.

ANNOTATION

I. General Consideration.
II. More Candidates Than Offices to Fill.
III. Filing Certificates with Secretary of State.
IV. Miscellaneous.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 225.

C.J.S. See 29 C.J.S., Elections, § 178.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision for acceptance of a nomination is so plain that it needs no construction other than that which its own language imports. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

No convention or body of men can compel another to be a candidate for office against his will. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

Only the political parties have the right to nominate by a convention or nominating committee. Schafer v. Whipple, 25 Colo. 400, 55 P. 180 (1898).

Nominees by either of the two leading political parties are not required to file an acceptance. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

II. MORE CANDIDATES THAN OFFICES TO FILL.

The purpose of limiting the number of names on a certificate of nomination to the number of offices to be filled is to prevent the same persons nominating candidates for the same office by certificate as individuals under two or more party names. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

An elector once having exercised the right to join in a certificate as an individual, nominating a candidate for office under some name adopted by the signers, cannot join in nominating the same person for the same office under some other name. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

III. FILING CERTIFICATE WITH SECRETARY OF STATE.

Certificates of nomination must be presented for filing at the office of the secretary of state to some person in charge thereof during business hours. Cowie v. Means, 39 Colo. 1, 88 P. 485 (1906).

Certificates not filed in office of the secretary of state. Certain alleged certificates of nomination to fill vacancies were handed for filing to the secretary of state, on board a train bound for another city, at the union depot in Denver, preceding the general election to be held on November 6. It was held, that such action did not constitute a legal filing of such certificates, as of that date, it being necessary to tender such certificates for filing at the office of the secretary of state to some person in charge during business hours. Cowie v. Means, 39 Colo. 1, 88 P. 485 (1906).

IV. MISCELLANEOUS.

The convention revoked nomination power of the committee. A party convention sat two days, and on the first day it adopted a resolution empowering a committee to nominate the ticket which it had assembled; on the second day, without expressly rescinding the resolution, it proceeded to nominate a full ticket and then adjourned sine die. It was held that the action of the convention on the second day was a revocation of the power delegated to the committee. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

Secretary of state has no power to decide between two sets of nominations. When two sets of nominations, both by conventions purporting to have been held by the same political party, and each in apparent conformity with this section, are certified to the secretary of state, he has no power to decide between them, but should certify both tickets to the county clerks in order that both may be printed upon the official ballots. People ex rel. Eaton v. Dist. Court, 18 Colo. 26, 31 P. 339 (1892).

PART 8

NOMINATION OF CANDIDATES BY PETITION

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this part 8 was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 8 prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of articles 1 to 13 for 1980 and of this part 8 for 1992, see the comparative tables located in the back of the index.

1-4-801. Designation of party candidates by petition. (1) Candidates for political party nominations to be made by primary election may be placed on the primary election ballot by petition. Every petition to nominate candidates for a primary election shall state the name of the office for which the person is a candidate and the candidate's name and address and shall designate in not more than three words the name of the political party which the candidate represents. No petition shall contain the name of more than one person for the same office.

(2) The signature requirements for the petition are as follows:

(a) Every petition in the case of a candidate for any county office shall be signed by electors eligible to vote within the county commissioner district or political subdivision for which the officer is to be

elected. The petition shall require signers equal in number to twenty percent of the votes cast in the political subdivision at the contested or uncontested primary election for the political party's candidate for the office for which the petition is being circulated or, if there was no primary election, at the last preceding general election for which there was a candidate for the office.

(b) Every petition in the case of a candidate for member of the general assembly, district attorney, or any district office greater than a county office shall be signed by eligible electors resident within the district for which the officer is to be elected. The petition shall require the lesser of one thousand signers or signers equal to thirty percent of the votes cast in the district at the contested or uncontested primary election for the political party's candidate for the office for which the petition is being circulated or, if there was no primary election, at the last preceding general election for which there was a candidate for the office.

(c) (I) Repealed.

(II) On and after January 1, 1999, every petition in the case of a candidate for an office to be filled by vote of the electors of the entire state shall be signed by at least one thousand five hundred eligible electors in each congressional district.

(d) (Deleted by amendment, L. 93, p. 1405, § 29, effective July 1, 1993.)

(3) No person shall be placed in nomination by petition on behalf of any political party unless the person has been affiliated with the political party for at least twelve months prior to the date of filing the petition, as shown by the registration books of the county clerk and recorder.

(4) No person who attempted and failed to receive at least ten percent of the votes for the nomination of a political party assembly for a particular office shall be placed in nomination by petition on behalf of the political party for the same office.

(5) Party petitions shall not be circulated nor any signatures be obtained prior to the last Monday in March. Petitions shall be filed no later than seventy-five days before the primary election.

Source: L. 92: Entire part R&RE, p. 684, § 7, effective January 1, 1993. **L. 93:** (2) amended, p. 1405, § 29, effective July 1. **L. 98:** (2)(a) to (2)(c) amended, p. 634, § 6, effective May 6. **L. 99:** (5) amended, p. 764, § 24, effective May 20. **L. 2000:** (1) amended, p. 2029, § 5, effective August 2. **L. 2005:** (5) amended, p. 1399, § 16, effective June 6; (5) amended, p. 1434, § 16, effective June 6.

Editor's note: (1) This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-603 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

(2) Subsection (2)(c)(I)(B) provided for the repeal of subsection (2)(c)(I), effective January 1, 1999. (See L. 98, p. 634.)

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

In addition to nominees designated by party assembly, a party member desirous of the party's nomination at the primary election may become a candidate by filing a petition signed by the requisite number of the electors of his party residing within the district from which he seeks to be elected. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

And it is permissible and possible for several candidates for the party's nomination to be placed on the primary ballot by this procedure. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

1-4-802. Petitions for nominating minor political party and unaffiliated candidates for a partisan office. (1) Candidates for partisan public offices to be filled at a general or congressional vacancy election who do not wish to affiliate with a major political party may be nominated, other than by a primary election or a convention, in the following manner:

(a) A petition for nominating minor political party or unaffiliated candidates shall be prepared, indicating the name and address of any candidate for the office to be filled. The petition shall indicate

the name of the minor political party or designate in not more than three words the political or other name selected by the signers to identify an unaffiliated candidate. No name of any political party shall be used, in whole or in part, to identify an unaffiliated candidate.

(b) Each petition shall contain only the name of one candidate for one office; except that any petition for a candidate for governor shall also include a candidate for lieutenant governor, and together they shall be considered joint candidates at the general election. In the case of nominations for electors of president and vice president of the United States, the names of the candidates may be added to the political or other name designated on the petition.

(c) Every petition for the office of president and vice president, for statewide office, for congressional district office, for the office of member of the general assembly, for district attorney, and for county office shall be signed by eligible electors residing within the district or political subdivision in which the officer is to be elected. The number of signatures of eligible electors on a petition shall be as follows:

(I) At least five thousand for the office of president and vice president;

(II) The lesser of one thousand or two percent of the votes cast for all candidates for that office in the most recent general election for any statewide office;

(III) The lesser of eight hundred or two percent of the votes cast in the congressional district in the most recent general election for the office of member of the United States house of representatives, member of the state board of education for a congressional district, or member of the board of regents of the university of Colorado for a congressional district;

(IV) The lesser of six hundred or two percent of the votes cast in the senate district in the most recent general election for the office of member of the state senate;

(V) The lesser of four hundred or two percent of votes cast in the house district in the most recent general election for the office of member of the state house of representatives;

(VI) The lesser of six hundred fifty or two percent of the votes cast in the district in the most recent general election for the office of district attorney; and

(VII) The lesser of seven hundred fifty or two percent of the votes cast for all candidates for that office in the most recent general election for any county office.

(d) (I) No petition to nominate an unaffiliated candidate, except petitions for candidates for vacancies to unexpired terms of representatives in congress and for presidential electors, shall be circulated or any signatures obtained thereon earlier than one hundred eighty-six days before the general election.

(II) No petition to nominate a minor political party candidate shall be circulated nor any signatures obtained thereon earlier than the last Monday in March in the general election year.

(e) The petition to nominate an unaffiliated candidate may designate or appoint upon its face one or more unaffiliated registered electors as a committee to fill vacancies in accordance with section 1-4-1002 (4) and (5). However, in the case of a petition for the office of state senator or state representative, the petition shall designate or appoint upon its face three or more unaffiliated registered electors as a committee to fill vacancies in accordance with section 1-4-1002 (4) and (5) and section 1-12-203.

(f) (I) Except as provided by subparagraph (II) of this paragraph (f), petitions shall be filed no later than 3 p.m. on the one hundred fortieth day before the general election or 3 p.m. on the fifty-fifth day preceding the congressional vacancy election.

(II) Petitions to nominate candidates of minor political parties shall be filed no later than seventy-five days before the primary election as specified in section 1-4-101.

(g) No person shall be placed in nomination by petition unless the person is an eligible elector of the political subdivision or district in which the officer is to be elected and unless the person was registered as affiliated with a minor political party or as unaffiliated, as shown on the books of the county clerk and recorder, for at least twelve months prior to the last date the petition may be filed; except that, if such nomination is for a nonpartisan election, the person shall be an eligible elector of the political

subdivision or district and be a registered elector, as shown on the books of the county clerk and recorder, on the date of the earliest signature on the petition.

Source: L. 92: Entire part R&RE, p. 685, § 7, effective January 1, 1993. **L. 95:** (1)(a), (1)(c), (1)(d), (1)(e), (1)(f), and (1)(g) amended, pp. 861, 885, 830, §§ 116, 2, 29, effective July 1. **L. 96:** IP(1) amended, p. 1739, § 21, effective July 1. **L. 99:** (1)(d) and (1)(f) amended, p. 764, § 25, effective May 20. **L. 2003:** IP(1), (1)(a), (1)(d), (1)(e), (1)(f), and (1)(g) amended, p. 1310, § 7, effective April 22. **L. 2005:** (1)(d) and (1)(f) amended, p. 1399, § 17, effective June 6; (1)(d) and (1)(f) amended, p. 1434, § 17, effective June 6.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-801 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-301 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For filling vacancies in a nomination for an unaffiliated candidate, see § 1-4-1002 (4) and (5).

ANNOTATION

I. General Consideration.
II. Purpose.
III. Requisites for Nomination.
IV. Requirements of Section.
V. Filing.
VI. Protection of Name of Party.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 219, 220, 242-244.

C.J.S. See 29 C.J.S., Elections, § 195.

Law reviews. For article, "Constitutional Law", which discusses a Tenth Circuit decision dealing with minor party ballot access, see 62 Den. U. L. Rev. 101 (1985). For article, "Constitutional Law", which discusses Tenth Circuit decisions dealing with minor party ballot access, see 63 Den. U. L. Rev. 247 (1986).

Annotator's note. The following annotations included cases decided under former provisions similar to this section.

The provision for nominating an independent candidate by petition shall receive such construction as will afford to the elector the greater liberty in casting his ballot. Pease v. Wilkin, 53 Colo. 404, 127 P. 230 (1912).

An appeal from the denial of an injunction to place a candidate's name on the ballot for the general election will be dismissed as moot where the election has come and gone. Thournir v. Buchanan, 710 F.2d 1461 (10th Cir. 1983).

II. PURPOSE.

The purpose of providing for nomination by petition is to permit electors to make independent nominations for public offices by petition under a name they may lawfully choose, and to vote for such nominees by that designation. Pease v. Wilkin, 53 Colo. 404, 127 P. 230 (1912).

In order to give the electors the widest possible latitude in naming candidates, candidates can be nominated by petition direct, without submitting their candidacy to a vote at the primary election. Pease v. Wilkin, 53 Colo. 404, 127 P. 230 (1912).

III. REQUISITES FOR NOMINATION.

No violation of equal protection. Requirement that each nominating petition circulated by an individual or political organization contain the name of a single candidate only does not violate equal protection. Nat'l Prohibition Party v. State of Colo., 752 P.2d 80 (Colo. 1988); Libertarian Party v. Sec'y of State, 817 P.2d 998 (Colo. 1991).

Application of that portion of subsection (1)(g) requiring a congressional candidate to be an eligible elector of the congressional district in which he seeks election violates the qualifications clause of the U.S. Constitution. Campbell v. Buckley, 46 F. Supp.2d 1115 (D. Colo. 1999), aff'd, 233 F.3d 1229 (10th Cir. 2000).

The requirement of subsection (1)(i) (now (1)(g)) that a person be registered as "unaffiliated" for a period of one year as a prerequisite for running for public office is constitutional. Thournir v. Meyer, 708 F. Supp. 1183 (D. Colo. 1989).

Legislative intent of subsection (1)(g) is clear: No unaffiliated candidate may be on the ballot unless registered as an unaffiliated voter at least 12 months prior to last date for filing applications. Conte v. Meyer, 882 P.2d 962 (Colo. 1994).

In order to make nominations by individuals two things are necessary: (1) The filing of a certificate with the proper officer substantially in the form required by law containing the requisite number of signatures of persons entitled to sign; and (2) an acceptance on the part of the candidates so named. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

Unless the latter accept, they are not nominees, and are no more candidates, or affected by the petitions filed, than if none had ever been filed. O'Connor v. Smithers, 45

Colo. 23, 99 P. 46 (1908).

IV. REQUIREMENTS OF SECTION.

The electors are not required to state anything in the petition regarding the political affiliation of the nominees. Pease v. Wilkin, 53 Colo. 404, 127 P. 230 (1912).

The subscriber's character as a voter is established by affidavit; no more can be required. Benson v. Gillespie, 62 Colo. 206, 161 P. 295 (1916).

One who has accepted the nomination of a political party may be nominated by petition of independent voters, assuming a different party designation. Pease v. Wilkin, 53 Colo. 404, 127 P. 230 (1912).

The unaffiliation requirement of subsection (1)(i) (now (1)(g)) is not unconstitutional because it serves the compelling state interest of protecting the integrity of Colorado's balloting process and it does not unnecessarily or unfairly impinge on a prospective candidate's right of access to the ballot. Libertarian Party v. Sec'y of State, 817 P.2d 998 (Colo. 1991).

V. FILING.

The words "not less than" do not require full clear days. The words "not less than" prefixed to the number of days specified in the provision for nomination by petition do not require full clear days. The time limitation is to be interpreted as if the words had been omitted. Luedke v. Todd, 109 Colo. 326, 124 P.2d 932 (1942).

Thus a certificate of nomination filed with the town clerk on February 21st would still be in time for a town election to be held on April 7th. Luedke v. Todd, 109 Colo. 326, 142 P.2d 932 (1942).

Secretary of state or deputy may pass on validity of petition. Although petitions for nominating independent candidates for offices to be voted on by the entire state are properly filed with the secretary of state, the secretary of state is not vested solely with the decision-making power in passing upon the validity of objections to such petition because the secretary of state has the power to appoint a deputy to act for the secretary if the secretary deems it necessary, and the deputy shall have full authority to act in all things relating to the office. Olshaw v. Buchanan, 186 Colo. 362, 527 P.2d 545 (1974).

VI. PROTECTION OF NAME OF PARTY.

Nominations by petitions protected in same manner as nominations by convention. The nomination, by petition, of the candidates of an organized party, authorized by such party, are to be protected to the same extent, and in the same manner, as nominations made by convention, even though such party have not sufficient strength to make nominations by convention. Philips v. Smith, 25 Colo. 456, 55 P. 184 (1898); McBroom v. Brown, 53 Colo. 412, 127 P. 957 (1912).

The authorized use by others of the name of such party, in a petition making nominations for an approaching election, even though prior in point of time to a certificate presented by the proper authorities of the party, will not prevent the filing of the latter. Philips v. Smith, 25 Colo. 456, 55 P. 184 (1898); McBroom v. Brown, 53 Colo. 412, 127 P. 957 (1912).

Name may not be appropriated by others. The name adopted by a new political party placed on a ballot by petition is not subject to appropriation by other petitioners. McBroom v. Brown, 53 Colo. 412, 127 P. 957 (1912).

Section unenforceable. In light of the Colorado Supreme Court decision in McBroom v. Brown, 53 Colo. 412, 127 P. 957 (1912), this section which distinguishes between political parties and political organizations by only allowing parties to prevent unendorsed candidates from running under the party name is unenforceable. Baer v. Meyer, 577 F. Supp. 838 (D. Colo. 1984), aff'd in part and rev'd in part on other grounds, 728 F.2d 471 (10th Cir. 1984).

1-4-803. Petitions for nominating school district directors. (1) (a) Any person who desires to be a candidate for the office of school director in a school district in which fewer than one thousand students are enrolled shall file a nomination petition signed by at least twenty-five eligible electors from throughout the school district, regardless of the school district's plan of representation. Any person who desires to be a candidate for the office of school director in a school district in which one thousand students or more are enrolled shall file a nomination petition signed by at least fifty eligible electors from throughout the school district, regardless of the school district's plan of representation. An eligible elector may sign as many petitions as candidates for whom that elector may vote.

(b) A person who desires to be a candidate for the office of school director may not circulate the nomination petition for signatures prior to ninety days before the election.

(2) The nomination petition must be filed no later than sixty-seven days before the election date.

(3) If a school district has an at-large method of representation and if terms of different lengths are to be filled at a district election, candidates must designate on the nomination petition the term for which they are running.

(4) A candidate for the office of school director shall not run as a candidate of any political party for that school directorship.

(5) The candidate for the office of school director shall have been a registered elector of the school district, as shown on the books of the county clerk and recorder, for at least twelve consecutive months prior to the date of the election.

Source: L. 92: Entire part R&RE, p. 686, § 7, effective January 1, 1993. **L. 93:** (2) amended, p. 1406, § 30, effective July 1. **L. 94:** (1) amended, p. 1153, § 14, effective July 1. **L. 95:** (1) amended, p. 831, § 30, effective July 1. **L. 98:** (5) amended, p. 291, § 2, effective July 1. **L. 99:** (1) amended, p. 468, § 1, effective April 30; (2) amended, p. 765, § 26, effective May 20. **L. 2006:** (1) and (5) amended, p. 1024, § 6, effective May 25.

1-4-804. Petitions for nominating nonpartisan special district directors. (Repealed)

Source: L. 92: Entire part R&RE, p. 687, § 7, effective January 1, 1993. **L. 93:** Entire section amended, p. 1406, § 31, effective July 1. **L. 94:** (1) amended and (3) added, p. 1153, § 15, effective July 1. **L. 96:** (4) added, p. 1740, § 22, effective July 1. **L. 99:** Entire section repealed, p. 450, § 5, effective August 4.

1-4-805. Petitions for nominating municipal candidates in coordinated elections. Any person who desires to be a candidate for a municipal office in a coordinated election shall, in lieu of the requirements of this article, comply with the nominating petition procedure set forth in the "Colorado Municipal Election Code of 1965", article 10 of title 31, C.R.S.; except that part 11 of this article, concerning write-in candidate affidavits, shall apply in such municipal elections, and any nominating petition may be circulated and signed beginning on the ninety-first day prior to the election and shall be filed with the municipal clerk no later than the seventy-first day prior to the date of the election. The petition may be amended to correct or replace signatures that the clerk finds are not in apparent conformity with the requirements of the municipal election code at any time before the sixty-seventh day before the election.

Source: L. 93: Entire section added, p. 1406, § 32, effective July 1. **L. 95:** Entire section amended, p. 831, § 31, effective July 1. **L. 96:** Entire section amended, p. 1740, § 23, effective July 1. **L. 99:** Entire section amended, p. 765, § 27, effective May 20. **L. 2004:** Entire section amended, p. 1522, § 1, effective May 28.

PART 9

PETITIONS FOR CANDIDACY AND RECALL

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this part 9 was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 9 prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of articles 1 to 13 for 1980 and of this part 9 for 1992, see the comparative tables located in the back of the index.

1-4-901. Designation of petition. (1) The petition for a candidate may consist of one or more sheets, to be fastened together in the form of one petition section, but each sheet shall contain the same heading and each petition section shall contain one sworn affidavit of the circulator. No petition shall contain the name of more than one person for the same office.

(2) Repealed.

Source: L. 92: Entire part R&RE, p. 687, § 7, effective January 1, 1993. **L. 93:** (2) amended, p. 1406, § 33, effective July 1. **L. 95:** (2) amended, p. 831, § 32, effective July 1. **L. 96:** (2) repealed, p. 1740, § 24, effective July 1. **L. 2001:** (1) amended, p. 1002, § 4, effective August 8.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this

section, as it existed in 1992, are similar to those contained in 1-4-603 (3) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For designation of candidates by assembly, see § 1-4-601; for designation of party candidates by petition, see § 1-4-603; for nomination of candidates by convention, see § 1-4-701.

ANNOTATION

I. General Consideration.
II. Apparent Conformity.
III. Proceedings Summary.
IV. Jurisdiction.
V. Review.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 257, 258.

C.J.S. See 29 C.J.S., Elections, § 195.

Annotator's note. The following annotations are taken from cases decided under former provisions similar to this section.

Failure to pursue remedies under the objection provision does not constitute waiver of the right of an elector to contest the eligibility of one to be a candidate of his political party. Ray v. Mickelson, 196 Colo. 325, 584 P.2d 1215 (1978).

II. APPARENT CONFORMITY.

The secretary of state, in the absence of objection, is not vested with authority to refuse to certify a nomination because he has some objection to it for some substantial reason. Mills v. Newell, 30 Colo. 377, 70 P. 405 (1902).

He may, on his own motion, refuse to file a certificate, based on some formal ground. Mills v. Newell, 30 Colo. 377, 70 P. 405 (1902).

But if it is "in apparent conformity" with the applicable provisions the secretary may not, of his own motion, and in the absence of some objection based upon matters of substance, refuse to certify the nomination. Mills v. Newell, 30 Colo. 377, 70 P. 405 (1902).

The law regards certificates of nomination as having been filed where the parties presenting them did all that was possible in complying with the designation and nomination provision even though the secretary of state refused to file the certificate. Mills v. Newell, 30 Colo. 377, 70 P. 405 (1902).

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III. PROCEEDINGS SUMMARY.

The formalities which are required in ordinary civil actions need not be strictly observed in proceedings based on objections to designations and nominations. Phillips v. Curley, 28 Colo. 34, 62 P. 837 (1900).

IV. JURISDICTION.

The filing officers in the first instance and the courts upon review have jurisdiction to determine the regularity of party conventions and the claims of rival factions of the same political party to have their nominees placed on the official ballot. Leighton v. Bates, 24 Colo. 303, 50 P. 856, 50 P. 858 (1897); Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897); Whipple v. Owen, 24 Colo. 319, 50 P. 861 (1897); McCoach v. Whipple, 24 Colo. 379, 51 P. 164 (1897); Whipple v. Broad, 25 Colo. 407, 55 P. 172 (1898); Whipple v. Wheeler, 25 Colo. 421, 55 P. 188 (1898); Spencer v. Maloney, 28 Colo. 38, 62 P. 850 (1900).

The decision of the filing officer as to formal matters in a certificate of nomination is final. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

But his decisions of matters of substance are reviewable by lower courts. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

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Subject only to the power of the supreme court, in its discretion, to review summarily the judicial proceeding below. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

V. REVIEW.

A review is ordinarily had of record only, and as made by the lower tribunal. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

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review in supreme court of the same character as that provided for in county or district court. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

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Supreme court may in its discretion accept or reject an appeal with respect to nominations of candidates, and if it elects to accept the appeal, it may proceed in a summary way to dispose of it. In re Weber, 186 Colo. 61, 525 P.2d 465 (1974).

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Objection to petition not raised before county clerk cannot be raised on review. In a proceeding to protest the placing of nominations upon the official ballot, an objection that the petition failed to show the authority of the petitioner to make the protest, if not raised before the county clerk, cannot be raised on review. Phillips v. Curley, 28 Colo. 34, 62 P. 837 (1900).

In order to invoke the appellate jurisdiction of the supreme court, in the exercise of its discretion to review the proceedings of the lower court determining the validity of objections to certificates of nomination, a certified copy of the record and judgment of the trial court, or the material parts thereof, sufficient to present the questions relied upon, with a brief petition stating the nature of the controversy, the points at issue, and the errors relied upon, should be filed in the supreme court. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

A motion should then be made, based upon this petition, asking the court to exercise its appellate jurisdiction, specifying time and place of hearing of the application. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

And notice of the motion should be served upon the opposing party. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

In an action to compel a county clerk to receive and file nominations for county offices which was refused by him on the ground that no election for such offices could be held at the ensuing election, where in the absence of one of the judges of the supreme court the other two disagree as to whether the court should exercise its discretion to review the judgment of the lower court even if it has jurisdiction to do so, the proceeding must be dismissed and it is unnecessary to determine whether or not the court has jurisdiction to review the judgment of the lower court. Beach v. Berdel, 31 Colo. 505, 74 P. 1129 (1903).

District judge was interested in the result and disqualified to try cause. Where a list of nominations for county officers filed with the county clerk was protested on the ground that the party name assumed was an infringement on the name of another political party and tended to deceive the voters, a district judge who had been nominated under the same party name and the nomination filed with the secretary of state was interested in the result and disqualified to try the cause, although the judgment in the cause would not directly affect his own nomination, since it involved the determination of a question which if raised in the proper tribunal would determine the validity of his own nomination on the ticket. Phillips v. Curley, 28 Colo. 34, 62 P. 837 (1900).

1-4-902. Form of petition. (1) The signatures to a petition need not all be appended to one paper, but no petition shall be legal that does not contain the requisite number of names of eligible electors whose names do not appear on any other petition previously filed for the same office or recall under the provisions of this section.

(2) At the top of each page shall be printed, in bold-faced type, the following:

WARNING:
IT IS AGAINST THE LAW:

For anyone to sign this petition with any name other than one's own or to knowingly sign one's name more than once for the same candidate or to knowingly sign the petition when not a registered elector.

Do not sign this petition unless you are an eligible elector. To be an eligible elector you must be registered to vote and eligible to vote in (name of political subdivision) elections.

Do not sign this petition unless you have read or have had read to you the proposed nomination petition in its entirety and understand its meaning.

(3) Directly following the warning in subsection (2) of this section shall be printed in bold-faced type the following:

Petition to nominate (name of person sought to be elected to) the office of (title of office).

Source: L. 92: Entire part R&RE, p. 687, § 7, effective January 1, 1993. **L. 93:** (3) amended, p. 1766, § 4, effective June 6. **L. 95:** (2) and (3) amended, p. 831, § 33, effective July 1.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-801(1)(d) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-301(1)(d) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 258.

1-4-903. Approval of petition. No petition shall be circulated until it has been approved as meeting the requirements of this section as to form. The secretary of state or the official with whom the petitions are to be filed shall approve or disapprove a petition as to form by the close of the second business day following submission of the proposed petition. The secretary of state or official, as applicable, shall mail written notice of the action taken to the person who submitted the petition on the day the action is taken.

Source: L. 92: Entire part R&RE, p. 688, § 7, effective January 1, 1993. **L. 95:** Entire section amended, p. 832, § 34, effective July 1. **L. 96:** Entire section amended, p. 1740, § 25, effective July 1.

Cross references: For filing a certificate of designation, see § 1-4-604; for convention nominations, see § 1-4-701.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 246-250.

C.J.S. See 29 C.J.S., Elections, § 195.

Annotator's note. The following annotations are taken from a case decided under a former provision similar to this section.

The "vacancy" section must be construed in the light of the two-pronged framework for the designation and nomination of candidates either by the party assembly or by petition. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

A vacancy comes into being when a party assembly fails to designate any candidate for nomination to a particular office. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

And such "vacancy" continues to exist until it is filled by the party central committee or the time for filing it expires by the term of the statute. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

The "vacancy" created by the party assembly's failure to designate a candidate for nomination may be filled by the subsequent action of the appropriate party central committee. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

This is true even though a candidate for party nomination has in the interim between the assembly and the action of the central committee been placed on the primary ballot by petition. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

1-4-904. Signatures on the petitions. (1) Every petition shall be signed only by eligible electors.

(2) (a) For petitions to nominate candidates from a major political party in a partisan election, each signer shall be affiliated with the major political party named in the petition and shall state the following to the circulator: That the signer has been affiliated with the major political party named in the petition for at least twenty-nine days as shown on the registration books of the county clerk and recorder; and that the signer has not signed any other petition for any other candidate for the same office.

(b) Petitions to nominate candidates from a minor political party or unaffiliated candidates in a partisan election may be signed by any eligible elector who has not signed any other petition for any other candidate for the same office.

(3) Unless physically unable, all electors shall sign their own signature and shall print their names, their respective residence addresses, including the street number and name, the city or town, the county, and the date of signature. Each signature on a petition shall be made, to the extent possible, in black ink.

(4) Any person, except a circulator, may assist an elector who is physically unable to sign the petition in completing the information on the petition as required by law. On the petition, immediately following the name of the disabled elector, the person providing assistance shall both sign and shall state that the assistance was given to the disabled elector.

Source: L. 92: Entire part R&RE, p. 688, § 7, effective January 1, 1993. **L. 93:** (1) amended, p. 34, effective July 1. **L. 99:** (2) amended, p. 765, § 28, effective May 20. **L. 2002:** (2) amended, p. 1626, § 3, effective June 7. **L. 2003:** (2) amended, p. 1311, § 8, effective April 22.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-603 (3) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For designation of candidates by assembly, see § 1-4-601; for designation of party candidates by petition, see § 1-4-603; for nomination of candidates by convention, see § 1-4-701.

1-4-905. Circulators. (1) No person shall circulate a petition to nominate a candidate unless the person is a resident of the state, a citizen of the United States, at least eighteen years of age, and, for partisan candidates, registered to vote and affiliated with the political party mentioned in the petition at the time the petition is circulated, as shown by the registration books of the county clerk and recorder.

(2) To each petition section shall be attached a signed, notarized, and dated affidavit executed by the person who circulated the petition section, which shall include: The affiant's printed name, the address at which the affiant resides, including the street name and number, the city or town, the county, and the date of signature; a statement that the affiant was a resident of the state, a citizen of the United States, and at least eighteen years of age at the time the section of the petition was circulated and signed by the listed electors; a statement that the affiant circulated the section of the petition; a statement that each signature on the petition section is the signature of the person whose name it purports to be; a statement that to the best of the affiant's knowledge and belief each of the persons signing the petition section was, at the time of signing, an eligible elector; and a statement that the affiant has not paid or will not in the future pay and that the affiant believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing the signer to sign the petition.

(3) The designated election official shall not accept for filing any section of a petition which does not have attached to it the notarized affidavit required by this section. Any signature added to a section of a petition after the affidavit has been executed is invalid.

Source: L. 92: Entire part R&RE, p. 689, § 7, effective January 1, 1993. **L. 98:** (1) amended, p. 634, § 7, effective May 6. **L. 2001:** (1) amended, p. 1002, § 5, effective August 8. **L. 2007:** (1) and (2) amended, p. 1971, § 9, effective August 3.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-4-603 (8) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-14-207 (8) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

1-4-906. Candidate's acceptance. Every nominating petition before it is filed shall have attached to it a notarized acceptance of the nomination of the candidate or notarized acceptances by both of the joint candidates. Each acceptance of nomination shall contain the full name of the candidate or joint candidate as the name will appear on the ballot and the candidate's full address.

Source: L. 92: Entire part R&RE, p. 690, § 7, effective January 1, 1993.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-603 (4) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-207 (4) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

1-4-907. Filing of petition. The petition, when executed and acknowledged as prescribed in this part 9, shall be filed as follows: With the secretary of state if it is for an office that is voted on by the electors of the entire state or of a congressional district or for the offices of members of the general assembly or district attorney or a district office of state concern; with the county clerk and recorder if it is for a county office; and with the designated election official if it is for a nonpartisan local election.

Source: L. 92: Entire part R&RE, p. 690, § 7, effective January 1, 1993. **L. 94:** Entire section amended, p. 1621, § 1, effective May 31. **L. 95:** Entire section amended, p. 832, § 35, effective July 1.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-801 (1) (h) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-301 (1) (h) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

1-4-908. Verification of petition and official statement. (1) Upon filing, the designated election official for the political subdivision shall review all petition information and verify the information against the registration records, and, where applicable, the county assessor's records. The secretary of state shall establish guidelines for verifying petition entries.

(2) (Deleted by amendment, L. 95, p. 832, § 36, effective July 1, 1995.)

(3) After review, the official shall notify the candidate of the number of valid signatures and whether the petition appears to be sufficient or insufficient. In the case of a petition for nominating an unaffiliated candidate, the official shall provide notification of sufficiency or insufficiency to the candidate on or before the primary election date. Upon determining that the petition is sufficient and after the time for protest has passed, the designated election official shall certify the candidate to the ballot, and, if the election is a coordinated election, so notify the coordinated election official.

Source: L. 92: Entire part R&RE, p. 690, § 7, effective January 1, 1993. **L. 94:** (1) and (3) amended, p. 1154, § 16, effective July 1. **L. 95:** (2) amended, p. 832, § 36, effective July 1; (3) amended, p. 886, § 3, effective July 1.

Editor's note: (1) This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-603 (2) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

(2) Amendments to subsection (3) by House Bill 95-1022 and House Bill 95-1241 were harmonized.

1-4-909. Protest of designations and nominations. (1) A petition or certificate of designation or nomination that has been verified and appears to be sufficient under this code shall be deemed valid unless a petition for a review of the validity of the petition pursuant to section 1-1-113 is filed with the district court within five days after the election official's statement of sufficiency is issued or, in the case of a certificate of designation, within five days after the certificate of designation is filed with the designated election official.

(1.5) If the election official determines that a petition is insufficient, the candidate named in the petition may petition the district court within five days for a review of the determination pursuant to section 1-1-113.

(2) This section does not apply to any nomination made at a primary election.

Source: L. 92: Entire part R&RE, p. 690, § 7, effective January 1, 1993. **L. 93:** (1) amended, p. 1407, § 35, effective July 1. **L. 95:** (1) amended, p. 833, § 37, effective July 1. **L. 2001:** (1) amended, p. 1002, § 6, effective August 8. **L. 2007:** (1) amended and (1.5) added, p. 1971, § 10, effective August 3.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-4-901 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-14-212 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For designation of candidates by assembly, see § 1-4-601; for designation of party candidates by petition, see § 1-4-603; for nomination of candidates by convention, see § 1-4-701.

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I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 218.

C.J.S. See 29 C.J.S., Elections, § 246.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

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A motion should then be made, based upon this petition, asking the court to exercise its appellate jurisdiction, specifying time and place of hearing of the application. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

And notice of the motion should be served upon the opposing party. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

In an action to compel a county clerk to receive and file nominations for county offices which was refused by him on the ground that no election for such offices could be held at the ensuing election, where in the absence of one of the judges of the supreme court the other two disagree as to whether the court should exercise its discretion to review the judgment of the lower court even if it has jurisdiction to do so, the proceeding must be dismissed and it is unnecessary to determine whether or not the court has jurisdiction to review the judgment of the lower court. Beach v. Berdel, 31 Colo. 505, 74 P. 1129 (1903).

District judge was interested in the result and disqualified to try cause. Where a list of nominations for county officers filed with the county clerk was protested on the ground that the party name assumed was an infringement on the name of another political party and tended to deceive the voters, a district judge who had been nominated under the same party name and the nomination filed with the secretary of state was interested in the result and disqualified to try the cause, although the judgment in the cause would not directly affect his own nomination, since it involved the determination of a question which if raised in the proper tribunal would determine the validity of his own nomination on the ticket. Phillips v. Curley, 28 Colo. 34, 62 P. 837 (1900).

1-4-910. Protest to a recall petition. (Repealed)

Source: L. 92: Entire part R&RE, p. 691, § 7, effective January 1, 1993. **L. 94:** Entire section amended, p. 1154, § 17, effective July 1. **L. 95:** Entire section repealed, p. 833, § 38, effective July 1.

1-4-911. Review of a protest. The party filing a protest has the burden of sustaining the protest by a preponderance of the evidence. The decision upon matters of substance is open to review, if prompt application is made, as provided in section 1-1-113. The remedy in all cases shall be summary, and the decision of any court having jurisdiction shall be final and not subject to review by any other court; except that the supreme court, in the exercise of its discretion, may review any judicial proceeding in a summary way.

Source: L. 92: Entire part R&RE, p. 691, § 7, effective January 1, 1993.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-901 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-212 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

1-4-912. Cure. (1) In case a petition for nominating an unaffiliated candidate is not sufficient, it may be amended once no later than 3 p.m. on the ninety-fifth day before the general election, 3 p.m. on the fifty-fifth day preceding a congressional vacancy election, or 3 p.m. on the sixty-seventh day before an election that is not being held concurrently with the general election. If a petition for nominating an unaffiliated candidate is amended, the designated election official shall notify the candidate of whether the petition is sufficient or insufficient no later than the ninetieth day before the general election.

(2) Repealed.

Source: L. 92: Entire part R&RE, p. 691, § 7, effective January 1, 1993. **L. 93:** Entire section amended, p. 1407, § 36, effective July 1. **L. 94:** (1) amended, p. 1155, § 18, effective July 1. **L. 95:** (1) amended and (2) repealed, pp. 887, 861, 833, §§ 4, 117, 39, effective July 1. **L. 99:** (1) amended, p. 765, § 29, effective May 20. **L. 2005:** (1) amended, p. 1399, § 18, effective June 6; (1) amended, p. 1434, § 18, effective June 6.

Editor's note: (1) This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-801 (1) (d) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-301 (1) (d) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

(2) Amendments to subsection (1) by House Bill 95-1022 and House Bill 95-1241 were harmonized.

1-4-913. Defacing of petitions. (Repealed)

Source: L. 92: Entire part R&RE, p. 692, § 7, effective January 1, 1993. **L. 95:** Entire section repealed, p. 834, § 40, effective July 1.

PART 10

WITHDRAWALS FROM AND VACANCIES IN NOMINATIONS AND DESIGNATIONS

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this part 10 was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 10 prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of articles 1 to 13 for 1980 and of this part 10 for 1992, see the comparative tables located in the back of the index.

1-4-1001. Withdrawal from candidacy. (1) Any person who has accepted a designation or nomination may withdraw from candidacy at any time by filing a letter of withdrawal. The letter shall be signed and acknowledged by the candidate before some officer authorized to take acknowledgments and shall be filed with the designated election official with whom the original certificate or petition of candidacy was filed. Except in the case of a vacancy to be filled in accordance with the provisions of section 1-4-1002 (2.5), in the event that the withdrawal of candidacy is not made in time for the candidate's name to be taken off the ballot, any votes cast for the candidate shall be deemed invalid and will not be counted.

(2) Any candidate withdrawing from a designation or nomination, as provided in subsection (1) of this section, shall forthwith report the withdrawal to the persons designated in section 1-4-1002 to fill the vacancy.

Source: L. 92: Entire part R&RE, p. 692, § 7, effective January 1, 1993. **L. 99:** (1) amended, p. 935, § 5, effective August 4.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-4-902 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are the same as those contained in 1-14-210 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 211.

1-4-1002. Vacancies in designation or nomination. (1) Any vacancy in a party designation occurring after the party assembly at which the designation was made and no later than sixty-eight days before the primary election may be filled by the party assembly vacancy committee of the district, county, or state, depending upon the office for which the vacancy in designation has occurred. A vacancy may be caused by the declination, death, disqualification, or withdrawal of any person designated by the assembly as a candidate for nomination, or by failure of the assembly to make designation of any candidate for nomination, or by death or resignation of any elective officer after an assembly at which a candidate could have been designated for nomination for the office at a primary election had the vacancy then existed. No person is eligible for appointment to fill a vacancy in a party designation unless that person meets all requirements of candidacy as of the date of the assembly that made the original designation.

(2) A vacancy in a party designation occurring during the sixty-seven days before the primary election or on the day of the primary election may be filled by the respective party assembly vacancy committee of the district, county, or state, depending upon the office for which the vacancy in designation or nomination has occurred. A vacancy may be caused by the declination, death, disqualification, resignation, or withdrawal of the person previously designated or of the person

nominated at the primary election or by declination, death, disqualification, or withdrawal of an elective officer after a primary election at which a nomination could have been made for the office had the vacancy then existed. No person is eligible for appointment to fill a vacancy in the party designation or nomination unless the person meets all of the requirements of candidacy as of the date of the primary election.

(2.3) (a) A vacancy in a party nomination, other than a vacancy for a party nomination for lieutenant governor for a general election occurring after January 1, 2001, that occurs after the day of the primary election and more than eighteen days before the general election may be filled by the respective party assembly vacancy committee of the district, county, or state, as appropriate, depending upon the office for which the vacancy in nomination has occurred in accordance with the provisions of subsection (9) of this section. A vacancy in a party nomination for lieutenant governor for a general election occurring after January 1, 2001, shall be filled by a replacement candidate for lieutenant governor nominated by the party's candidate for governor. A vacancy may be caused by the declination, death, disqualification, resignation, or withdrawal of the person nominated at the primary election or by the declination, death, disqualification, resignation, or withdrawal of an elective officer after a primary election at which a nomination could have been made for the office had the vacancy then existed. No person is eligible for appointment to fill a vacancy in the party nomination unless the person meets all of the requirements of candidacy as of the date of the primary election. When a vacancy is filled pursuant to this paragraph (a), the designated election official shall provide notice by publication of the replacement nomination in the same manner as the notice required by section 1-5-205.

(a.5) When a vacancy in a party nomination is filled pursuant to paragraph (a) of this subsection (2.3) before the designated election official has certified the ballot in accordance with section 1-5-203 (3) (a), the designated election official shall certify the name of the replacement candidate for the ballot.

(b) When a vacancy in a party nomination is filled pursuant to paragraph (a) of this subsection (2.3) after the designated election official has certified the ballot in accordance with section 1-5-203 (3) (a), the designated election official shall, to the extent reasonably practical under the circumstances:

(I) Cause the name of the replacement candidate to appear on the official ballot; or

(II) Cause to be printed and placed on the sample ballot delivered to the election judges and posted pursuant to section 1-5-413 a sticker of a different color than the sample ballot indicating the name of the replacement candidate.

(c) Notwithstanding subparagraph (I) of paragraph (b) of this subsection (2.3), a designated election official shall not be required to print replacement ballots containing the name of a replacement candidate if the official ballots containing the name of the candidate who vacated the nomination have already been printed.

(d) For purposes of this section, a vacancy is filled when the designated election official receives the certificate of nomination and the written acceptance of the replacement candidate pursuant to paragraph (a) of subsection (5) of this section.

(e) If the name of a replacement candidate designated to fill a vacancy pursuant to this subsection (2.3) does not appear on the official ballot and ballots containing the name of the candidate who vacated the nomination are used in a general election, the votes cast for the candidate who vacated the nomination shall be counted as votes for the replacement candidate.

(2.5) (a) Any vacancy in a party nomination occurring less than eighteen days before the general election that is caused by the declination, death, disqualification, or withdrawal of any person nominated at the primary election or by the declination, death, disqualification, or withdrawal of any elective officer after a primary election at which a nomination could have been made for the office had the vacancy then existed shall not be filled before the general election. In such case, the votes cast for the candidate whose declination, death, disqualification, or withdrawal caused the vacancy are to be counted and recorded, and, if the candidate receives a plurality of the votes cast, such vacancy shall be filled after the general election by the respective party vacancy committee of the district, county, or state, as appropriate,

depending upon the office for which the vacancy in nomination has occurred and in the manner provided for in part 2 of article 12 of this title for filling vacancies in office.

(b) Any vacancy in a party nomination for lieutenant governor for a general election occurring after January 1, 2001, that occurs less than eighteen days before the general election that is caused by the declination, death, disqualification, or withdrawal of the nominated candidate shall not be filled before the general election. In such case, the votes cast for the candidate for governor who was a joint candidate with the candidate whose declination, death, disqualification, or withdrawal caused the vacancy shall be counted and recorded, and, if such candidate is elected, he or she shall fill the vacancy after the general election by selecting a lieutenant governor who is a member of the same political party. The senate shall have no power to confirm or deny such appointment.

(3) Any vacancy in a party nomination occurring after the convention or assembly at which the nomination was made and no later than seventy days before the congressional vacancy election, caused by the declination, death, disqualification, or withdrawal of any person nominated at the convention, may be filled in the same manner required for the original nomination. If the original nomination was made by a party convention or assembly that had delegated to a committee the power to fill vacancies, the committee may proceed to fill the same vacancy when it occurs. No person is eligible for appointment to fill a vacancy in the party nomination unless that person meets all of the requirements of candidacy as of the date of the convention or assembly at which the original nomination was made.

(4) Any vacancy in a nomination for an unaffiliated candidate caused by the declination, death, or withdrawal of any person nominated by petition or statement of intent occurring after the filing of the petition for nomination or the submittal of a statement of intent under section 1-4-303 and no later than seventy days before the general or congressional vacancy election may be filled by the person or persons designated on the petition or statement of intent to fill vacancies.

(4.5) Any vacancy in a nomination for a minor political party candidate occurring after the filing of the certificate of designation pursuant to section 1-4-1304 (3) and no later than seventy days before the general or congressional vacancy election, which is caused by the declination, death, or withdrawal of any person nominated by the minor political party, may be filled by the person or persons designated in the constitution or bylaws of the minor political party to fill vacancies.

(5) (a) The persons designated to fill any of the vacancies in subsections (1) to (4.5) of this section shall file with the designated election official with whom the original certificate of petition was filed any certificate of designation or nomination to fill the vacancy and a written acceptance signed by the person designated or nominated no later than the close of business on the sixty-seventh day before the primary election or the sixty-ninth day before the general election, depending on when the vacancy occurred; except that, in the case of a vacancy filled pursuant to the provisions of subsection (2.3) of this section, such filing shall be done no later than the seventh day before the election affected by the vacancy.

(b) If the persons designated to fill any of the vacancies in subsections (1) to (4.5) of this section decide not to fill a vacancy, they shall in like manner file a certificate setting forth the occurrence of the vacancy, stating they do not intend to fill the vacancy.

(6) When the secretary of state or the county clerk and recorder receives a certificate of nomination to fill a vacancy, that official, in certifying the list of designees or nominees, shall replace the name of the original candidate with that of the replacement candidate. In the event the secretary of state has already certified the list, the secretary of state shall forthwith certify to the county clerk and recorders of the affected counties the name of the new nominee, the office for which the nomination is made, and the name of the person for whom the nominee is substituted. The secretary of state and the county clerk and recorders shall not accept any certificates of nomination to fill vacancies after the sixty-seventh day before election day; except that, in the case of a vacancy filled pursuant to the provisions of subsection (2.3) of this section, the secretary of state and the county clerk and recorder shall not accept any certificates of nomination to fill vacancies after the seventh day before election day.

(7) Except as otherwise provided in subsection (7.3) of this section, any vacancy in a statewide or county office, in the office of district attorney, or in the office of a state senator occurring during a term of office shall be filled at the next general election with nomination or designation by the political party as follows:

(a) If the vacancy occurs prior to the political party assembly, the designated election official shall notify the chairperson of each major political party that the office will be on the ballot for the next primary election, and candidates for the office shall be designated as provided in section 1-4-601 or 1-4-603.

(b) If the vacancy occurs after the political party assembly and no later than sixty-eight days before the primary election, the designated election official shall add the office to the notice of election and notify the chairperson of each major political party that the office will be on the ballot for the next primary election. Candidates for the office shall be designated as provided in section 1-4-603 or by the respective party central committee vacancy committee for the state, county, judicial district, or state senate district.

(c) If the vacancy occurs during the sixty-seven days before the primary election or after the primary election and no later than sixty-eight days before the general election, the designated election official shall add the office to the notice of election for the general election. Nominations for the office shall be made by the respective party central committee vacancy committee for the state, county, judicial district, or state senate district or as provided in section 1-4-802 for the nomination of unaffiliated candidates.

(7.3) After the second Tuesday of January 2003, any vacancy in the office of lieutenant governor shall be filled by the appointment by the governor of a lieutenant governor of the same political party as the governor to fill the vacancy. The senate shall have no power to confirm or deny such appointment.

(7.5) Any vacancy in a statewide or county office, in the office of district attorney, or in the office of a state senator occurring during a term of office shall be filled at the next general election with nomination or designation by a minor political party pursuant to the constitution or bylaws of the minor political party.

(8) Notwithstanding any provisions to the contrary, if a political party has established a rule regarding the length of affiliation required for a candidate for the office of United States senator or representative in congress, and a vacancy in that office occurs, then the party rule applies.

(9) (a) No vacancy committee called to fill a vacancy pursuant to the provisions of subsection (2.3) of this section may select a person to fill a vacancy at a meeting held for that purpose unless a written notice announcing the time and location of the vacancy committee meeting was mailed to each of the committee members at least five days prior to such meeting by the chairperson of the central committee which selected the members. Mailing of the notice is effective when the notice is properly addressed and deposited in the United States mail, with first-class postage prepaid.

(b) The vacancy committee, by a majority vote of its members present and voting at a meeting called for that purpose, shall select a person who meets all of the requirements of candidacy as of the date of the primary election and who is affiliated with the same political party or minor political party, if any, shown on the registration books of the county clerk and recorder as the candidate whose declination, death, disqualification, resignation, or withdrawal caused the vacancy. No meeting shall be held until a quorum is present consisting of not less than one-half of the voting membership of the vacancy committee. No member of the vacancy committee may vote by proxy. The committee shall certify the selection to the secretary of state within seven days from the date the vacancy occurs. If the vacancy committee fails to certify a selection within seven days, the state chair of the same political party or minor political party as the candidate whose declination, death, disqualification, resignation, or withdrawal caused the vacancy, within seven days, shall fill the vacancy by appointing a person having the qualifications set forth in this subsection (9). The name of the person selected or appointed by the state chair shall be certified to the secretary of state. The vacancy shall be filled until the next general election after the vacancy occurs, when the vacancy shall be filled by election.

Source: L. 92: Entire part R&RE, p. 692, § 7, effective January 1, 1993. **L. 95:** (2), (4), (7), and (7)(c) amended, pp. 834, 861, §§ 41, 118, 42, effective July 1. **L. 96:** (4) amended, p. 1741, § 26, effective July 1. **L. 98:** (4.5) and (7.5) added and (5) amended, p. 257, § 9, effective April 13. **L. 99:** (1), (2), (3), (4), (4.5), (5)(a), (6), (7)(b), and (7)(c) amended, p. 766, § 30, effective May 20; (2), (3), (4), (4.5), (5)(a), (6), (7)(b), and (7)(c) amended and (2.3), (2.5), and (9) added, p. 930, § 2, effective August 4; (8) amended, p. 161, § 10, effective August 4. **L. 2000:** (2.3)(a), (2.5), and IP(7) amended and (7.3) added, p. 2029, § 6, effective August 2. **L. 2005:** (1), (2), (2.3)(a), (3), (4), (4.5), (5)(a), (6), (7)(b), and (7)(c) amended, p. 1400, § 19, effective June 6; (1), (2), (2.3)(a), (3), (4), (4.5), (5)(a), (6), (7)(b), and (7)(c) amended, p. 1435, § 19, effective June 6. **L. 2007:** (2) and (2.3) amended, p. 1972, § 11, effective August 3.

Editor's note: (1) This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-4-903 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-14-211 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

(2) Amendments to subsection (7) by sections 42 and 118 of House Bill 95-1241 were harmonized.

Cross references: For filing a petition or certificate of designation, see § 1-4-604; for convention nominations, see § 1-4-701.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 214, 215.

C.J.S. See 29 C.J.S., Elections, § 182.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The "vacancy" section must be construed in the light of the two-pronged framework for the designation and nomination of candidates either by the party assembly or by petition. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

A vacancy comes into being when a party assembly fails to designate any candidate for nomination to a particular office. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

And such "vacancy" continues to exist until it is filled by the party central committee or the time for filing it expires by the term of the statute. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

The "vacancy" created by the party assembly's failure to designate a candidate for nomination may be filled by the subsequent action of the appropriate party central committee. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

This is true even though a candidate for party nomination has in the interim between the assembly and the action of the central committee been placed on the primary ballot by petition. Anderson v. Mullaney, 166 Colo. 533, 444 P.2d 878 (1968).

1-4-1003. Vacancies of joint candidates. For the purposes of this part 10, no vacancy in designation or nomination for the office of governor or the office of lieutenant governor shall in any way affect the candidacy of the other joint candidate.

Source: L. 92: Entire part R&RE, p. 695, § 7, effective January 1, 1993.

PART 11

WRITE-IN CANDIDATES

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this part 11 was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 11 prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of articles 1 to 13 for 1980 and of this part 11 for 1992, see the comparative tables located in the back of the index.

1-4-1101. Write-in candidate affidavit of intent. (1) A person who wishes to be a write-in candidate for an office in an election shall file an affidavit of intent stating that he or she desires the office and is qualified to assume its duties if elected. A write-in candidate for governor shall designate in

the affidavit a write-in candidate for lieutenant governor. The affidavit shall be filed with the secretary of state if it is for a statewide office, a seat in congress, a seat in the general assembly, the office of district attorney, or any other district office of state concern. The affidavit shall be filed with the county clerk and recorder if it is for a county office and with the designated election official if it is for a local office.

(2) No write-in vote for an office in an election shall be counted unless the person for whom the vote was cast filed the affidavit of intent required by subsection (1) of this section within the time prescribed by section 1-4-1102. No write-in vote for a candidate for governor shall be counted unless the person designated as the write-in candidate for lieutenant governor pursuant to subsection (1) of this section also filed an affidavit of intent within the time prescribed by section 1-4-1102.

Source: L. 92: Entire part R&RE, p. 695, § 7, effective January 1, 1993. **L. 96:** (1) amended, p. 1741, § 27, effective July 1. **L. 2007:** Entire section amended, p. 1973, § 12, effective August 3.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-4-1001 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in §§ 1-4-207 and 1-6-111 (6) as said sections existed in 1979, the year prior to the first repeal and reenactment of this part.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section and § 1-7-309 do not conflict. This section regulates the conduct of write-in candidates and prohibits the write-in candidate who fails to file an affidavit of intent from accumulating votes whereas § 1-7-309 regulates the conduct of voters and rejects ballots showing more names than persons to be elected to an office. Moran v. Carlstrom, 775 P.2d 1176 (Colo. 1989).

1-4-1102. Time of filing affidavit. (1) Except as provided in subsection (2) of this section, the affidavit of intent shall be filed by the close of business on the sixty-seventh day before a primary election and by the close of business on the seventieth day before any other election.

(2) In a nonpartisan election, the affidavit of intent shall be filed by the close of business on the sixty-fourth day before the election. If the election is to be coordinated by the county clerk and recorder, the designated election official shall forward a copy of the affidavit of intent to the coordinated election official.

Source: L. 92: Entire part R&RE, p. 696, § 7, effective January 1, 1993. **L. 94:** Entire section amended, p. 1768, § 25, effective January 1, 1995. **L. 95:** Entire section amended, p. 835, § 43, effective July 1. **L. 96:** Entire section amended, p. 1741, § 28, effective July 1. **L. 99:** (1) amended, p. 768, § 31, effective May 20. **L. 2005:** (1) amended, p. 1402, § 20, effective June 6; (1) amended, p. 1437, § 20, effective June 6.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-1001 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-207 (7) and 1-6-111(6) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

1-4-1103. Write-in votes for governor. No write-in vote for governor in a general election shall be counted unless it includes a write-in vote for lieutenant governor.

Source: L. 92: Entire part R&RE, p. 696, § 7, effective January 1, 1993. **L. 95:** Entire section amended, p. 835, § 44, effective July 1. **L. 2007:** Entire section amended, p. 1974, § 13, effective August 3.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in § 1-4-1002 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in

§ 1-6-110 (6) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

PART 12

PRESIDENTIAL PRIMARY ELECTIONS

1-4-1201 to 1-4-1208. (Repealed)

Source: L. 2003: Entire part repealed, p. 496, § 6, effective March 5.

Editor's note: This part 12 was added by referendum as part 11 in 1990, and this article was subsequently repealed and reenacted in 1992. For amendments to this part 12 prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 13

MINOR POLITICAL PARTIES

1-4-1301. Formation of minor political party. (1) A minor political party shall adopt a constitution or set of bylaws to govern its organization and the conduct of its affairs and shall exercise thereunder any power not inconsistent with the laws of this state. The constitution or set of bylaws shall be filed with the secretary of state. Any minor political party failing to file its constitution or set of bylaws pursuant to this section shall not be qualified as a minor political party. The constitution or set of bylaws shall contain the following:

(a) A method of nominating candidates for the partisan offices specified in section 1-4-1304 (1);

(b) A method for calling and conducting assemblies and conventions;

(c) A method for selecting delegates to assemblies and conventions;

(d) A method for the selection of members and a chairperson to the state central committee and for the selection of other party officers;

(e) A method for filling vacancies in party offices;

(f) The powers and duties of party officers;

(g) The structure of the state and county party organizations, if any;

(h) A statement that any meeting to elect party officers, including delegates, and any assembly to nominate candidates, shall be held at a public place at the time specified by the party chairperson and that the time and place of such meeting shall be published once, no later than fifteen days before such meeting, in a newspaper of general circulation in each county wherein the members of the minor political party reside;

(i) A statement that the party chairperson or his or her designee shall be the person who shall communicate on behalf of the minor political party; and

(j) A method for amending the constitution or set of bylaws.

(2) The chairperson of the party shall file any amendments to the constitution or set of bylaws with the secretary of state no later than fifteen days after the amendments are adopted.

(3) The name of the minor political party shall contain no more than three words in addition to the word "party". The name of the minor political party shall not use, in whole or in part, the name of any existing political party.

Source: L. 98: Entire part added, p. 251, § 1, effective April 13. **L. 99:** (1)(h) and (2) amended, p. 769, § 34, effective May 20. **L. 2003:** (1)(b), (1)(c), and (1)(h) amended, p. 1311, § 9, effective April 22.

1-4-1302. Petition to qualify as a minor political party. (1) A petition to qualify as a minor political party shall be signed by at least ten thousand registered electors and shall be submitted to the secretary of state no later than March 1 of the election year for which the minor political party seeks to qualify.

(2) The petition shall contain the name of the minor political party, and the heading of the petition shall state that the signers thereof desire that it be qualified as a minor political party.

(3) Each registered elector signing a petition pursuant to this section shall print the elector's name and address, including the street and number, if any. There shall be attached to each petition an affidavit of a registered elector who circulated the petition stating:

(a) The elector's address;

(b) That the elector is a registered elector;

(c) That the elector circulated the petition;

(d) That each signature on the petition was affixed in the elector's presence and is the signature of the person whose name it purports to be; and

(e) That, to the best of the elector's knowledge and belief, each of the persons signing the petition was a registered elector at the time of signing.

(4) (a) Upon filing, the secretary of state shall review all petition information and verify the information against the registration records. The secretary of state shall establish guidelines for verifying petition entries.

(b) No later than twenty-one days after receipt of the petition, the secretary of state shall notify the minor political party seeking to qualify of the number of valid signatures and whether the petition appears to be sufficient or insufficient.

(c) In case a petition to allow a minor political party to nominate candidates is not sufficient, it may be amended once at any time prior to 3 p.m. on the seventh day following the date of the notification of insufficiency. If such petition is amended prior to 3 p.m. on the seventh day following the notification of insufficiency, the secretary of state shall notify the minor political party of whether the petition is sufficient or insufficient no later than the fourteenth day following the date of the notification of insufficiency.

(d) Upon determining that the petition is sufficient:

(I) The secretary of state shall notify the minor political party and the clerk and recorder of each county that such party is qualified; and

(II) Eligible electors shall be able to register as affiliated with such minor political party.

Source: L. 98: Entire part added, p. 252, § 1, effective April 13. **L. 99:** (4)(b) and (4)(c) amended, p. 769, § 35, effective May 20. **L. 2003:** (1), (2), and (4)(d)(I) amended, p. 1311, § 10, effective April 22.

1-4-1303. Qualifications to nominate by constitution or bylaws. (1) Subject to the provisions of subsection (2) of this section, a minor political party qualifies as a minor political party if the party satisfies the requirements of section 1-4-1302 or any one of the following conditions:

(a) Any of its candidates for any office voted on statewide in either of the last two preceding general elections received at least five percent of the total votes cast for such office.

(b) One thousand or more registered electors are affiliated with the minor political party prior to July 1 of the election year for which the minor political party seeks to nominate candidates.

(2) A minor political party shall continue to be qualified as a minor political party if:

(a) A candidate of the party for statewide office has received at least one percent of the total votes cast for any statewide office in either of the last two preceding general elections; or

(b) One thousand or more registered electors are affiliated with the minor political party prior to July 1 in either of the last two preceding general elections for which the party seeks to nominate candidates.

(3) (Deleted by amendment, L. 2003, p. 1312, § 11, effective April 22, 2003.)

Source: L. 98: Entire part added, p. 253, § 1, effective April 13. **L. 2003:** IP(1) and (3) amended, p. 1312, § 11, effective April 22.

1-4-1304. Nomination of candidates. (1) A minor political party may nominate candidates in accordance with sections 1-4-302, 1-4-402 (1) (a), 1-4-502 (1), and 1-4-802 and this article.

(1.5) (a) A minor political party may nominate candidates for offices to be filled at a general election by petition in accordance with section 1-4-802.

(b) (I) A minor political party may nominate candidates for offices to be filled at a general election by assembly. An assembly shall be held no later than sixty-five days preceding the primary election.

(II) Each candidate receiving thirty percent or more of the votes of all duly accredited assembly delegates who are present and voting on that office shall be designated by the assembly and certified pursuant to subsection (3) of this section.

(c) If an assembly designates more than one candidate for an office, or if an assembly designates one or more candidates and one or more candidates qualifies by petition, the candidate of the minor political party for that office shall be nominated at a primary election held in accordance with this code.

(d) If only one candidate is designated for an office by petition or assembly, that candidate shall be the candidate of the minor political party in the general election.

(e) Nothing in this section shall be construed to prevent any eligible elector associated with a political organization that does not qualify as a minor political party in an election from qualifying for the ballot by petition as an unaffiliated candidate under section 1-4-802.

(2) Nominations by a minor political party, to be valid, shall be made in accordance with the party's constitution or bylaws. No nomination under this section shall be valid for any general election held after January 1, 1999, unless the nominee:

(a) Is a registered elector;

(b) Has been affiliated for a period of twelve months immediately preceding the date of nomination with the minor political party that is making the nomination as shown in the registration books of the county clerk and recorder unless otherwise provided in the constitution or bylaws of the minor political party; and

(c) Has not been registered as a member of a major political party for at least twelve months prior to the date of nomination unless otherwise provided in the constitution or bylaws of the minor political party.

(3) Any minor political party nominating candidates in accordance with this part 13 shall file a certificate of designation with the designated election official no later than four days after the assembly was held at which the candidate was designated. The certificate of designation shall state the name of the office for which each person is a candidate and the candidate's name and address, the date on which the assembly was held at which the candidate was designated, shall designate in not more than three words the name of the minor political party that the candidate represents, and shall certify that the candidate is a member of the minor political party. The candidate's affiliation as shown on the registration books of the county clerk and recorder is prima facie evidence of party membership.

(4) Any person nominated in accordance with this part 13 shall file a written acceptance with the designated election official by mail, facsimile transmission, or hand delivery. The written acceptance must be postmarked or received by the designated election official no later than four business days after the filing of the certificate of designation required under subsection (3) of this section. If the acceptance is transmitted to the designated election official by facsimile transmission, the original acceptance must also be filed and postmarked no later than ten days after the filing of the certificate of designation required under subsection (3) of this section. If an acceptance is not filed within the specified time, the candidate shall be deemed to have declined the nomination.

(5) Nothing in this part 13 shall be construed to allow a minor political party to nominate more than one candidate for any one office.

Source: L. 98: Entire part added, p. 254, § 1, effective April 13. **L. 99:** IP(2), (3), and (4) amended, p. 769, § 36, effective May 20; (3) amended, p. 161, § 12, effective August 4. **L. 2001:** (3) amended, p. 1002, § 7, effective August 8. **L. 2003:** (1) and (3) amended and (1.5) added, p. 1312, § 12, effective April 22. **L. 2007:** (2)(b) and (2)(c) amended, p. 1974, § 14, effective August 3.

Editor's note: Amendments to subsection (3) by Senate Bill 99-025 and House Bill 99-1152 were harmonized.

1-4-1305. Disqualification of minor political party. (1) In the event a minor political party ceases to qualify as such a party pursuant to section 1-4-1303 (2) and fails to subsequently qualify as such a party pursuant to section 1-4-1303, the secretary of state shall notify the chairperson of such party and the clerk and recorder of each county of such disqualification.

(2) Such notice of disqualification shall be provided by the secretary of state to the chairperson of the minor political party and to each clerk and recorder no later than July 1 of an election year in which a minor political party may qualify candidates for the ballot. No certificate of designation of candidates pursuant to section 1-4-1304 (3) shall be accepted by the secretary of state from the minor political party for the election for which such party has ceased to qualify.

(3) Upon notification of disqualification of a minor political party, each registered elector that is affiliated with such minor political party shall be designated on the registration books of the county clerk and recorder as "unaffiliated".

Source: L. 98: Entire part added, p. 255, § 1, effective April 13.

ARTICLE 5

Notice and Preparation for Elections

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this article was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of this article for 1980 and 1992, see the comparative tables located in the back of the index.

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PART 1

POLLING PLACES

Cross references: For early voters' polling place, see § 1-8-204.

1-5-101. Establishing precincts and polling places for partisan elections. (1) Subject to approval by the board of county commissioners, the county clerk and recorder of each county shall divide the county into as many election precincts for all general, primary, and congressional vacancy elections as is convenient for the eligible electors of the county and shall designate the place for each precinct at which elections are to be held. In establishing boundaries, the board of county commissioners shall take into consideration natural and artificial boundaries that meet the requirements of the United States bureau of the census. The precincts shall be numbered in accordance with section 1-5-101.5. Changes in the precinct boundaries of a county shall be made only within the district boundaries of each representative and senatorial district.

(2) In counties that use paper ballots, the county clerk and recorder, subject to approval by the board of county commissioners, shall establish at least one precinct for every six hundred active eligible electors, with boundaries that take into consideration municipal and school district boundary lines whenever possible. However, the county clerk and recorder, subject to approval by the board of county commissioners, may establish one precinct for every seven hundred fifty active eligible electors.

(3) In a county that uses an electronic or electromechanical voting system, the county clerk and recorder, subject to approval by the board of county commissioners, shall establish at least one precinct for every one thousand five hundred active eligible electors. However, the county clerk and recorder, subject to approval by the board, may establish one precinct for every two thousand active eligible electors.

(4) Repealed.

(5) Notwithstanding section 1-5-103, and except as otherwise required by federal law, in order to facilitate the preparation of a computerized database for use in the redistricting process that will take

place after the decennial census in years ending in the number zero, the precinct boundaries established by the county clerk and recorder of each county, subject to approval by the board of county commissioners, that are used in the general election in years ending in the number eight shall remain in effect until after the general election in years ending in the number zero; except that the precincts so established may be subdivided within the boundaries of the original precinct and adjacent precincts may be aggregated for purposes of data collection. In establishing precinct boundaries pursuant to the provisions of this subsection (5), county clerk and recorders and boards of county commissioners shall, to the extent reasonably possible, utilize natural and man-made boundaries that meet the requirements for visible features adopted by the United States bureau of the census. If the precinct boundaries used in the general election in years ending in the number eight are changed prior to the next general election in years ending in the number zero pursuant to federal law, the county clerk and recorders shall timely submit in writing to the director of research of the legislative council a list showing the precincts for which the boundaries have changed.

(6) A precinct containing no more than one hundred fifty electors may be designated as a mail-in polling precinct at the discretion of the election official for the precinct.

Source: L. 92: Entire article R&RE, p. 700, § 8, effective January 1, 1993. **L. 95:** Entire section amended, p. 835, § 45, effective July 1. **L. 97:** (5) added, p. 1056, § 2, effective May 27; (4) added, p. 5, § 1, effective August 6. **L. 98:** (6) added, p. 635, § 8, effective May 6. **L. 99:** (4) amended, p. 1389, § 7, effective June 4. **L. 2000:** (1) amended, p. 265, § 2, effective August 2. **L. 2004:** (4) repealed, p. 1104, § 2, effective May 27; (3) amended, p. 1343, § 4, effective May 28. **L. 2007:** (6) amended, p. 1778, § 12, effective June 1. **L. 2008:** (5) amended, p. 1743, § 4, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-6-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-4-201 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: (1) For transferring names of electors when precinct boundaries changed, see § 1-2-223; for the power of the board of county commissioners to form new precincts, change the names of precincts, or reduce the numbers of precincts, see § 30-11-114.

(2) For the legislative declaration contained in the 2004 act amending subsection (3), see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 301-304.

C.J.S. See 29 C.J.S., Elections, § 73.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Judicial notice taken of boundaries of election precincts. Courts take judicial notice of matters of common knowledge in the community where they sit, such as the boundaries of election precincts. Nat'l Optical Co. v. United States Fid. & Guar. Co., 77 Colo. 130, 235 P. 343 (1925); Antlers Athletic Ass'n v. Hartung, 85 Colo. 125, 274 P. 831 (1928); Israel v. Wood, 93 Colo. 500, 27 P.2d 1024 (1933).

And a court will take judicial notice of the fact that there has been a precinct established in a county, it not being material whether the precinct was established upon proper petition or by virtue of authority so to do under this section. Bd. of Comm'rs v. People ex rel. McPherson, 36 Colo. 246, 91 P. 36 (1906).

Whereupon a mandamus proceeding will be dismissed. When a court takes judicial notice that an election precinct has been established, a mandamus proceeding to compel the board of county commissioners to establish such precinct pending upon review in such court will be dismissed, there being no live question for determination. Bd. of Comm'rs v. People ex rel. McPherson, 36 Colo. 246, 91 P. 36 (1906).

Applied in Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

1-5-101.5. Precinct numbering. (1) There is hereby created a precinct numbering system that shall be used by the county clerk and recorder of each county of the state in numbering election precincts established in accordance with section 1-5-101. The precinct numbering system created pursuant to this

section shall not be used until the reapportionment of senatorial and representative districts required to be conducted after the 2000 federal census pursuant to section 48 of article V of the Colorado constitution is completed, but the precinct numbering system shall be implemented by each county clerk and recorder no later than July 1, 2002.

(2) Any election precinct established pursuant to the provisions of section 1-5-101 shall be numbered with a ten digit number as follows:

(a) The first digit of the precinct number shall consist of the number of the congressional district in which the precinct is contained.

(b) The second and third digits of the precinct number shall consist of the number of the state senatorial district in which the precinct is contained. If the state senatorial district consists of one digit, such digit shall be preceded by a zero for purposes of the precinct number.

(c) The fourth and fifth digits of the precinct number shall consist of the number of the state representative district in which the precinct is contained. If the state representative district consists of one digit, such digit shall be preceded by a zero for purposes of the precinct number.

(c.5) The sixth and seventh digits of the precinct number shall consist of the number assigned by the secretary of state to represent the county in which the precinct is contained.

(d) The last three digits of the precinct number shall consist of an individual precinct number as determined by the county clerk and recorder.

(3) Any changes in election precinct numbering required pursuant to this section shall be completed and reported by the county clerk and recorder to the secretary of state in accordance with section 1-5-103 (3).

Source: L. 2000: Entire section added, p. 264, § 1, effective August 2. **L. 2001:** IP(2) amended and (2)(c.5) added, p. 1003, § 8, effective August 8.

1-5-102. Establishing precincts and polling places for nonpartisan elections. (1) For nonpartisan elections other than coordinated elections, no later than twenty-five days prior to the election, the designated election official, with the approval of the governing body with authority to call elections, shall divide the jurisdiction into as many election precincts as it deems expedient for the convenience of eligible electors of the jurisdiction and shall designate the polling place for each precinct. The election precincts shall consist of one or more whole general election precincts wherever practicable, and the designated election official and governing body shall cooperate with the county clerk and recorder and the board of county commissioners of their political subdivisions to accomplish this purpose. Wherever possible, the polling places shall be the same as those designated by the county for partisan elections.

(2) The county clerk and recorder, no later than one hundred twenty days prior to a regular special district election or regular election of any other political subdivision, shall prepare a map of the county showing the location of the polling places and precinct boundaries utilized in the last November election. Copies of the map shall be available for inspection at the office of the county clerk and recorder and for distribution to the designated election official of each political subdivision.

(3) The county clerk and recorder shall maintain a list of owners or contact persons who, to the clerk's knowledge, may grant permission to political subdivisions to use the locations identified on the map for polling places. The clerk shall, upon request of the designated election official of a political subdivision, provide a copy of the list, or a part of the list as requested by the designated election official.

Source: L. 92: Entire article R&RE, p. 700, § 8, effective January 1, 1993. **L. 94:** Entire section amended, p. 1155, § 19, effective July 1. **L. 95:** (1) amended, p. 836, § 46, effective July 1. **L. 96:** (1) amended, p. 1741, § 29, effective July 1. **L. 99:** (1) and (2) amended, p. 770, § 37, effective May 20.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 301-304. **C.J.S.** See 29 C.J.S., Elections, §§ 73, 144.

1-5-102.5. Establishing polling places for coordinated elections. (1) No later than ninety days prior to a coordinated election, the county clerk and recorder, in consultation with the other designated election officials of each political subdivision participating in the election, shall assure that one polling place be designated to allow an individual elector to vote for all ballot issues, ballot questions, and candidates voted on the same date.

(2) Repealed.

Source: L. 93: Entire section added, p. 1408, § 40, effective July 1. **L. 98:** Entire section amended, p. 582, § 15, effective April 30. **L. 99:** (1) amended, p. 771, § 38, effective May 20. **L. 2004:** (2) repealed, p. 1104, § 3, effective May 27.

1-5-102.7. Combining precincts and polling places - vote centers. (1) Notwithstanding any provision of section 1-5-101, 1-5-102, or 1-5-102.5, a designated election official may combine polling places or precincts or establish one or more vote centers for any election, subject to approval by the board of county commissioners. A designated election official who combines polling places or precincts or establishes a vote center shall publish the location of polling places pursuant to section 1-5-205.

(2) If vote centers are used in an election in a political subdivision, precinct polling places shall not also be used in the election in that political subdivision, unless each precinct polling place has a secure electronic connection to provide voting information to and receive voting information from the computerized registration book maintained by the county clerk and recorder.

(3) If vote centers are used in a general election in a county with a population of twenty-five thousand or more active registered electors, there shall be at least one vote center for every ten thousand active registered electors; except that the secretary of state may waive this requirement for a county before the election at the request of the county clerk and recorder.

(4) Each vote center used in a county shall have a secure electronic connection to the computerized registration book maintained by the county clerk and recorder permitting all voting information processed by any computer at a vote center to be immediately accessible to all other computers at all vote centers in the county. A county may not use vote centers in an election unless the secretary of state has certified that the secure electronic connection is sufficient to prevent any elector from voting more than once and to prevent unauthorized access to the computerized registration book. The secretary of state shall adopt rules in accordance with article 4 of title 24, C.R.S., establishing requirements for the equipment used at a vote center, including but not limited to requirements to test and backup the equipment used for the secure electronic connection to the computerized registration book and requirements that a vote center have a noncomputerized copy of the registration book or a copy of the elector registration records stored electronically at the vote center to be used in case of a system failure.

(5) (a) The designated election official shall determine the number, location, and manner of operation of vote centers, including poll watching activities at vote centers, in consultation with the chairpersons of the county central committees of the major political parties and a representative of the county organization of any minor political party and after a public comment period of no less than fifteen days and a public hearing held in accordance with the rules adopted by the secretary of state pursuant to article 4 of title 24, C.R.S.

(b) The secretary of state shall adopt rules in accordance with article 4 of title 24, C.R.S., establishing guidelines for the number, location, and manner of operation of vote centers. The guidelines shall address issues including, but not limited to, the number of computers with a secure connection to the computerized registration book, voting devices or machines, provisional ballots, and other supplies to be available at each vote center.

(6) Each vote center shall meet all the requirements of federal and state law applicable to polling places, except as such requirements of state law are modified by this section.

(7) The designated election official of a political subdivision shall not establish vote centers for a general election unless vote centers were used in a previous election held by the political subdivision in

an odd-numbered year or in a primary election held on or after January 1, 2006.

(8) (a) In elections held before January 1, 2008, the election judges shall make one certificate for each vote center in the form required by section 1-7-601.

(b) In elections held on and after January 1, 2008, the use of vote centers in an election shall not affect the duty of the election judges to make a certificate for each precinct in accordance with section 1-7-601.

Source: L. 2004: Entire section added, p. 1105, § 4, effective May 27. **L. 2006:** (5) and (8) amended, p. 2031, § 9, effective June 6. **L. 2007:** (4) and (5)(b) amended, p. 1974, § 15, effective August 3.

1-5-103. Changes in boundaries - partisan elections. (1) (a) Changes in the boundaries of precincts or the creation of new precincts for partisan elections shall be completed no later than twenty-nine days prior to the precinct caucus day, except in cases of precinct changes resulting from changes in county boundaries.

(b) Repealed.

(2) Subject to approval by the board of county commissioners, the county clerk and recorder shall change any polling place upon a petition of a majority of the eligible electors residing within a precinct if the request is made at least ninety days prior to the primary election.

(3) All changes in precinct boundaries or numbering for partisan elections, including changes required pursuant to section 1-5-101.5, shall be reported within ten days by the county clerk and recorder to the secretary of state, and a corrected precinct map shall be transmitted to the secretary of state as soon as possible after the changes have been effected.

Source: L. 92: Entire article R&RE, p. 701, § 8, effective January 1, 1993. **L. 94:** (1) amended, p. 1769, § 26, effective January 1, 1995. **L. 95:** (1) amended, p. 836, § 47, effective July 1. **L. 99:** (1) amended, p. 771, § 39, effective May 20. **L. 2000:** (3) amended, p. 265, § 3, effective August 2. **L. 2002:** (1) amended, p. 134, § 5, effective March 27.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-101(2), (3) and (4) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-201 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective July 1, 2002. (See L. 2002, p. 134.)

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Applied in Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

1-5-104. Changes in boundaries - nonpartisan elections. (1) Changes in the boundaries of precincts or the creation of new precincts for nonpartisan elections shall be completed no later than twenty-five days prior to scheduled elections, except in cases of precinct changes resulting from changes in the jurisdiction's boundaries.

(2) All changes in precinct boundaries or numbering for nonpartisan elections shall be reported to the county clerk and recorder within ten days by the designated election official, and a corrected precinct map shall be transmitted to the county clerk and recorder as soon as possible after the changes have been effected.

(3) Each governing body shall change any polling place upon a petition of a majority of the eligible electors residing within a precinct if the request is made at least forty-five days prior to the next scheduled election and another polling place location is reasonably available.

(4) Except as provided by law, no polling place shall be changed after the twenty-fifth day prior to an election.

Source: L. 92: Entire article R&RE, p. 701, § 8, effective January 1, 1993. **L. 93:** (1) amended, p. 1408, § 41, effective July 1. **L. 96:** (1), (3), and (4) amended, p. 1742, § 30, effective July 1. **L. 99:** (1) amended, p. 771, § 40, effective May 20.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Applied in Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

1-5-105. Restrictions. (1) No election-related activity shall be conducted within one hundred feet of any building in which a polling place is located except that of the conduct of the election at the polling place.

(2) No polling place shall be located in a room in which any intoxicating malt, spirituous, or vinous liquors are being served.

(3) The polling places shall be in public locations wherever possible. A private location may be used only when no appropriate public location is available.

(4) For purposes of subsection (1) of this section and sections 1-6-119 and 1-13-714, when a polling place is within multi-use buildings such as a shopping mall or county office building, the "building" shall be considered the room in which ballots are cast, any waiting room or hall where electors wait to vote, as well as a primary corridor where electors walk to an interior polling place, and the designated exterior door to the multi-use building in which the polling place is located.

Source: L. 92: Entire article R&RE, p. 701, § 8, effective January 1, 1993. **L. 93:** (2) and (3) amended, p. 1408, § 42, effective July 1. **L. 95:** (4) added, p. 836, § 48, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-101 (5) and (6) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-201 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-5-106. Polling place - designation by sign. All polling places shall be designated by a sign conspicuously posted at least twelve days before each election. The sign shall be substantially in the following form: "Polling place for precinct no. ...." The lettering on the sign and the precinct number shall be black on a white background. The letters and numerals of the title shall be at least four inches in height. In addition, the sign shall state the hours the polling place will be open.

Source: L. 92: Entire article R&RE, p. 702, § 8, effective January 1, 1993. **L. 95:** Entire section amended, p. 836, § 49, effective July 1. **L. 2007:** Entire section amended, p. 1975, § 16, effective August 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-6-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-4-201 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 301-304.

1-5-107. Polling places for disabled electors - repeal. (Repealed)

Source: L. 92: Entire article R&RE, p. 702, § 8, effective January 1, 1993. **L. 2004:** (2) added by revision, pp. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-7-108 (2) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-5-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (2) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

1-5-108. Election judges may change polling places. (1) If it becomes impossible or impracticable to hold an election because of an emergency at the designated polling place, the election judges, after assembling at or as near as practicable to the original designated polling place, may move to the nearest convenient place for holding the election and at the newly designated place forthwith proceed with the election. The election judges shall notify the designated election official of the change as soon as possible.

(2) Upon moving to a new polling place, the election judges shall display a proclamation of the change at the original polling place to notify all electors of the new location for holding the election. The proclamation shall contain a statement explaining the specific nature of the emergency that required the change in the polling place and shall provide the street address of the new location.

Source: L. 98: Entire section added, p. 583, § 16, effective April 30.

PART 2

CALL AND NOTICE

1-5-201. Notice of presidential primary election. (Repealed)

Source: L. 92: Entire article R&RE, p. 702, § 8, effective January 1, 1993. **L. 93:** Entire section repealed, p. 1409, § 43, effective July 1.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-4-1103 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-5-201.5. Legislative declaration - purpose. The general assembly declares that the purpose of this part 2 is to provide adequate notice of elections at a reasonable cost to the taxpayers of the state and its political subdivisions.

Source: L. 94: Entire section added, p. 1155, § 20, effective July 1.

1-5-202. Notice of presidential primary and primary election by secretary of state and county clerk and recorder. (Repealed)

Source: L. 92: Entire article R&RE, p. 702, § 8, effective January 1, 1993. **L. 93:** (1) and (2) amended, p. 1409, § 44, effective July 1. **L. 94:** Entire section amended, p. 1155, § 21, effective July 1. **L. 96:** (2) amended, p. 1742, § 31, effective July 1. **L. 99:** (1) and (2) amended, p. 771, § 41, effective May 20. **L. 2002:** Entire section repealed, p. 1642, § 39, effective June 7.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-6-201 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-15-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-5-203. Certification of ballot. (1) (a) No later than sixty days before any primary election, and no later than fifty-seven days before any general or odd-year November election or congressional vacancy election, the secretary of state shall deliver by electronic transmission and registered mail to the county clerk and recorder of each county a certificate in writing of the ballot order and content for each county, as follows:

(I) For general elections, the certificate shall specify the national and state officers and the district officers of state concern for whom some or all of the eligible electors of the county are entitled to cast ballots at the general election. The certificate shall include the name and party or other designation of each candidate for whom some or all of the eligible electors of the county are entitled to cast ballots and for whom a petition or certificate of nomination has been filed with the secretary of state, the name and party of each candidate nominated at the primary election for a national or state office or a district office of state concern, and the order of the ballot and the ballot content for the election. With regard to the election of members to the general assembly, the notice shall also specify the district number and the names of the members whose terms of office will expire.

(II) For primary elections, the certificate shall specify the offices for which nominations are to be made. The notice shall include a certified list of persons for whom certificates of designation or petitions have been filed with the secretary of state and the office for which each person is a candidate, together with the other details mentioned in the certificates of designation or petitions, and the order of the ballot for the primary election.

(III) For any election at which one or more ballot issues or ballot questions are to be submitted to the eligible electors of the entire state, the secretary of state shall certify the order of ballot and ballot content with respect to such ballot issues or ballot questions to the county clerk and recorder of each county of the state.

(b) The secretary of state shall be solely responsible for the accuracy of the information contained in the certificate.

(2) (Deleted by amendment, L. 2002, p. 1626, § 4, effective June 7, 2002.)

(3) (a) No later than sixty days before any election, the designated election official of each political subdivision that intends to conduct an election shall certify the order of the ballot and ballot content. Such certification shall be delivered to the county clerk and recorder of each county that has territory within the political subdivision if the election is coordinated with the clerk and recorder. The order of the ballot and ballot content shall include the name and office of each candidate for whom a petition has been filed with the designated election official and any ballot issues or ballot questions to be submitted to the eligible electors.

(b) (Deleted by amendment, L. 2002, p. 1626, § 4, effective June 7, 2002.)

(c) The state or a political subdivision that issues a certificate pursuant to this subsection (3) shall be solely responsible for the accuracy of the information contained in the certificate. Any error that can be corrected pursuant to the provisions of section 1-5-412 shall be corrected at the expense of the political subdivision whose designated election official issued the defective certificate or, at the expense of the state, if the secretary of state issued the defective certificate.

Source: L. 92: Entire article R&RE, p. 703, § 8, effective January 1, 1993. **L. 93:** Entire section amended, p. 1409, § 45, effective July 1. **L. 94:** Entire section amended, p. 1156, § 22, effective July 1. **L. 99:** Entire section amended, p. 772, § 42, effective May 20. **L. 2002:** (1), (2), (3)(a), and (3)(b) amended, p. 1626, § 4, effective June 7. **L. 2003:** IP(1) amended, p. 495, § 2, effective March 5. **L. 2005:** IP(1) and (3)(a) amended, p. 1402, § 21, effective June 6; IP(1) and (3)(a) amended, p. 1437, § 21, effective June 6. **L. 2006:** (1) amended, p. 1487, § 1, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-201 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-101 and 1-4-102 as said sections existed in 1979, the year prior to the first repeal and reenactment of this article.

1-5-204. Call for nominations for nonpartisan elections. (Repealed)

Source: L. 92: Entire article R&RE, p. 703, § 8, effective January 1, 1993. **L. 93:** Entire section amended, p. 1409, § 46, effective July 1. **L. 94:** Entire section amended, p. 1157, § 23, effective July 1. **L. 96:** Entire section repealed, p. 1742, § 32, effective July 1.

1-5-205. Published and posted notice of election. (1) The designated election official, or the coordinated election official if so provided by an intergovernmental agreement, no later than ten days before each election, shall provide notice by publication of the election as described by section 1-1-104 (34), which notice shall state, as applicable for the particular election for which notice is provided, the following:

(a) The date of the election;

(b) The hours during which the polls will be open on election day and for early voting;

(c) The address of the walk-in location and hours during which the walk-in location for the delivery of mail ballots and receipt of replacement ballots will be open;

(d) The address of the location for application and the return of mail-in ballots and the hours during which the office will be open;

(e) The complete ballot content.

(f) to (i) (Deleted by amendment, L. 2002, p. 1627, § 5, effective June 7, 2002.)

(1.2) (Deleted by amendment, L. 2002, p. 1627, § 5, effective June 7, 2002.)

(1.3) A copy of the notice required by this section shall be posted at least ten days prior to the election and until two days after the election in a conspicuous place in the office of the designated election official or the clerk and recorder if the election is coordinated by the clerk and recorder. Sample ballots may be used as notices so long as the information required by this section is included with the sample ballot.

(1.4) Publication of the notice required by subsection (1) of this section by the clerk and recorder for a coordinated election shall satisfy the publication requirement for all political subdivisions participating in the coordinated election.

(1.5) (Deleted by amendment, L. 2002, p. 1627, § 5, effective June 7, 2002.)

(2) At the time that notice by publication is made, the designated election official shall also mail a copy of the notice of the election to the county clerk and recorders of the counties in which the political subdivision is located if the clerk and recorder is not the coordinated election official.

(3) When there is a vacancy for an unexpired term in any national or state office or a district office of state concern that is by law to be filled at any general or congressional vacancy election, the secretary of state, no later than fifty-five days prior to the election, shall give notice in writing by publishing a notice in at least one newspaper of general circulation in the state or in the congressional district in which the vacancy is to be filled. The notice shall specify the office in which the vacancy exists, the cause of the vacancy, the name of the officer in whose office it has occurred, and the time when the term of office will expire.

Source: L. 92: Entire article R&RE, p. 704, § 8, effective January 1, 1993. **L. 93:** Entire section amended, p. 1410, § 47, effective July 1. **L. 94:** Entire section amended, p. 1157, § 24, effective July 1. **L. 96:** IP(1), (1)(h), and (1)(i) amended and (1.2) added, p. 1743, § 33, effective July 1. **L. 99:** IP(1) and (1.5) amended, p. 773, § 43, effective May 20. **L. 2000:** (1)(g) amended, p. 299, § 7, effective August 2. **L. 2002:** Entire section amended, p. 1627, § 5, effective June 7. **L. 2007:** (1)(d) amended, p. 1778, § 13, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-202 (2) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-102 (2) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the correction of errors in publication, see § 1-5-412.

ANNOTATION

I. General Consideration.
II. Notice by Secretary of State.
III. Notice by County Clerk and Recorder.
A. In General.
B. Published in Newspapers.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 275-278.

C.J.S. See 29 C.J.S., Elections, § 136.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. NOTICE BY SECRETARY OF STATE.

In case of the election of officers for the executive or judicial department, the secretary of state is bound to give 30 days' notice of it, and in the case of a vacancy which is to be filled at the election, he must likewise give 30 days' notice. People ex rel. Dix v. Kerwin, 10 Colo. App. 472, 51 P. 530 (1897).

III. NOTICE BY COUNTY CLERK AND RECORDER.

A. In General.

The requirement that notice be published and posted for 10 days before the election is specific, precise and definite. People ex rel. Dix v. Kerwin, 10 Colo. App. 472, 51 P. 530 (1897).

The theory of elections is that there shall be due notice given to the voters, and that they must be advised either by a direct notice published by the clerk or by proceedings taken by the voters and the people generally in such way as that it may be fairly inferred that it was generally and thoroughly well understood that a particular office was to be filled at the election, so that the voters should act understandingly and intelligently in casting their ballots. People ex rel. Dix v. Kerwin, 10 Colo. App. 472, 51 P. 530 (1897).

Election conducted without notice held to be invalid. People ex rel. Dix v. Kerwin, 10 Colo. App. 472, 51 P. 530 (1897).

But under some circumstances an election may be valid notwithstanding lack of notice. See People ex rel. Dix v. Kerwin, 10 Colo. App. 472, 51 P. 530 (1897).

For the notice requirement is not necessarily under all circumstances and at all times so far mandatory that a failure to observe it will defeat an election otherwise regularly held. People ex rel. Dix v. Kerwin, 10 Colo. App. 472, 51 P. 530 (1897).

B. Published in Newspapers.

The notice requirement is clearly intended for the benefit of the public, not the newspapers. People ex rel. Lamar Publ'g Co. v. Hoag, 54 Colo. 452, 131 P. 400 (1913).

The purpose of requiring that legal notices be published in newspapers of general circulation is not to benefit the papers but to insure that the public is aware of matters of legal importance. Resident Participation of Denver, Inc. v. Love, 322 F. Supp. 1100 (D. Colo. 1971).

And since the duty imposed by the notice requirement is a public one, its breach does not constitute a private wrong for which a publisher can recover in an individual action. People ex rel. Lamar Publ'g Co. v. Hoag, 54 Colo. 542, 131 P. 400 (1913).

However, a printer who follows the statutory requirements as to printing the nomination list cannot be denied compensation for such printing by reason of his purported nonobservance of the clerk's directions to print in another form. Bd. of Comm'rs v. Frederick, 50 Colo. 464, 115 P. 514 (1911).

And for publishing the nomination list, publishers are entitled to the reasonable value of the work, as § 24-70-107, providing for fees for publication of legal notices, does not apply. Bd. of Comm'rs v. Price, 10 Colo. App. 519, 51 P. 1011 (1898).

And a contract of the publisher of a newspaper for the legal printing for a county may be so framed as to include the printing of such lists, in case the clerk should select such newspaper for its publication. Bd. of Comm'rs v. Frederick, 50 Colo. 464, 115 P. 514 (1911).

But the publication of the list of nominations is county printing. Bd. of Comm'rs v. Frederick, 50 Colo. 464, 115 P. 514 (1911).

But inasmuch as the clerk is to select the newspaper in which the list is to be published, a contract in general terms to do the "county legal printing", at a specified rate, does not include the publication of such lists. Bd. of Comm'rs v. Frederick, 50 Colo. 464, 115 P. 514 (1911).

1-5-206. Postcard notice - reimbursement of mailing cost. (1) (a) No later than twenty-five days before the general election or a special legislative election, the county clerk and recorder shall mail a voter information card concerning the general election or special legislative election by forwardable mail to each active registered eligible elector of the county, as defined in section 1-1-104 (16), and by

nonforwardable mail to each inactive registered eligible elector, except an elector whose previous communication from the county clerk and recorder was returned by the United States postal service as undeliverable or an elector whose registration record was marked "Inactive" by the county clerk and recorder pursuant to section 1-2-605 (2) before the general election of 2006.

(b) As used in this section, unless the context otherwise requires, "voter information card" means written communication in the form of a card or letter that is mailed to the elector's address of record, unless the elector has requested that such communication be sent to the elector's deliverable mailing address pursuant to section 1-2-204 (2) (k), and shall contain the eligible elector's name and address, precinct number, polling location for the election, a returnable portion that allows the elector to request designation as a permanent mail-in voter pursuant to section 1-8-104.5, and any other information the designated election official deems applicable.

(2) (a) No later than fifteen days before a nonpartisan election and in addition to the publication required by section 1-5-205, the designated election official or coordinated election official may mail to each household where one or more active eligible electors reside a voter information card. The information on the voter information card may be included with the ballot issue notice.

(a.5) and (b) (Deleted by amendment, L. 2002, p. 1629, § 6, effective June 7, 2002.)

(3) and (4) (Deleted by amendment, L. 94, p. 1158, § 25, effective July 1, 1994.)

(5) Repealed.

Source: L. 92: Entire article R&RE, p. 704, § 8, effective January 1, 1993. **L. 93:** (2)(a) amended, p. 1766, § 5, effective June 6; (1) and (2)(a) amended and (4) added, p. 1410, § 48, effective July 1. **L. 94:** Entire section amended, p. 1158, § 25, effective July 1; (1) amended, p. 1769, § 27, effective January 1, 1995. **L. 95:** (1) amended, p. 837, § 50, effective July 1. **L. 97:** (1) amended, p. 477, § 19, effective July 1. **L. 99:** (2)(a) amended, p. 773, § 44, effective May 20; (1) amended, p. 1389, § 8, effective June 4; (1) amended, p. 279, § 5, effective August 4. **L. 2000:** (1) and (2) amended, p. 1084, § 1, effective August 2. **L. 2002:** (1)(b) and (2) amended, p. 1629, § 6, effective June 7. **L. 2007:** (1)(b) amended, p. 1778, § 14, effective June 1. **L. 2008:** (1)(a) amended and (5) added, p. 1875, § 2, effective June 2. **L. 2009:** (1)(a) amended, (SB 09-292), ch. 369, p. 1938, § 1, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-2-222 (1)(a) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (2)(a) was amended in House Bill 93-1342. Those amendments were superseded by the amendment of subsection (2)(a) in House Bill 93-1255.

(3) Amendments to this section by House Bill 94-1286 and House Bill 94-1294 were harmonized.

(4) Amendments to subsection (1) by House Bill 99-1082 and House Bill 99-1097 were harmonized.

(5) Subsection (5)(b) provided for the repeal of subsection (5), effective July 1, 2009. (See L. 2008, p. 1875.)

(6) Subsection (1)(a) was amended in a 2009 act that was passed without a safety clause. The act establishes an effective date of August 5, 2009, for this provision. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-5-206.5. Ballot issue notice. (Repealed)

Source: L. 94: Entire section added, p. 1159, § 26, effective July 1. **L. 96:** Entire section repealed, p. 1775, § 84, effective July 1.

1-5-206.7. Failure to receive mailed notice. Any election for which a notice was mailed shall not be invalidated on the grounds that an eligible elector did not receive the ballot issue notice, mailed information, or mailed notification of the election required by this code or the state constitution if the designated election official or coordinated election official acted in good faith in making the mailing. Good faith is presumed if the designated election official or coordinated election official mailed the ballot issue notice, information, or notification to the addresses appearing on a registration list for the

political subdivision as provided by the county clerk and recorder, and, where applicable, the list of property owners provided by the county assessor.

Source: L. 94: Entire section added, p. 1159, § 26, effective July 1.

1-5-207. Court-ordered elections. (1) When an election is ordered by the court for a special district, the court shall authorize the designated election official to give notice as provided in the order.

(2) For an organizational election, the notice by publication shall include the purposes of the election, the estimated operating and debt service mill levies and fiscal year spending for the first year following organization, and the boundaries of the special district. The notice by publication shall recite the election date, which shall be not less than ten days after publication of the election notice.

(3) For a dissolution election, the notice by publication shall include the plan for dissolution or a summary of the plan and the place where a member of the public may inspect or obtain a copy of the complete plan. The notice by publication shall recite the election date, which shall be not less than ten days after publication of the election notice.

Source: L. 92: Entire article R&RE, p. 705, § 8, effective January 1, 1993. **L. 94:** Entire section amended, p. 1160, § 27, effective July 1.

1-5-208. Election may be canceled - when. (1) Except as provided in subsection (1.5) of this section, if the only matter before the electors is the election of persons to office and if, at the close of business on the thirtieth day before the election, there are not more candidates than offices to be filled at the election, including candidates filing affidavits of intent, the designated election official, if instructed by resolution of the governing body, shall cancel the election and declare the candidates elected.

(1.5) If the only matter before the electors in a nonpartisan election is the election of persons to office and if, at the close of business on the sixty-third day before the election, there are not more candidates than offices to be filled at the election, including candidates filing affidavits of intent, the designated election official, if instructed by resolution of the governing body, shall cancel the election and declare the candidates elected.

(2) Except for initiative and recall elections, no later than twenty-five days before an election conducted as a coordinated election in November, and at any time prior to any other elections, a governing body may by resolution withdraw one or more ballot issues or ballot questions from the ballot. The ballot issues and ballot questions shall be deemed to have not been submitted and votes cast on the ballot issues and ballot questions shall either not be counted or shall be deemed invalid by action of the governing body.

(3) If the electors are to consider the election of persons to office and ballot issues or ballot questions, the election may be canceled by the governing body only in the event that all of the conditions of subsection (1) of this section exist and that all ballot issues or ballot questions have been withdrawn from the ballot pursuant to subsection (2) of this section.

(4) Except as provided in subsection (2) of this section, no election may be canceled in part.

(5) Unless otherwise provided by an intergovernmental agreement pursuant to section 1-7-116, upon receipt of an invoice, the governing body shall within thirty days promptly pay all costs accrued by the county clerk and recorder and any coordinating political subdivision attributable to the canceled election or withdrawn ballot issues or ballot questions.

(6) The governing body shall provide notice by publication of the cancellation of the election. A copy of the notice shall be posted at each polling place of the political subdivision, in the office of the designated election official, and in the office of the clerk and recorder for each county in which the political subdivision is located and, for special districts, a copy of the notice shall be filed in the office of the division of local government. The governing body shall also notify the candidates that the election

was canceled and that they were elected by acclamation.

Source: L. 92: Entire article R&RE, p. 705, § 8, effective January 1, 1993. **L. 94:** Entire section amended, p. 1160, § 28, effective July 1; entire section amended, p. 1769, § 28, effective January 1, 1995. **L. 95:** (1) and (6) amended, p. 837, § 51, effective July 1. **L. 96:** (1) amended and (1.5) added, p. 1743, § 34, effective July 1. **L. 2000:** (2), (3), (4), and (5) amended, p. 790, § 1, effective August 2.

Editor's note: Amendments to this section in House Bill 94-1286 and House Bill 94-1294 were harmonized.

PART 3

REGISTRATION BOOKS

1-5-301. Registration record for partisan elections. (1) The original registration records shall be retained in the office of the county clerk and recorder and may be provided for use by election judges at precinct polling places in primary, general, and congressional vacancy elections.

(2) The designated election official, at least one day prior to any election, shall cause the registration records and all necessary registration supplies to be delivered to the supply judge. The registration records shall be delivered in a sealed envelope or container to the supply judge, who shall have custody of and shall give a receipt for the registration records.

Source: L. 92: Entire article R&RE, p. 706, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-301 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-205 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 308. **C.J.S.** See 29 C.J.S., Elections, § 67.

1-5-302. Computer lists may be used in lieu of original registration records. For the purposes of all elections, the county clerk and recorder may substitute and supply computer lists of registered electors within the political subdivision for the original registration record. Following a primary, general, or congressional vacancy election, the county clerk and recorder shall record the date of election and, if a primary election, the party ballot received on the registered elector's original registration record retained and stored as provided in section 1-1-104 (36).

Source: L. 92: Entire article R&RE, p. 706, § 8, effective January 1, 1993. **L. 95:** Entire section amended, p. 837, § 52, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-302 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-214 (2) and (3) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-5-303. Registration records for nonpartisan elections. (1) No later than the fortieth day preceding the date of the scheduled nonpartisan election, the designated election official shall order the registration records. The designated election official may order a complete list of the registered electors as of the thirtieth day prior to the election with a supplementary list provided on the twentieth day, or the designated election official may order a complete list as of the twentieth day prior to the election. The county clerk and recorder shall certify and make available a complete copy of the list of the registered

electors of each general election precinct that is located within the county and is involved in the election and, if the supplemental list is ordered no later than the twentieth day preceding the election, shall certify and make available a supplemental list of the eligible electors who have become eligible since the earlier list was certified. These lists shall substitute for the original registration record.

(2) The registration list for each election precinct that is certified thirty days before the election shall contain the names and addresses of all registered electors residing within the precinct at the close of business on the fortieth day preceding the election. The registration list for each election precinct that is certified no later than twenty days before the election shall contain the names and addresses of all eligible electors residing within the precinct at the close of business on the thirtieth day prior to the election. If a supplemental list is ordered, it shall contain the names and addresses of all eligible electors who have become eligible within the period since the initial registration list was certified through the close of business on the thirtieth day preceding the election.

(3) Costs for the lists shall be assessed by the county clerk and recorder and paid by the political subdivision holding the election. The fee for furnishing the lists shall be no less than twenty-five dollars for the entire list nor more than one cent for each name contained on the registration list, whichever is greater.

(4) The order for the list may be canceled if the election is canceled pursuant to section 1-5-208 and the county clerk and recorder has not already prepared the list.

Source: L. 92: Entire article R&RE, p. 706, § 8, effective January 1, 1993. **L. 95:** (1) and (2) amended, p. 838, § 53, effective July 1.

1-5-304. Lists of property owners. (1) For elections where owning property in the political subdivision is a requirement for voting in the election, no later than the fortieth day preceding the date of the election, the designated election official, in addition to using the affidavit prescribed in section 32-1-806, C.R.S., shall order the list of property owners from the county assessor. Except as otherwise required under subsection (2) of this section, the county assessor shall certify and deliver an initial list of all recorded owners of taxable real and personal property within the political subdivision no later than thirty days before the election. The supplemental list for the political subdivision shall be provided no later than twenty days before the election and shall contain the names and addresses of all recorded owners who have become owners no later than thirty days prior to the election and after the initial list of property owners was provided. The cost for the lists shall be assessed by the county assessors and paid by the political subdivision holding the election. The fee for furnishing the lists shall be no less than twenty-five dollars for both lists nor more than one cent for each name contained on the lists, whichever is greater.

(2) The designated election official of a special district may order the list described in subsection (1) of this section of all recorded owners of taxable real and personal property within the special district as of the thirtieth day before the election with a supplementary list to be provided on the twentieth day before the election, or the designated election official may order a complete list as of the twentieth day before the election.

Source: L. 92: Entire article R&RE, p. 707, § 8, effective January 1, 1993. **L. 93:** Entire section amended, p. 1411, § 49, effective July 1. **L. 94:** Entire section amended, p. 1161, § 29, effective July 1. **L. 99:** Entire section amended, p. 773, § 45, effective May 20; entire section amended, p. 451, § 6, effective August 4.

Editor's note: Amendments to this section by Senate Bill 99-025 and House Bill 99-1268 were harmonized.

PART 4

BALLOTS

1-5-401. Method of voting. The method of voting for all elections may be by paper ballots or by electronic or electromechanical voting systems.

Source: L. 92: Entire article R&RE, p. 707, § 8, effective January 1, 1993. **L. 2004:** Entire section amended, p. 1343, § 5, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-401 (1) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-102 (1) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-402. Primary election ballots. (1) No later than thirty-two days before the primary election, the county clerk and recorder shall prepare a separate ballot for each political party. The ballots shall be printed in the following manner:

(a) All official ballots shall be printed according to the provisions of sections 1-5-407 and 1-5-408; except that across the top of each ballot shall be printed the name of the political party for which the ballot is to be used.

(b) The positions on the ballot shall be arranged as follows: First, candidates for United States senator; next, congressional candidates; next, state candidates; next, legislative candidates; next, district attorney candidates; next, other candidates for district offices greater than a county office; next, candidates for county commissioners; next, county clerk and recorder candidates; next, county treasurer candidates; next, county assessor candidates; next, county sheriff candidates; next, county surveyor candidates; and next, county coroner candidates. When other offices are to be filled at the coming general election, the county clerk and recorder, in preparing the primary ballot, shall use substantially the form prescribed by this section, stating the proper designation of the office and placing the names of the candidates for the office under the name of the office.

Source: L. 92: Entire article R&RE, p. 707, § 8, effective January 1, 1993. **L. 93:** (1)(a) amended, p. 1766, § 6, effective June 6. **L. 99:** IP(1) amended, p. 774, § 46, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-401(2) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For order of names on a primary ballot, see § 1-4-103; for designation of candidates by party assembly, see § 1-4-601; for designation of party candidates by petition, see § 1-4-603; for conduct of primary elections, see part 2 of article 7 of this title.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 237, 281, 282.

C.J.S. See 29 C.J.S., Elections, §§ 217, 218.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Ineligible candidate's name removed from ballot by best means available. In a contest involving the eligibility of a party designee in a primary election, where the party is found to be ineligible, is not error for a trial court to order such person's name eliminated from the ballot by the best means available, rather than requiring reprinting of the

ballots, or to direct the county clerks not to certify absentee ballots already cast for the ineligible candidate. Anderson v. Kilmer, 134 Colo. 270, 302 P.2d 185 (1956).

And ordering that the name of an ineligible candidate be stricken from the ballots by blocking out, by printing, or by striking out with a colored pencil is not in violation of the provision that there shall be no other printing or distinguishing marks on the ballot except as specifically provided. Anderson v. Kilmer, 134 Colo. 270, 302 P.2d 185 (1956).

1-5-403. Content of ballots for general and congressional vacancy elections. (1) The county clerk and recorder of each county using paper ballots or electronically counted ballot cards shall provide printed ballots for every odd-numbered year, general, or congressional vacancy election. The official ballots shall be printed and in the possession of the county clerk and recorder no later than thirty-two days before every odd-numbered year, congressional vacancy, and general election.

(2) For all elections except those for presidential electors, every ballot shall contain the names of all candidates for offices to be voted for at that election whose nominations have been made and accepted, except those who have died or withdrawn, and the ballot shall contain no other names. When presidential electors are to be elected, their names shall not be printed on the ballot, but the names of the candidates of the respective political parties or political organizations for president and vice president of the United States shall be printed together in pairs under the title "presidential electors". The pairs shall be arranged in the alphabetical order of the names of the candidates for president in the manner provided for in section 1-5-404. A vote for any pair of candidates is a vote for the duly nominated presidential electors of the political party or political organization by which the pair of candidates were named.

(3) The names of joint candidates of a political party or political organization for the offices of governor and lieutenant governor shall be printed in pairs. The pairs shall be arranged in the alphabetical order of the names of candidates for governor in the manner provided for in section 1-5-404. A vote for any pair of candidates for governor and lieutenant governor is a vote for each of the candidates who compose that pair.

(4) The name of each person nominated shall be printed or written upon the ballot in only one place. Opposite the name of each person nominated, including candidates for president and vice president and joint candidates for governor and lieutenant governor, shall be the name of the political party or political organization which nominated the candidate, expressed in not more than three words. Those three words may not promote the candidate or constitute a campaign promise.

(5) The positions on the ballot shall be arranged as follows: First, candidates for president and vice president of the United States; next, candidates for United States senator; next, congressional candidates; next, joint candidates for the offices of governor and lieutenant governor; next, other state candidates; next, legislative candidates; next, district attorney candidates; next, candidates for the board of directors of the regional transportation district; next, other candidates for district offices greater than a county office; next, candidates for county commissioners; next, county clerk and recorder candidates; next, county treasurer candidates; next, county assessor candidates; next, county sheriff candidates; next county surveyor candidates; and next, county coroner candidates. When other offices are to be filled, the county clerk and recorder, in preparing the ballot, shall use substantially the form prescribed by this section, stating the proper designation of the office and placing the names of the candidates for the office under the name of the office. The ballot issues concerning the retention in office of justices of the supreme court, judges of the court of appeals, judges of the district court, and judges of the county court shall be placed on the ballot in that order and shall precede the placement of ballot issues concerning amendment of the state constitution or pertaining to political subdivisions.

Source: L. 92: Entire article R&RE, p. 708, § 8, effective January 1, 1993. **L. 97:** (1) amended, p. 184, § 1, effective August 6. **L. 99:** (1) amended, p. 774, § 47, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-402 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-

4-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For provision requiring joint election of governor and lieutenant governor, see § 1-4-204; for requirement that write-in candidate file affidavit of intent, see § 1-4-1101; for ballots for primary elections, see § 1-5-402; for printing and distribution of ballots, see § 1-5-410; for the furnishing of cards of instruction to election judges, see § 1-5-504; for the manner of voting in precincts which use paper ballots, see § 1-7-304; for ballots defectively marked, see § 1-7-309.

ANNOTATION

I. General Consideration.
II. Use of Paper Ballots.
III. Name to be Printed in One Place.
IV. Ballots to Allow Cross Marks.
V. Spaces for Write-ins.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 281, 282.

C.J.S. See 29 C.J.S., Elections, §§ 182, 183, 262, 266.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

All provisions for the form of ballots are mandatory in the sense that they impose a duty upon those who come within their terms. Allen v. Glynn, 17 Colo. 338, 29 P. 670 (1892).

It does not follow, however, that an election should be invalidated because of every departure on the part of public officers from the ballot arrangement requirements. Allen v. Glynn, 17 Colo. 338, 29 P. 670 (1892).

Rather, a ballot should be admitted if the spirit and intention of the requirements are not violated, even though the ballot is not literally in accordance with them; for, unless a statute declares that a strict compliance with its requirements by the voters is essential to have their ballots counted, courts will not undertake to disfranchise them if, in the attempted exercise of their right, there is manifestly an effort to comply in good faith with the statutory requirements. Kellogg v. Hickman, 12 Colo. 256, 21 P. 325 (1888); Young v. Simpson, 21 Colo. 460, 42 P. 666 (1895); Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900).

II. USE OF PAPER BALLOTS.

The legislative intent in prescribing the form, size, color of paper, etc., of ballots to be used by voters is to guard the secrecy of the ballot and secure to the voter the right of suffrage, free of restraint. Kellogg v. Hickman, 12 Colo. 256, 21 P. 325 (1888).

Thus, a ballot is not illegal merely because printed differently. After a ballot has been voted, received, and counted, courts are not authorized, in the absence of constitutional restrictions as to the manner of exercising the right of suffrage, in declaring such ballot illegal merely because printed on paper of different quality, color, or dimension from that prescribed. Kellogg v. Hickman, 12 Colo. 256, 21 P. 325 (1888).

Furthermore, objection to irregularities in printing of ballots is too late after the vote. When public officers are entrusted with the preparation of ballots and ample provision is made for the correction of errors before an election, it is too late after they have been voted, as a general rule, to interpose objections to the ballots for mere irregularities in the printing thereof. Allen v. Glynn, 17 Colo. 338, 29 P. 670 (1892).

And it cannot be held that a printer may not recover because of a disregard of the prescribed ballot arrangement, or for a supposed nonobservance of the directions of the clerk, where, as matter of fact, the ballot list was published in the form contemplated, or at least permitted, by statutory requirements. Bd. of Comm'rs v. Frederick, 50 Colo. 464, 115 P. 514 (1911).

But opposing candidate with notice of emblem mistake cannot lie by and allow voters to be misled. If the county clerk makes a mistake in designating a candidate on the ballot as the nominee of a political party represented by an emblem, and the opposing candidate having notice of such mistake in time to have the mistake corrected, he will not be permitted to lie by and allow voters to be misled thereby and afterwards take advantage of such defect to defeat the expressed will of a majority of the voters. Allen v. Glynn, 17 Colo. 338, 29 P. 670 (1892); Dickinson v. Freed, 25 Colo. 302, 55 P. 812 (1898).

III. NAME TO BE PRINTED IN ONE PLACE.

The ballot arrangement requirements do not attempt to restrict the right of selecting an emblem to any particular kind, or class, of political parties. Schafer v. Whipple, 25 Colo. 400, 55 P. 180 (1898).

But separate column for political designations required. While the ballot arrangement requirements do not in specific terms provide for a separate column for political designations, a fair interpretation or construction thereof so requires, since opposite the name of each candidate must be added the party name, and this, in some cases at least, might not be done without double columns. Bd. of Comm'rs v. Frederick, 50 Colo. 464, 115 P. 514 (1911).

IV. BALLOTS TO ALLOW CROSS MARKS.

Voter must express his choice by making an "X" opposite name of candidate. Riley v. Trainor, 57 Colo. 155, 140 P. 469 (1914).

V. SPACES FOR WRITE-INS.

Voters must make cross mark when they write in more than one name. Riley v. Trainor, 57 Colo. 155, 140 P. 469 (1914).

1-5-404. Arrangement of names on ballots for partisan elections. (1) In all partisan elections, the names of all candidates and joint candidates who have been duly nominated for office shall be arranged on the ballot under the designation of the office in three groups as follows:

(a) The names of the candidates of the two major political parties shall be placed on the general election ballot in an order established by lot and shall comprise the first group; except that the joint candidates for president and vice president and the joint candidates for governor and lieutenant governor shall be arranged in the alphabetical order of the names of the candidates for president and governor.

(b) The names of the candidates and joint candidates of the minor political parties shall be listed in an order established by lot and shall comprise the second group; except that the joint candidates for president and vice president and the joint candidates for governor and lieutenant governor shall be arranged in the alphabetical order of the names of the candidates for president and governor.

(c) The names of the candidates and joint candidates of the remaining political organizations shall be listed in an order established by lot and shall comprise the third group; except that the joint candidates for president and vice president and the joint candidates for governor and lieutenant governor shall be arranged in the alphabetical order of the names of the candidates for president and governor.

(2) Between July 1 and July 15 of each election year, the officer in receipt of the original designation, nomination, or petition of each candidate shall inform the two major political parties, each minor political party, and the representative of each political organization on file with the secretary of state of the time and place of the lot-drawing for offices to appear on the general election ballot. Ballot positions shall be assigned to the major political party, minor political party, or political organization in the order in which they are drawn. The name of the candidate shall be inserted on the ballot prior to the ballot certification.

(3) The arrangement of names on ballots for congressional vacancy elections shall be established by lot at any time prior to the certification of ballots for the congressional vacancy election. The officer in receipt of the original designation, nomination, or petition of each candidate shall inform the two major political parties, each minor political party, and the representatives of each political organization on file with the secretary of state of the time and place of the lot-drawing for the congressional election ballot. Ballot positions shall be assigned to the major political party, minor political party, or political organization in the order in which they are drawn.

Source: L. 92: Entire article R&RE, p. 710, § 8, effective January 1, 1993. **L. 93:** (1) and (3) amended, p. 1411, § 50, effective July 1. **L. 98:** Entire section amended, p. 258, § 11, effective April 13.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-403 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-208 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 283-297.

C.J.S. See 29 C.J.S., Elections, §§ 269-273.

No constitutionally cognizable classification scheme is employed by the state in applying this section. This section is facially neutral and neither excludes minority parties from the ballot nor prevents them from attaining major political party status. Libertarian Party of Colo. v. Buckley, 938 F. Supp. 687 (D. Colo. 1996).

Subsection (1) does not offend the equal protection clause nor infringe on individual plaintiffs' voting rights under the first amendment of the U.S. Constitution.

Libertarian Party of Colo. v. Buckley, 8 F. Supp.2d 1244
(D. Colo. 1998).

1-5-405. Arrangement of names on voting machines - testing of machines - repeal. (Repealed)

Source: L. 92: Entire article R&RE, p. 710, § 8, effective January 1, 1993. **L. 93:** Entire section R&RE, p. 1412, § 51, effective July 1. **L. 2004:** (4) added by revision, pp. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in § 1-6-404 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in § 1-6-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (4) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

1-5-406. Content of ballots for nonpartisan elections. The designated election official shall provide printed ballots for every election. The official ballots shall be printed and in the possession of the designated election official at least thirty days before the election. Every ballot shall contain the names of all duly nominated candidates for offices to be voted for at that election, except those who have died or withdrawn, and the ballot shall contain no other names. The arrangement of the names shall be established by lot at any time prior to the certification of the ballot. The designated election official shall notify the candidates of the time and place of the lot-drawing for the ballot. The drawing shall be performed by the designated election official or a designee. The names shall be printed on the ballot without political party designation.

Source: L. 92: Entire article R&RE, p. 712, § 8, effective January 1, 1993. **L. 93:** Entire section amended, p. 1412, § 52, effective July 1.

1-5-407. Form of ballots. (1) Except as provided in subsections (1.5) and (1.6) of this section, the extreme top part of each ballot may be divided into two spaces by two perforated or dotted lines. Each space shall be not less than one inch wide. The top portion is called the stub, and the next portion is called the duplicate stub. The same number shall be printed upon both the stub and the duplicate stub. All ballots shall be numbered consecutively. All ballots shall be uniform and of sufficient length and width to allow for the names of candidates, officers, ballot issues, and ballot questions to be printed in clear, plain type, with a space of at least one-half inch between the different columns on the ballot. On each ballot shall be printed the endorsement "Official ballot for .....", and after the word "for" shall follow the designation of the precinct, if appropriate, and the political subdivision for which the ballot is prepared, the date of the election, and a facsimile of the signature of the election official. The ballot shall contain no caption or other endorsement, except as provided in this section. The election official shall use precisely the same quality and tint of paper, the same kind of type, and the same quality and tint of plain black ink for all ballots prepared for one election.

(1.5) A duplicate stub is not required for a ballot that is prepared for a mail ballot election pursuant to article 7.5 of this title.

(1.6) No ballot stub is required for a ballot produced on demand, so long as the quantity of ballots produced for the election can be reconciled by the ballot processing method used by the voting system. Such ballots may contain printed and distinguishing marks, so long as secrecy in voting is protected.

(2) The ballots shall be printed so as to give to each eligible elector a clear opportunity to designate his or her choice of candidates, joint candidates, ballot issues, and ballot questions by a mark as

instructed. On the ballot may be printed words that will aid the elector, such as "vote for not more than one".

(3) At the end of the list of candidates for each different office shall be one or more blank spaces in which the elector may write the name of any eligible person not printed on the ballot who has filed an affidavit of intent of write-in candidate pursuant to section 1-4-1101. The number of spaces provided shall be the lesser of the number of eligible electors who have properly filed an affidavit of intent of write-in candidate pursuant to section 1-4-1101 or the number of persons to be elected to the office. No such blank spaces shall be provided if no eligible elector properly filed an affidavit of intent of write-in candidate.

(4) The names of the candidates for each office shall be arranged under the designation of the office as provided in section 1-5-404. The designated election official shall not print, in connection with any name, any title or degree designating the business or profession of the candidate.

(4.5) If no candidate has been duly nominated and no person has properly filed an affidavit of intent of write-in candidate for an office, the following text shall appear under the designation of the office: "There are no candidates for this office."

(5) Whenever the approval of a ballot issue or ballot question is submitted to the vote of the people, the ballot issue or question shall be printed upon the ballot following the lists of candidates. Except as otherwise provided in section 32-9-119.3 (2), C.R.S., constitutional issues shall be printed first, followed by statewide issues and questions, county issues and questions, municipal issues and questions, school district issues and questions, ballot issues and questions for other political subdivisions which are in more than one county, and then ballot issues and questions for other political subdivisions which are wholly within a county. The measures in each category shall be placed in the following order: Measures to increase taxes; measures to retain revenues in excess of a district's fiscal year spending limit; measures to increase debt; citizen petitions; and referred measures.

Editor's note: This version of subsection (5) is effective until January 1, 2010.

(5) (a) Whenever the approval of a ballot issue or ballot question is submitted to the vote of the people, the ballot issue or question shall be printed upon the ballot following the lists of candidates. Except as otherwise provided in section 32-9-119.3 (2), C.R.S., initiated amendments shall be printed first, followed by referred amendments, initiated propositions, referred propositions, county issues and questions, municipal issues and questions, school district issues and questions, ballot issues and questions for other political subdivisions which are in more than one county, and then ballot issues and questions for other political subdivisions which are wholly within a county.

(b) Beginning with the 2010 general election:

(I) Each proposed change to the state constitution, whether initiated by the people or referred to the people by the general assembly, shall be identified on the ballot as an "amendment"; and

(II) Each proposed change to the Colorado Revised Statutes, whether initiated by the people or referred to the people by the general assembly, shall be identified on the ballot as a "proposition".

Editor's note: This version of subsection (5) is effective January 1, 2010.

(5.3) Commencing with the general election held in November 2000, each statewide measure initiated by the people shall be numbered consecutively in regular numerical order beginning with the number twenty. Such consecutive numbering of measures shall continue at any odd-year or general election held after such election at which any such measure is on the ballot beginning with the number following the highest number utilized in the previous election until the number ninety-nine is utilized at an election for any such measure. Such measures shall again be numbered consecutively in regular numerical order beginning with the number one and in accordance with this subsection (5.3) following

the utilization of the number ninety-nine for any such measure. The secretary of state may promulgate rules as may be necessary to administer this subsection (5.3), including, but not limited to, rules specifying the grouping of such measures for purposes of such numbering or reserving specific sequences of numbers for certain categories of measures. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

Editor's note: This version of subsection (5.3) is effective until January 1, 2010.

(5.3) (a) Commencing with the general election held in November 2010, each statewide measure initiated by the people that is a proposed change to the state constitution shall be numbered consecutively in regular numerical order beginning with the number sixty. Such consecutive numbering of measures shall continue at any odd-year or general election held after such election at which any such measure is on the ballot beginning with the number following the highest number utilized in the previous election until the number ninety-nine is utilized at an election for any such measure. Such measures shall again be numbered consecutively in regular numerical order beginning with the number one and in accordance with this paragraph (a) following the utilization of the number ninety-nine for any such measure. The secretary of state may promulgate rules as may be necessary to administer this paragraph (a). Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(b) Commencing with the general election held in November 2010, each statewide measure initiated by the people that is a proposed change to the Colorado Revised Statutes shall be numbered consecutively in regular numerical order beginning with the number one hundred one. Such consecutive numbering of measures shall continue at any odd-year or general election held after such election at which any such measure is on the ballot beginning with the number following the highest number utilized in the previous election until the number one hundred ninety-nine is utilized at an election for any such measure. Such measures shall again be numbered consecutively in regular numerical order beginning with the number one hundred one and in accordance with this paragraph (b) following the utilization of the number one hundred ninety-nine for any such measure. The secretary of state may promulgate rules as may be necessary to administer this paragraph (b). Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

Editor's note: This version of subsection (5.3) is effective January 1, 2010.

(5.4) Commencing with the general election held in November 2004, each statewide measure referred to the people by the general assembly shall be lettered consecutively in regular alphabetical order beginning with the letter A. The consecutive lettering of statewide referred measures shall continue at any odd-year or general election held after the election at which any statewide referred measure is on the ballot beginning with the letter following the last letter utilized in the previous election until the letter Z is utilized at an election for a statewide referred measure. Statewide referred measures shall again be lettered consecutively in regular alphabetical order beginning with the letter A and in accordance with this subsection (5.4) following the utilization of the letter Z for any statewide referred measure. The secretary of state may promulgate rules as may be necessary to administer this subsection (5.4), including but not limited to rules specifying the grouping of statewide referred measures for purposes of lettering or reserving specific sequences of letters for certain categories of measures. Any rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

Editor's note: This version of subsection (5.4) is effective until January 1, 2010.

(5.4) (a) Commencing with the general election held in November 2010, each statewide measure referred to the people by the general assembly that is a proposed change to the state constitution shall be

lettered consecutively in regular alphabetical order beginning with the letter P. The consecutive lettering of such statewide referred measures shall continue at any odd-year or general election held after the election at which any statewide referred measure is on the ballot beginning with the letter following the last letter utilized in the previous election until the letter Z is utilized at an election for such a statewide referred measure. Such statewide referred measures shall again be lettered consecutively in regular alphabetical order beginning with the letter A and in accordance with this paragraph (a) following the utilization of the letter Z for any such statewide referred measure. The secretary of state may promulgate rules as may be necessary to administer this paragraph (a). Any rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(b) Commencing with the general election held in November 2010, each statewide measure referred to the people by the general assembly that is a proposed change to the Colorado Revised Statutes shall be double-lettered consecutively in regular alphabetical order beginning with the letters AA. The consecutive lettering of such statewide referred measures shall continue at any odd-year or general election held after the election at which any statewide referred measure is on the ballot beginning with the letters following the last letters utilized in the previous election until the letters ZZ are utilized at an election for such a statewide referred measure. Such statewide referred measures shall again be lettered consecutively in regular alphabetical order beginning with the letters AA and in accordance with this paragraph (b) following the utilization of the letters ZZ for any such statewide referred measure. The secretary of state may promulgate rules as may be necessary to administer this paragraph (b). Any rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

Editor's note: This version of subsection (5.4) is effective January 1, 2010.

(5.5) The coordinated election official may choose to follow the provisions of subsection (5) of this section, or may choose to use separate ballots. If separate ballots are used, the candidates shall be listed first, followed by measures to increase taxes, measures to increase debt, citizen petitions, and referred measures.

(6) Whenever candidates are to be voted for only by the eligible electors of a particular district, county, or other political subdivision, the names of those candidates shall not be printed on any ballots other than those provided for use in the district, county, or political subdivision in which those candidates are to be voted on.

(7) No printing or distinguishing marks shall be on the ballot except as specifically provided in this code.

(8) The form of the ballot may vary from the requirements of this section if the changes are approved by the secretary of state.

(9) If a referred measure, including but not limited to a measure referred by the school board of a multicounty school district or the board of directors of a multicounty special district to the registered electors of the school district or special district, is referred to registered electors of multiple counties, the alphabetical, numerical, or alphanumerical designation used to identify the measure shall be identical on each ballot that includes the measure.

Source: L. 92: Entire article R&RE, p. 712, § 8, effective January 1, 1993. **L. 93:** (1) and (5) amended and (5.5) added, p. 1412, § 53, effective July 1. **L. 94:** (1) amended and (8) added, p. 1161, § 30, effective July 1. **L. 96:** (3) amended, p. 1743, § 35, effective July 1. **L. 97:** (1) amended and (1.5) added, p. 184, § 2, effective August 6. **L. 2000:** (5.3) added, p. 299, § 8, effective August 2. **L. 2002:** (1), (2), (3), and (4) amended and (1.6) and (4.5) added, p. 1630, § 7, effective June 7. **L. 2005:** (5) amended and (5.4) and (9) added, p. 1265, § 1, effective June 3. **L. 2009:** (5) amended, (SB 09-108), ch. 5, p. 48, § 3, effective March 2; (5), (5.3), and (5.4) amended, (HB 09-1326), ch. 258, p. 1167, § 1, effective January 1, 2010.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-402 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained

in 1-4-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Amendments to subsection (5) by Senate Bill 09-108 and House Bill 09-1326 were harmonized.

(3) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending subsections (5), (5.3), and (5.4) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after January 1, 2010.

1-5-408. Form of ballots - electronic voting. (1) Ballot cards placed upon voting equipment shall, so far as practicable, be arranged as provided by sections 1-5-402, 1-5-403, and 1-5-404; except that they shall be of the size and design required by the voting equipment and may be printed on a number of separate ballot cards that are placed on the voting equipment.

(2) If votes are recorded on a ballot card, a separate write-in ballot may be provided, which may be in the form of a paper ballot or envelope on which the elector may write in the title of the office and the name of a qualified write-in candidate.

(3) Polling places that use electromechanical voting systems may use ballot cards of different colors to ensure that electors receive a full ballot. Such polling places may also use ballot cards of different colors for each party at primary elections.

(4) In polling places using electromechanical voting systems, each ballot card may have two stubs attached. Stubs shall be separated from the ballot card and from each other by perforated lines or other means of removal approved by the designated election official so that they may be readily detached. Stubs shall have the serial ballot number printed on them. The size of the ballot stubs and the spacing of the printed material may be varied to suit the conditions imposed by the use of the ballot cards. The ballot stub may also include color marking or wording to indicate that the stub must show when the ballot is voted and placed in the privacy envelope for deposit in the ballot box. The face of the ballot card shall include the endorsement "Official ballot for .....", and after the word "for" shall follow the designation of the precinct, if appropriate, and the political subdivision for which the ballot is prepared, the date of the election, and a facsimile of the signature of the designated election official.

Source: L. 92: Entire article R&RE, p. 713, § 8, effective January 1, 1993. **L. 97:** (4) amended, p. 185, § 3, effective August 6. **L. 2004:** (1), (3), and (4) amended, p. 1344, § 6, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-405 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-207 and 1-6-117 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending subsections (1), (3), and (4), see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 281, 282.

C.J.S. See 29 C.J.S., Elections, §§ 266, 301.

1-5-409. Single cross mark for party slate not permitted. Each office in every election shall be voted upon separately, and no emblem, device, or political party designation shall be used on the official ballot at any election by which an eligible elector may vote for more than one office by placing a single cross mark on the ballot or by writing in the name of any political party or political organization.

Source: L. 92: Entire article R&RE, p. 714, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-406 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-4-209 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 287.

C.J.S. See 29 C.J.S., Elections, §§ 271, 289, 292.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Prior to the enactment of this section, a cross marked in ink against a party emblem on a ballot indicated a vote for the entire set of candidates of that party, while a cross so marked opposite the name of an individual candidate indicated a vote for that individual. When a ballot was marked against a party emblem, thereby indicating a vote for the entire list of candidates of such party, and was also marked against one or more names of candidates in another list, the ballot was void as to any office so doubly marked. Heiskell v. Landrum, 23 Colo. 65, 46 P. 120 (1896).

And where the voter wrote, in the blank above the list of nominations, the name of a particular party, he indicated an intention to vote for all the candidates of that party named upon the ballot, unless, he manifested a different intention, i.e., by inserting an "X" opposite the name of an opposing candidate, or if there are two or more candidates for the same office, by drawing a line through the name of those, or the one, for whom he did not desire to vote. Bromley v. Hallock, 57 Colo. 148, 140 P. 186 (1914).

1-5-410. Printing and distribution of ballots. In political subdivisions using paper ballots or electronic ballot cards, the designated election official shall have a sufficient number of ballots printed and distributed to the election judges in the respective precincts. The ballots shall be sent in one or more sealed packages for each precinct with marks on the outside of each clearly stating the precinct and polling place for which it is intended, together with the beginning and ending sequence number of the ballots enclosed. The packages shall be delivered on any day on which a judges' school of instruction is held or by 8 p.m. on the Monday before election day. Receipts for ballots thus delivered shall be given by the election judges who receive the ballots. The receipts shall be filed with the designated election official, who shall also keep a record of the time when and the manner in which each of the packages was delivered. The election judges receiving the packages shall produce them, with the seals unbroken, in the proper polling place at the opening of the polls on election day and, in the presence of all election judges, shall open the packages.

Source: L. 92: Entire article R&RE, p. 714, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-407 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-211 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 312.

1-5-411. Substitute ballots. If the ballots to be furnished to any election judges are not delivered at the time and in the manner required in section 1-5-410 or if after delivery they are destroyed or stolen, it shall be the duty of the designated election official to cause other ballots to be prepared, as nearly in the form prescribed as practicable, with the words "substitute ballot" printed on each ballot. Upon receipt of the ballots thus prepared from the designated election official, accompanied by a statement under oath that the designated election official prepared and furnished the substitute ballots and that the original ballots have not been received or have been destroyed or stolen, the election judges shall cause the substitute ballots to be used at the election. If from any cause neither the official ballots nor the substitute ballots are ready in time to be distributed for the election or if the supply of ballots is exhausted before the polls are closed, unofficial ballots, printed or written, made as nearly as possible in

the form of the official ballots, may be used until substitutes prepared by the designated election official can be printed and delivered.

Source: L. 92: Entire article R&RE, p. 715, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-408 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-4-212 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 262.

1-5-412. Correction of errors. (1) The designated election official shall correct without delay any errors in publication or in sample or official ballots which are discovered or brought to the official's attention and which can be corrected without interfering with the timely distribution of the ballots.

(2) When it appears by verified petition of a candidate or the candidate's agent to any district court that any error or omission has occurred in the publication of the names or description of the candidates or in the printing of sample or official election ballots which has been brought to the attention of the designated election official and has not been corrected, the court shall issue an order requiring the designated election official to correct the error forthwith or to show cause why the error should not be corrected. Costs, including reasonable attorney fees, may be assessed in the discretion of the court against either party.

(3) If, before the date set for election, a duly nominated candidate withdraws by filing an affidavit of withdrawal with the designated election official or dies and the fact of the death becomes known to the designated election official before the ballots are printed, the name of the candidate shall not be printed on the ballots. Except in the case of a vacancy to be filled in accordance with the provisions of section 1-4-1002 (2.3) or (2.5), if the ballots are already printed, the votes cast for the withdrawn or deceased candidate are invalid and shall not be counted.

Source: L. 92: Entire article R&RE, p. 715, § 8, effective January 1, 1993. **L. 99:** (3) amended, p. 934, § 3, effective August 4. **L. 2007:** (3) amended, p. 1975, § 17, effective August 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-409 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-12-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For taxing reasonable attorney fees in favor of the defendant when an action is vexatiously commenced, see C.R.C.P. 3(a).

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 297.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The purpose of allowing the correction of errors is to give the opposing candidate ample opportunity to see that his opponent's name was not upon an unauthorized ticket or under a device to the use of which he was not entitled. Allen v. Glynn, 17 Colo. 338, 29 P. 670 (1892).

As the fundamental object of all election laws is the freedom and purity of the ballot. Allen v. Glynn, 17 Colo. 338, 29 P. 670 (1892).

And ample provision is made for the correction of ballots prior to the election. Allen v. Glynn, 17 Colo. 338, 29 P. 670 (1892).

But it is the duty of candidates to make such objections in seasonable time, since it would not be in the interest of a fair expression of the will of the people to allow a candidate to lie by and not point out such objections as he may have to the form of the ballot until after the election has been held. Allen v. Glynn, 17 Colo. 338, 29 P. 670 (1892).

Moreover, the voter has no control whatever over the publication of the names of candidates or the form of the ballots. If, for some defect in these particulars, the ballot must be rejected, the door would be open to fraud. Allen v. Glynn, 17 Colo. 338, 29 P. 670 (1892).

Clerk cannot correct improper certification of nominations. It is the duty of the county clerk to cause to be printed the names as certified to him by the secretary of state, and if such nominations are improperly certified, it constitutes no such error or omission in the publication of the names or description of the candidates as he is authorized to correct. Smith v. Harris, 18 Colo. 274, 32 P. 616 (1893).

1-5-413. Sample ballots. Sample ballots shall be printed in the form of official ballots, but upon paper of a different color from the official ballots. Sample ballots shall be delivered to the election judges and posted with the cards of instruction provided for in section 1-5-504. All sample ballots are subject to public inspection.

Source: L. 92: Entire article R&RE, p. 716, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-410 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-207 (2) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

PART 5

POLLING PLACE SUPPLIES AND EQUIPMENT

1-5-501. Sufficient voting booths, voting machines, or electronic voting equipment. (1) At all elections in political subdivisions which use paper ballots, the governing body shall provide in each polling place a sufficient number of voting booths. Each voting booth shall be situated so as to permit eligible electors to prepare their ballots screened from observation and shall be furnished with supplies and conveniences necessary for voting.

(2) (a) At all elections in political subdivisions that use electronic or electromechanical voting systems, the designated election official shall supply each precinct with sufficient voting equipment.

(b) At general elections in counties that use electronic or electromechanical voting systems, the county clerk and recorder shall supply each precinct with one voting booth for each four hundred active registered electors or fraction thereof.

Source: L. 92: Entire article R&RE, p. 716, § 8, effective January 1, 1993. **L. 2004:** (2) amended, p. 1344, § 7, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-501 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-203 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending subsection (2), see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303.

C.J.S. See 29 C.J.S., Elections, §§ 313-315.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Mere irregularities in the conduct of an election which do not deprive any legal voter of the elective

franchise, and from which no injury results to anyone, do not warrant the rejection of the official returns of a precinct, although such irregularities may include a failure to strictly comply with certain statutory regulations, such as, for example, the failure to provide a guard rail. Baldauf v. Gunson, 90 Colo. 243, 8 P.2d 265 (1932).

1-5-502. Ballot boxes for nonmachine voting. The governing body of each political subdivision using paper ballots or an electronic vote counting system shall provide at least one ballot box for each polling place. For elections which have both receiving and counting judges, the governing body shall provide no less than one ballot box for each set of receiving judges and one ballot box for each set of counting judges at each place of voting. The ballot boxes shall be strongly constructed so as to prevent tampering, with a small opening at the top and with a lid to be locked. The ballot boxes and keys shall be kept by the designated election official and delivered to the election judges no later than the day preceding any election, to be returned as provided in section 1-6-109.5.

Source: L. 92: Entire article R&RE, p. 716, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 586, § 25, effective April 30. **L. 99:** Entire section amended, p. 774, § 48, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-502 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-206 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For delivery of election returns, ballot boxes, and other election papers, see § 1-7-701.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 303, 314.

C.J.S. See 29 C.J.S., Elections, § 314.

1-5-503. Arrangement of voting equipment or voting booths and ballot boxes. The voting equipment or voting booths and the ballot box shall be situated in the polling place so as to be in plain view of the election officials and watchers. No person other than the election officials and those admitted for the purpose of voting shall be permitted within the immediate voting area, which shall be considered as within six feet of the voting equipment or voting booths and the ballot box, except by authority of the election judges or the designated election official, and then only when necessary to keep order and enforce the law.

Source: L. 92: Entire article R&RE, p. 717, § 8, effective January 1, 1993. **L. 2004:** Entire section amended, p. 1344, § 8, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-503 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-4-204 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303.

C.J.S. See 29 C.J.S., Elections, §§ 313-315.

1-5-504. Instruction cards. (1) The designated election official of each political subdivision shall furnish to the election judges a sufficient number of instruction cards for the guidance of eligible electors in preparing their ballots. The election judges shall post at least one of the cards in each polling place

upon the day of the election. The cards shall be printed in large, clear type and shall contain full instructions to the eligible electors as to what should be done:

(a) To obtain ballots for voting;

(b) To prepare the ballots for deposit in the ballot box;

(c) To obtain a new ballot in the place of one spoiled by accident or mistake;

(d) To obtain assistance in marking ballots; and

(e) To vote for a write-in candidate.

Source: L. 92: Entire article R&RE, p. 717, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-504 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-213 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-5-504.5. Items to be posted at the polling place on or before election day. (1) The following items shall be posted at each polling place on or before election day:

(a) A polling place sign visible from the outside of the closest entrance to the polling place pursuant to section 1-5-106;

(b) A sign notifying persons outside and inside of the polling place that no electioneering is permitted within one hundred feet of the polling place pursuant to section 1-13-714;

(c) Instruction cards for the guidance of eligible electors pursuant to section 1-5-504;

(d) Sample ballots pursuant to section 1-5-413;

(e) An explanation of the procedures that govern the provision of voting assistance to electors with disabilities who require such assistance pursuant to section 1-7-111. The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., to prescribe the form of such explanation.

Source: L. 96: Entire section added, p. 1744, § 36, effective July 1. **L. 2000:** (1)(e) added, p. 1086, § 1, effective May 26.

1-5-505. Election expenses to be paid by county. (1) Except as provided in section 1-5-505.5, the cost of conducting general, primary, and congressional vacancy elections, including the cost of printing and supplies, shall be a county charge, the payment of which shall be provided for in the same manner as the payment of other county expenses.

(2) (a) For a special legislative election, if the state senatorial or state representative district in which the special legislative election is to be held is comprised of one or more whole counties or a part of one county and all or a part of one or more other counties, the cost of conducting a special legislative election, including the cost of printing and supplies, shall be a county charge of the county in which there were irregularities in the votes cast or counted at the general election for such district.

(b) If the state senatorial or state representative district in which the special election is to be held is comprised of a portion of one county, the cost of conducting a special legislative election, including the cost of printing and supplies, shall be a county charge of such county.

(c) The payment of such costs of a special legislative election shall be provided for in the same manner as the payment of other county expenses.

Source: L. 92: Entire article R&RE, p. 717, § 8, effective January 1, 1993. **L. 99:** Entire section amended, p. 1389, § 9, effective June 4. **L. 2000:** (1) amended, p. 655, § 1, effective August 2.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-505 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-

4-214 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For payment of county expenses, see part 1 of article 25 of title 30.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 298, 303.

1-5-505.5. State reimbursement to counties for ballot measure elections. (1) As used in this section, unless the context otherwise requires:

(a) "Ballot issue" shall have the same meaning as provided in section 1-1-104 (2.3).

(b) "Ballot question" shall have the same meaning as provided in section 1-1-104 (2.7).

(2) For an election held in an odd-numbered year pursuant to article 41 of this title in which the only item on the ballot of a particular county is a state ballot issue, the state shall reimburse such county for the costs incurred that are shown by such county to be directly attributable to conducting such election and shall not include any portion of the usual costs of maintaining the office of the clerk and recorder, including, without limitation, overhead costs and personal service costs of permanent employees.

(3) For any other odd- or even-numbered year election in which a state ballot issue or state ballot question is on the ballot of a particular county, the state shall reimburse such county for the cost of the duties performed by the county clerk and recorder that relate to conducting the election on the ballot issue or ballot question; except that the reimbursement shall be set at the following rates:

(a) For counties with ten thousand or fewer active registered electors, eighty cents for each active registered elector as of the time of the election;

(b) For counties with more than ten thousand active registered electors, seventy cents for each active registered elector as of the time of the election.

(4) The general assembly shall make appropriations to the department of state from the department of state cash fund or from the general fund for the purpose of reimbursing counties under the terms of this section in conformity with section 24-21-104.5, C.R.S.

Source: L. 2000: Entire section added, p. 655, § 2, effective August 2. **L. 2006:** (3) amended, p. 2032, § 10, effective June 6.

1-5-506. Election expenses in nonpartisan elections. The cost of conducting a nonpartisan election, including the cost of printing, mailing voter information cards pursuant to section 1-5-206, and supplies, shall be paid by the governing body calling the election.

Source: L. 92: Entire article R&RE, p. 717, § 8, effective January 1, 1993. **L. 93:** Entire section amended, p. 1413, § 54, effective July 1. **L. 2000:** Entire section amended, p. 1085, § 2, effective August 2.

1-5-507. County clerk and recorder to give estimate. In any election called by a nonpartisan governing body where the county clerk and recorder will have responsibilities for the election, the county clerk and recorder shall give to the governing body estimates of the costs for conducting a coordinated election or a mail ballot election so that the governing body may choose the appropriate method of election.

Source: L. 92: Entire article R&RE, p. 717, § 8, effective January 1, 1993. **L. 93:** Entire section amended, p. 1413, § 55, effective July 1.

PART 6

AUTHORIZATION AND USE OF VOTING MACHINES AND ELECTRONIC VOTING SYSTEMS

1-5-601. Use of voting systems - definition. (1) In all elections held in this state, the votes may be cast, registered, recorded, and counted by means of an electronic or electromechanical voting system as provided in this part 6.

(2) As used in this part 6, "electromechanical voting system" shall include a paper-based voting system as defined in section 1-1-104 (23.5).

Source: L. 92: Entire article R&RE, p. 718, § 8, effective January 1, 1993. **L. 2004:** Entire section amended, p. 1345, § 9, effective May 28. **L. 2009:** Entire section amended, (HB 09-1335), ch. 260, p. 1189, § 2, effective May 15.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-601 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303.

1-5-601.5. Compliance with federal requirements. All voting systems and voting equipment offered for sale on or after May 28, 2004, shall meet the voting systems standards that were promulgated in 2002 by the federal election commission. At his or her discretion, the secretary of state may require by rule that voting systems and voting equipment satisfy voting systems standards promulgated after January 1, 2008, by the federal election assistance commission as long as such standards meet or exceed those promulgated in 2002 by the federal election commission. Subject to section 1-5-608.2, nothing in this section shall be construed to require any political subdivision to replace a voting system that is in use prior to May 28, 2004.

Source: L. 2004: Entire section added, p. 1346, § 14, effective May 28. **L. 2009:** Entire section amended, (HB 09-1335), ch. 260, p. 1190, § 3, effective May 15.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-602. Requirements for voting machines - repeal. (Repealed)

Source: L. 92: Entire article R&RE, p. 718, § 8, effective January 1, 1993. **L. 93:** (1)(f) and (1)(k) amended, p. 1414, § 56, effective July 1. **L. 95:** (1)(e) amended, p. 862, § 119, effective July 1. **L. 2004:** (2) added by revision, pp. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were the same as those contained in 1-6-602 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were the same as those contained in 1-6-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (2) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

1-5-603. Adoption and payment for voting machines. The governing body of any political subdivision may adopt for use at elections any kind of voting machine fulfilling the requirements for voting machines set forth in this part 6. These voting machines may be used at any or all elections held in the political subdivision for casting, registering, and counting votes. The governing body of any political subdivision which adopts and purchases or leases voting machines shall provide for the payment of the purchase price or the rent in such manner as may be in the best interest of the political subdivision and may for that purpose provide for the issuance of interest-bearing bonds, certificates of indebtedness, or other obligations, which shall be a charge upon the county. The bonds, certificates of indebtedness, or other obligations may be made payable at such times, not exceeding ten years from the date of issue, as may be determined by the governing body but shall not be issued or sold at less than par.

Source: L. 92: Entire article R&RE, p. 719, § 8, effective January 1, 1993. **L. 2007:** Entire section amended, p. 2017, § 1, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-603 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-6-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303.

The purchase of voting machines by a municipality is a local or municipal matter controlled by charter and ordinances rather than by statute. Kingsley v. City & County of Denver, 126 Colo. 194, 247 P.2d 805 (1952) (decided under former law).

1-5-604. Experimental use - repeal. (Repealed)

Source: L. 92: Entire article R&RE, p. 720, § 8, effective January 1, 1993. **L. 2004:** (2) added by revision, p. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were the same as those contained in 1-6-604 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were the same as those contained in 1-6-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (2) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

1-5-605. Other laws apply - paper ballots permitted for absentee voting - repeal. (Repealed)

Source: L. 92: Entire article R&RE, p. 720, § 8, effective January 1, 1993. **L. 2004:** (2) added by revision, p. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were the same as those contained in 1-6-605 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were the same as those contained in 1-6-112 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (2) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

1-5-605.5. Custody of voting system. The county clerk and recorder or designated election official shall be the custodian of the voting system in a political subdivision and may appoint deputies necessary to prepare and supervise the voting system prior to and during elections.

Source: L. 2004: Entire section added, p. 1346, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-605.7. Mechanical lever voting machines - prohibited. (1) No voting system using mechanical lever voting machines may be used in any election in this state.

(2) This section shall apply to elections held on and after January 1, 2006.

Source: L. 2004: Entire section added, p. 1345, § 12, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-606. Election officials and employees not to have interest in voting equipment or devices. No election official or employee of an election official having duties or responsibilities in connection with the conduct of any election shall have any financial or proprietary interest, either directly or indirectly, in the manufacture, sale, maintenance, servicing, repair, or transportation of voting equipment. This section shall not apply to any designated election official or employee of a designated election official participating in a coordinated election who has no independent decision-making responsibility concerning the selection of voting equipment by the county clerk and recorder or whose interest derives solely from ownership of shares in a mutual or pension fund.

Source: L. 92: Entire article R&RE, p. 720, § 8, effective January 1, 1993. **L. 96:** Entire section amended, p. 1744, § 37, effective July 1. **L. 2004:** Entire section amended, p. 1345, § 10, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-606 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-113 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-607. Elected officials not to handle voting equipment or devices. (1) In any political subdivision having a population of one hundred thousand or more, it is unlawful for any elected official or candidate for elective office to prepare, maintain, or repair any voting equipment or device that is to be used or is used in any election. The provisions of this section shall be limited to actual physical contact with any voting equipment or device or any of its parts and shall not be construed as prohibiting an elected official from directing employees or other persons who are not elected officials to prepare, maintain, repair, or otherwise handle any voting equipment or devices.

(2) The provisions of this section shall not be construed to prohibit any elected official or candidate for elective office from voting at any election.

(3) The provisions of this section shall not apply to precinct committeepersons who act as election judges.

(4) Repealed.

Source: L. 92: Entire article R&RE, p. 720, § 8, effective January 1, 1993. **L. 96:** (4) repealed, p. 1775, § 84, effective July

1. **L. 2004:** (1) amended, p. 1345, § 11, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-607 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-114 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: (1) For penalties for election offenses, see § 1-13-111.

(2) For the legislative declaration contained in the 2004 act amending subsection (1), see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-608. Requirements - electronic voting systems - repeal. (Repealed)

Source: L. 92: Entire article R&RE, p. 721, § 8, effective January 1, 1993. **L. 94:** (1)(e) amended, p. 1162, § 31, effective July 1. **L. 95:** (1)(c) amended, p. 862, § 120, effective July 1. **L. 2004:** (3) added by revision, p. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-6-608 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-6-115 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (3) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

1-5-608.2. Punch card voting systems - prohibited. (1) No punch card electronic voting system or other voting system in which the elector uses a device to pierce the ballot may be used in any election in this state.

(2) This section shall apply to elections held on and after January 1, 2006.

Source: L. 2004: Entire section added, p. 1345, § 12, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-608.5. Electronic and electromechanical voting systems - testing by federally accredited labs - certification and approval of purchasing of electronic and electromechanical voting systems by secretary of state - conditions of use by secretary of state - testing. (1) A federally accredited laboratory may test, approve, and qualify electronic and electromechanical voting systems for sale and use in the state of Colorado.

(2) (Deleted by amendment, L. 2009, (HB 09-1335), ch. 260, p. 1190, § 4, effective May 15, 2009.)

(3) (a) If the electronic and electromechanical voting systems tested pursuant to this section satisfy the requirements of this part 6, the secretary of state shall certify such systems and approve the purchase, installation, and use of such systems by political subdivisions and establish standards for certification.

(b) The secretary of state may promulgate conditions of use in connection with the use by political subdivisions of electronic and electromechanical voting systems as may be appropriate to mitigate deficiencies identified in the certification process.

(c) In undertaking the certification required by this section, the secretary of state may consider either procedures used or adopted by county clerk and recorders or best practices recommended by equipment vendors.

(4) In undertaking the certification required by this section, the secretary of state may request a federally accredited laboratory to undertake the testing of an electronic or electromechanical voting system or may use and rely upon the testing of an electronic or electromechanical voting system already

performed by another state or a federally accredited laboratory upon satisfaction of the following conditions:

(a) The secretary of state has complete access to any documentation, data, reports, or similar information on which the other state or laboratory relied in performing its testing and will make such information available to the public subject to any redaction required by law; and

(b) The secretary of state makes written findings and certifies that he or she reviewed the information specified in paragraph (a) of this subsection (4) and determines that the testing:

(I) Was conducted in accordance with appropriate engineering standards in use as of the time the testing is undertaken; and

(II) Satisfies the requirements of sections 1-5-615 and 1-5-616 and all rules promulgated thereunder.

(5) In undertaking the certification required by this section, the secretary of state may conduct joint testing with an agency of another state or with a federally accredited laboratory.

Source: L. 93: Entire section added, p. 1414, § 57, effective July 1. **L. 2004:** Entire section amended, p. 1346, § 13, effective May 28. **L. 2009:** Entire section amended, (HB 09-1335), ch. 260, p. 1190, § 4, effective May 15.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-609. Acquisition and use authorized - repeal. (Repealed)

Source: L. 92: Entire article R&RE, p. 721, § 8, effective January 1, 1993. **L. 2004:** (3) added by revision, pp. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were the same as those contained in 1-6-609 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were the same as those contained in 1-6-116 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (3) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

1-5-610. Preparation for use - electronic voting. (1) Prior to an election in which an electronic voting system is to be used, the designated election official shall have all system components prepared for voting and shall inspect and determine that each vote recorder or voting device is in proper working order. The designated election official shall cause a sufficient number of recorders or devices to be delivered to each election precinct in which an electronic voting system is to be used.

(2) The designated election official shall supply each election precinct in which vote recorders or voting devices are to be used with a sufficient number of ballots, ballot cards, sample ballots, ballot boxes, and write-in ballots and with such other supplies and forms as may be required. Each ballot or ballot card shall have a serially numbered stub attached, which shall be removed by an election judge before the ballot or ballot card is deposited in the ballot box.

Source: L. 92: Entire article R&RE, p. 722, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-610 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-6-118 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303.

1-5-611. Requirements - non-punch card electronic voting systems. (1) No non-punch card electronic voting system shall be purchased, leased, or used unless it fulfills the following requirements:

(a) It provides for voting in secrecy;

(b) It permits each elector to write in the names of eligible candidates not appearing on the printed ballot, to vote for as many candidates for an office as there are vacancies for which the elector is entitled to vote, and to vote for or against any ballot issue upon which the elector is entitled to vote;

(c) It rejects any vote for an office or on a ballot issue if the number of votes exceeds the number the elector is entitled to cast;

(d) It permits each elector, other than at a primary election, to vote for the candidates of one or more parties and for unaffiliated candidates;

(e) It prevents the elector from voting for the same candidates more than once for the same office; and

(f) If the system uses a voting device:

(I) It is suitably designed, of durable construction, and capable of being used safely, efficiently, and accurately in the conduct of elections and the tabulation of votes;

(II) It permits the names of candidates and the text of issues to be printed on pages which are securely attached to the voting device, the pages to be securely locked in a metal frame or sealed to prevent tampering;

(III) It contains a protective counter with a register which cannot be reset, which shall register the cumulative total number of movements of the operating mechanism; and

(IV) It is capable of providing printouts of vote totals by office and candidate or by ballot issue, including a numeric-only printout to be used for testing as provided in section 1-7-509.

Source: L. 92: Entire article R&RE, p. 722, § 8, effective January 1, 1993. **L. 95:** (1)(d) amended, p. 862, § 121, effective July 1. **L. 2005:** (1)(f)(IV) amended, p. 1425, § 55, effective June 6; (1)(f)(IV) amended, p. 1460, § 55, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-611 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-5-612. Use of electronic and electromechanical voting systems. (1) The governing body of any political subdivision may, upon consultation with the designated election official, adopt an electronic or electromechanical voting system, including any upgrade in hardware, firmware, or software, for use at the polling places in the political subdivision. The system may be used for recording, counting, and tabulating votes at all elections held by the political subdivision.

(2) An electronic or electromechanical voting system may be used on or after May 28, 2004, only if the system has been certified by the secretary of state in accordance with this part 6.

Source: L. 2004: Entire section added, p. 1347, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-613. Purchase and sale of voting equipment. (1) The secretary of state shall adopt uniform rules in accordance with article 4 of title 24, C.R.S., for the purchase and sale of voting equipment in the state.

(2) On and after May 28, 2004, the governing body or designated election official of a political subdivision may purchase a voting system only if the voting system has been certified for use in this state by the secretary of state in accordance with this part 6.

(3) The governing body or designated election official of a political subdivision shall notify the secretary of state before purchasing or selling voting equipment. The secretary of state shall attempt to coordinate the sale of excess or outmoded equipment by one political subdivision with purchases of necessary equipment by other political subdivisions.

(4) The secretary of state shall provide information at the request of the governing bodies of the various political subdivisions of the state on the availability and sources of new and used voting equipment.

Source: L. 2004: Entire section added, p. 1347, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-614. Certification of electronic and electromechanical voting systems - standards. (Repealed)

Source: L. 2004: Entire section added, p. 1347, § 14, effective May 28. **L. 2009:** Entire section repealed, (HB 09-1335), ch. 260, p. 1191, § 5, effective May 15.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-615. Electronic and electromechanical voting systems - requirements. (1) No electronic or electromechanical voting system shall be certified by the secretary of state unless such system:

(a) Provides for voting in secrecy;

(b) Permits each elector to vote for all offices for which the elector is lawfully entitled to vote and no others, to vote for as many candidates for an office as the elector is entitled to vote for, and to vote for or against any ballot question or ballot issue on which the elector is entitled to vote;

(c) Permits each elector to verify his or her votes privately and independently before the ballot is cast;

(d) Permits each elector privately and independently to change the ballot or correct any error before the ballot is cast, including by voting a replacement ballot if the elector is otherwise unable to change the ballot or correct an error;

(e) If the elector overvotes:

(I) Notifies the elector before the ballot is cast that the elector has overvoted;

(II) Notifies the elector before the vote is cast that an overvote for any office, ballot question, or ballot issue will not be counted; and

(III) Gives the elector the opportunity to correct the ballot before the ballot is cast;

(f) Does not record a vote for any office, ballot question, or ballot issue that is overvoted on a ballot cast by an elector;

(g) For electronic and electromechanical voting systems using ballot cards, accepts an overvoted or undervoted ballot if the elector chooses to cast the ballot, but it does not record a vote for any office, ballot question, or ballot issue that has been overvoted;

(h) In a primary election, permits each elector to vote only for a candidate seeking nomination by the political party with which the elector is affiliated;

(i) In a presidential election, permits each elector to vote by a single operation for all presidential electors of a pair of candidates for president and vice president;

(j) Does not use a device for the piercing of ballots by the elector;

(k) Provides a method for write-in voting;

(l) Counts votes correctly;

(m) Can tabulate the total number of votes for each candidate for each office and the total number of votes for and against each ballot question and ballot issue for the polling place;

(n) Can tabulate votes from ballots of different political parties at the same polling place in a primary election;

(o) Can automatically produce vote totals for the polling place in printed form; and

(p) Saves and produces the records necessary to audit the operation of the electronic or electromechanical voting system, including a permanent paper record with a manual audit capacity.

(2) The permanent paper record produced by the electronic or electromechanical voting system shall be available as an official record for any recount conducted for any election in which the system was used.

Source: L. 2004: Entire section added, p. 1347, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-616. Electronic and electromechanical voting systems - standards - procedures. (1) The secretary of state shall adopt rules in accordance with article 4 of title 24, C.R.S., that establish minimum standards for electronic and electromechanical voting systems regarding:

(a) Functional requirements;

(b) Performance levels;

(c) Physical and design characteristics;

(d) Documentation requirements;

(e) Evaluation criteria;

(f) Audit capacity;

(g) Security requirements;

(h) Telecommunications requirements; and

(i) Accessibility.

(2) The secretary of state may review the rules adopted pursuant to subsection (1) of this section governing standards for certification of electronic or electromechanical voting systems to determine the adequacy and effectiveness of the rules in assuring that elections achieve the standards established by section 1-1-103.

(3) The secretary of state shall adopt rules in accordance with article 4 of title 24, C.R.S., to achieve the standards established by section 1-1-103 for the procedures of voting, including write-in voting, and of counting, tabulating, and recording votes by electronic or electromechanical voting systems used in this state.

(4) The secretary of state shall adapt the standards for certification of electronic or electromechanical voting systems established by rule pursuant to subsection (1) of this section to ensure that new technologies that meet the requirements for such systems are certified in a timely manner and available for selection by political subdivisions and meet user standards.

(5) (a) Each designated election official shall establish written procedures to ensure the accuracy and security of voting in the political subdivision and submit the procedures to the secretary of state for review. The secretary of state shall notify the designated election official of the approval or disapproval of the procedures no later than fifteen days after the secretary of state receives the submission.

(b) Each designated election official shall submit any revisions to the accuracy and security procedures to the secretary of state no less than sixty days before the first election in which the

procedures will be used. The secretary of state shall notify the designated election official of the approval or disapproval of said revisions no later than fifteen days after the secretary of state receives the submission.

Source: L. 2004: Entire section added, p. 1349, § 14, effective May 28. **L. 2006:** (5)(a) amended, p. 2032, § 11, effective June 6.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-617. Examination - testing - certification. (1) (a) After an electronic or electromechanical voting system is tested in accordance with section 1-5-608.5, the voting system provider may submit the system to the secretary of state for certification.

(b) The secretary of state shall examine each electronic or electromechanical voting system submitted for certification and determine whether the system complies with the requirements of section 1-5-615 and the standards established under section 1-5-616.

(c) The secretary of state shall decide whether to certify an electronic or electromechanical voting system within one hundred twenty days after the system is submitted for certification.

(2) The secretary of state shall appoint one or more experts in the fields of data processing, mechanical engineering, or public administration to assist in the examination and testing of electronic or electromechanical voting systems submitted for certification and to produce a written report on each system.

(3) Neither the secretary of state nor any examiner shall have any pecuniary interest in any voting equipment.

(4) Within thirty days after deciding to certify an electronic or electromechanical voting system, the secretary of state shall make a report on the system containing a description of the system and its operation, with drawings or photographs showing the system. The secretary of state shall send a notice of certification and a copy of the report to the voting system provider that submitted the system for certification. The secretary of state shall notify the governing bodies of the political subdivisions of the state of the certification and make the notice of certification and report available to them upon request.

(5) The designated election official of a political subdivision that plans to use an electronic or electromechanical voting system that has been certified in accordance with this section shall apply to the secretary of state for approval of the purchase, installation, and use of the system. The secretary of state shall prescribe the form and procedure of the application by rule adopted in accordance with article 4 of title 24, C.R.S.

(6) The secretary of state may provide technical assistance to designated election officials on issues related to the certification of the purchase, installation, and use of electronic and electromechanical voting systems by a political subdivision.

Source: L. 2004: Entire section added, p. 1350, § 14, effective May 28. **L. 2005:** (5) amended, p. 759, § 3, effective June 1. **L. 2009:** (1)(c) amended, (HB 09-1335), ch. 260, p. 1191, § 6, effective May 15.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-618. Modification of electronic and electromechanical voting systems - definition. (1) After an electronic or electromechanical voting system has been certified by the secretary of state, a political subdivision may not adopt any modification of the system until the modification is certified or approved in accordance with the provisions of subsection (1.5) of this section by the secretary of state. A person

desiring approval of a modification shall submit a written application for approval to the secretary of state.

(1.5) Upon receipt of the written application for approval in accordance with subsection (1) of this section, the secretary of state shall undertake a preliminary examination of the proposed modification. In connection with such preliminary review, the secretary shall determine if the proposed modification may cause adverse effects on the security or accuracy of elections. The secretary shall make the determination within forty-five days after receiving the request. If the secretary, upon completion of his or her preliminary review of the request, determines that the proposed modification will cause significant adverse effects, the modification shall be subject to further review under the provisions of subsection (2) of this section. If the secretary determines, upon completion of his or her preliminary review, that the proposed modification causes no adverse effects, the secretary shall approve the modification. If the secretary determines, upon completion of his or her preliminary review, that the proposed modification causes possible adverse effects, the modification shall be subject to further review under the provisions of subsection (4) of this section. Following such additional review, if the secretary determines that any adverse effects of the proposed modification are insignificant, the secretary shall approve the modification. If, however, following such additional review, the secretary determines that the adverse effects of the modification are significant, the modification shall be subject to further review under the provisions of subsection (2) of this section.

(2) The requirements for approval of a modified electronic or electromechanical voting system are the same as those prescribed by this part 6 for the initial certification of the system.

(3) The secretary of state shall approve the modified electronic or electromechanical voting system by written order if the modified system satisfies the applicable requirements for certification.

(4) If the secretary of state does not approve the modified design, the secretary of state shall by written order:

(a) Invite the applicant to submit additional information in support of the application, submit the modified electronic or electromechanical voting system itself, or both; or

(b) Require an examination of the modified electronic or electromechanical voting system by independent examiners.

(5) After examining the additional information, the modified electronic or electromechanical voting system, or the report of an independent examiner submitted pursuant to subsection (4) of this section, the secretary of state shall approve the modified system by written order if the system satisfies the applicable requirements for certification.

(6) If a modification to a certified electronic or electromechanical voting system does not satisfy the applicable requirements for certification, the secretary of state shall suspend the sale of the system in this state until the system satisfies the requirements for certification.

(7) For purposes of this section, "modification" means a revision or a new release of an electronic or electromechanical voting system.

Source: L. 2004: Entire section added, p. 1351, § 14, effective May 28. **L. 2009:** (1) amended and (1.5) added, (HB 09-1335), ch. 260, p. 1192, § 7, effective May 15.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-619. Temporary use of electronic and electromechanical voting systems. (1) After an electronic or electromechanical voting system has been tested in accordance with section 1-5-608.5 but has not yet been certified by the secretary of state, a voting system provider or designated election official may apply to the secretary of state for temporary approval of the system.

(2) The secretary of state shall, by rule adopted in accordance with article 4 of title 24, C.R.S.,

establish standards and procedures for temporary approval of electronic and electromechanical voting systems.

(3) An electronic or electromechanical voting system may be temporarily approved for a total of no more than one year, and the secretary of state may revoke such approval at any time. Temporary approval of a system shall not supersede the certification requirements of this part 6.

(4) A temporarily approved electronic or electromechanical voting system may not be used in any election without the written authorization of the secretary of state.

(5) A designated election official may enter into a contract to rent or lease a temporarily approved electronic or electromechanical voting system for a specific election with the approval of the secretary of state. A political subdivision shall not acquire title to a temporarily approved system.

(6) The use of a temporarily approved electronic or electromechanical voting system shall be valid for all purposes.

Source: L. 2004: Entire section added, p. 1351, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-620. Electronic or electromechanical voting system information - software. When a political subdivision purchases or adopts an electronic or electromechanical voting system, the vendor of the system shall send to the secretary of state copies of the software user and operator manuals, and any other information, specifications, or documentation required by the secretary of state relating to a certified system and its equipment. Any such information or materials that are not on file with and approved by the secretary of state, including any updated or modified materials, shall not be used in an election.

Source: L. 2004: Entire section added, p. 1352, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-621. Compliance - definitions. (1) Notwithstanding any provision of law to the contrary, upon filing of a complaint, the secretary of state shall investigate the complaint and may review or inspect the electronic or electromechanical voting system of a political subdivision at any time, including election day, to determine whether the system complies with the applicable requirements of this part 6 or deviates from a certified system.

(2) A voting system provider or a designated election official using an electronic or electromechanical voting system shall give notice to the secretary of state within twenty-four hours of a malfunction of its system in preparation for or during an election. The notice may be verbal or in writing. For purposes of this section, "malfunction" means a deviation from a correct value in a voting system.

(3) Upon receipt of the notice sent pursuant to subsection (2) of this section, the secretary of state shall determine whether further information on the malfunction is required. At the written or verbal request of the secretary of state, the voting system provider or designated election official shall submit a report to the secretary of state's office describing the reprogramming or other actions necessary to correct the malfunction of the electronic or electromechanical voting system. The report shall indicate whether permanent changes are necessary to prevent similar malfunctions in the future. The report shall be submitted within thirty days after the date of the request by the secretary of state. Failure to submit the report within the required period shall be grounds to decertify the system. A copy of the report shall be attached to the most recent certification of the system on file in the secretary of state's office. The secretary of state shall distribute a copy of the report to all political subdivisions that use the system.

(4) If the secretary of state determines after inspecting an electronic or electromechanical voting system or reviewing the report submitted pursuant to subsection (3) of this section that the system does not comply with applicable standards or deviates from a certified system, the secretary shall by written order:

(a) Specify actions to remedy the defect in the electronic or electromechanical voting system and direct the designated election official or voting system provider, as appropriate, to perform such actions;

(b) Prohibit the use of the electronic or electromechanical voting system or any part of the system by a political subdivision that adopted the system for use in an election until the actions to remedy the defect are performed and approved by the secretary of state;

(c) Limit the use of the electronic or electromechanical voting system or any part of the system to circumstances or conditions stated in the order; or

(d) Decertify the electronic or electromechanical voting system.

(5) Upon decertification of an electronic or electromechanical voting system, the secretary of state shall notify all political subdivisions that use the system and the providers of the system that the certification of the system for use and sale in this state is withdrawn. The notice shall be in writing and shall indicate the reasons for the decertification of the system and the effective date of the decertification.

(6) Within thirty days after receiving notice from the secretary of state of the decertification of an electronic or electromechanical voting system, a political subdivision or provider of a voting system that is decertified may request in writing that the secretary of state reconsider its decision to decertify the electronic or electromechanical voting system. Upon receipt of the request, the secretary of state shall hold a public hearing to reconsider the decision to decertify the system. Any interested party may submit testimony or documentation in support of or in opposition to the decision to decertify the system. Following the hearing, the secretary of state may affirm or reverse the decision.

(7) The secretary of state shall amend or rescind an order issued under this section if the secretary of state determines that the electronic or electromechanical voting system has been modified to comply with applicable standards or no longer deviates from the certified system.

Source: L. 2004: Entire section added, p. 1352, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-622. Special rules applicable to 2007 retesting of voting systems - repeal. (Repealed)

Source: L. 2008: Entire section added, p. 3, § 1, effective February 11.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2009. (See L. 2008, p. 3.)

1-5-623. Special rules applicable to use, modification, or purchase of electronic voting devices or systems and related components prior to 2014 - legislative declaration - rules. (1) (a) The general assembly hereby finds and declares that, over the past decade, voting technology used in the state has undergone dramatic changes, creating confusion and difficulties for election administrators, state government, and the voting public. Efforts to address this confusion have been complicated by the timing of periodic substantial investments in voting technology by county governments necessitated by changes in federal and state law.

(b) Now, therefore, by enacting this section, the general assembly intends that:

(I) Between May 15, 2009, and the 2014 general election, any voting system purchased by a political subdivision shall be a paper-based voting system as defined in section 1-1-104 (23.5);

(II) The acquisition of electronic voting systems be suspended in order to assess existing and emerging voting technologies; and

(III) Substantial investment by political subdivisions before the 2014 general election in alternate technologies that will frustrate the intent of the general assembly as specified in paragraph (a) of this subsection (1) is discouraged and disfavored.

(2) Notwithstanding any other provision of this part 6, any existing electronic voting device or any related component of the device that was used by a political subdivision in conducting the 2008 general election may continue to be used by the political subdivision on and after May 15, 2009, as long as the device or component is used in accordance with either the conditions of use under which the device or component was originally certified for the 2008 general election or in accordance with alternate conditions of use established by the secretary of state.

(3) (a) Notwithstanding any other provision of law, on and after May 15, 2009, no political subdivision may purchase a new electronic voting device or system or any related component of such device or system without obtaining the prior approval of the secretary of state for such purchase in accordance with the requirements of this subsection (3).

(b) Subject to the requirements of paragraph (a) of this subsection (3), if a political subdivision desires to purchase a new electronic voting device or system or any related component of such device or system, the political subdivision shall submit a written application to the secretary of state for approval of the purchase. The application shall be made by means of any forms or procedures established by the secretary. Within three business days of receiving the application, the secretary shall grant or deny the application. In reviewing the application, the secretary shall consider, among other relevant factors, the total effect of the purchase at issue in light of other purchases by the political subdivision on voting systems or components of such systems on or after the effective date of this section and the needs of the political subdivision. In making the determination, the secretary shall prevent political subdivisions from making substantial investments in alternate technologies that will frustrate the intent of the general assembly as specified in subsection (1) of this section and shall consider, among other relevant factors:

(I) Whether the purchase is intended to replace damaged or defective equipment or to accommodate an increase in population in the political subdivision;

(II) Whether the purchase requires a new contract or agreement that would be entered into by the political subdivision and one or more vendors; and

(III) A comparison of the purchase under review with the average capital expenditures by the political subdivision on the administration of elections on an annual basis for the four consecutive years prior to the year in which the application is submitted in order to discourage an investment in technology with a limited useful life in accordance with the intent of the general assembly as specified in subsection (1) of this section.

(4) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., as may be necessary to administer and enforce any requirement of this section, including any rules necessary to specify permissible conditions of use governing electronic voting devices or systems or related components of such devices or systems in accordance with the requirements of this part 6.

Source: L. 2009: Entire section added, (HB 09-1335), ch. 260, p. 1192, § 8, effective May 15.

PART 7

ACCESSIBILITY FOR ELECTORS WITH DISABILITIES

Cross references: For the legislative declaration contained in the 2004 act enacting this part 7, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-701. Legislative declaration - federal funds. (1) The general assembly hereby finds and declares that:

(a) It is the intent of the general assembly that all state requirements should meet or exceed the minimum federal requirements for accessibility of voting systems and polling places to persons with disabilities.

(b) All state laws, rules, standards, and codes governing voting systems and polling place accessibility shall be maintained to ensure that the state is eligible for federal funds.

Source: L. 2004: Entire part added, p. 1354, § 15, effective May 28.

1-5-702. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Accessible voter interface device" means a device that communicates voting instructions and the information on the ballot to an elector and allows the elector to select and vote for candidates, ballot questions, and ballot issues in accordance with the standards in section 1-5-704. A ballot marking device may be considered an accessible voter interface device.

(2) "Alternative formats" has the same meaning ascribed in the federal "Americans with Disabilities Act of 1990", as amended, (Pub.L. 101-336), codified at 42 U.S.C. sec. 12101 et seq., including specifically the technical assistance manuals promulgated thereunder.

(2.5) "Ballot marking device" means a device that allows an elector to mark a ballot card used in an electromechanical voting system and that meets the standards in section 1-5-704 (1) (o).

(3) "Tactile input device" means a device such as a keyboard with which an elector provides information to a voting system by touching the device.

Source: L. 2004: Entire part added, p. 1354, § 15, effective May 28. **L. 2007:** (1) amended and (2.5) added, p. 1975, § 18, effective August 3.

1-5-703. Accessibility of polling places to persons with disabilities. (1) Each polling place shall be made accessible to persons with disabilities by complying with the following standards of accessibility:

(a) Doors, entrances, and exits used to enter or exit the polling place shall have a minimum width of thirty-two inches.

(b) Any curb adjacent to the main entrance to a polling place shall have curb cuts or temporary ramps.

(c) Any steps necessarily used to enter the polling place shall have a temporary handrail and ramp with edge protection.

(d) At the polling place, no barrier shall impede the path of electors with disabilities to the voting booth.

(2) Emergency polling places are exempt from compliance with this section.

(3) Except as otherwise provided in subsection (2) of this section, a designated election official shall only select as polling places sites that meet the standards of accessibility set forth in subsection (1) of this section.

(4) Before selecting polling places, the designated election official shall submit to the secretary of state an accessibility survey in the form prescribed by the secretary of state identifying the criteria for

selecting accessible polling places and applying the criteria to proposed polling places.

Source: L. 2004: Entire part added, p. 1354, § 15, effective May 28.

1-5-704. Standards for accessible voting systems. (1) Notwithstanding any other provision of this article, each voting system certified by the secretary of state for use in local, state, and federal elections shall have the capability to accept accessible voter interface devices in the voting system configuration to allow the voting system to meet the following minimum standards:

(a) The voting system shall provide a tactile input or audio input device, or both.

(b) The voting system shall provide a method by which electors can confirm any tactile or audio input by audio output using synthetic or recorded human speech.

(c) Any operable controls on the input device that are needed by electors who are visually impaired shall be indicated in braille or otherwise discernible tactilely without actuating the keys.

(d) Devices providing audio and visual access shall be able to work both separately and simultaneously.

(e) If a nonaudio access approach is provided, the voting system may not require color perception. The voting system shall use black text or graphics, or both, on white background or white text or graphics, or both, on black background, unless the secretary of state approves other high-contrast color combinations that do not require color perception.

(f) Any voting system that requires any visual perception shall allow the font size as it appears to the voter to be set from a minimum of fourteen points to a maximum of twenty-four points before the voting system is delivered to the polling place.

(g) The voting system shall provide audio information, including any audio output using synthetic or recorded human speech or any auditory feedback tones that are important for the use of the audio approach, through at least one mode, by handset or headset, at high volume and shall provide incremental volume control with output amplification up to a level of at least ninety-seven decibel sound pressure level.

(h) For voice signals transmitted to the elector, the voting system shall provide a gain adjustable up to a minimum of twenty decibels with at least one intermediate step of twelve decibels.

(i) If the voting system can exceed one hundred twenty decibel sound pressure level, a mechanism shall be included to reset the volume automatically to the voting system's default volume level after every use, such as when the handset is replaced, but not before. Universal precautions in the use and sharing of headsets should be followed.

(j) If sound cues and audible information such as "beeps" are used, simultaneous corresponding visual cues and information shall be provided.

(k) Controls and mechanisms shall be operable with one hand, including with a closed fist, and operable without tight grasping, pinching, or twisting of the wrist.

(l) The force required to operate or activate the controls may not exceed five pounds of force.

(m) Voting booths shall have voting controls at a minimum height of thirty-six inches above the finished floor with a minimum knee clearance of twenty-seven inches high, thirty inches wide, and nineteen inches deep, or the accessible voter interface devices shall be designed so as to allow their use on top of a table to meet such requirements. Tabletop installations shall ensure adequate privacy.

(n) Audio ballots shall meet the following standards:

(I) After the initial instruction from an election official, the elector shall be able to independently operate the voter interface device through the final step of casting a ballot without assistance.

(II) The elector shall be able to determine the offices for which the elector is allowed to vote and to determine the candidates for each office.

(III) The elector shall be able to determine how many candidates may be selected for each office.

(IV) The elector shall have the ability to verify that the physical or vocal inputs given to the voting

system have selected the candidates that the elector intended to select.

(V) The elector shall be able to review the candidate selections that the elector has made.

(VI) Before casting the ballot, the elector shall have the opportunity to change any selections previously made and confirm a new selection.

(VII) The voting system shall communicate to the elector the fact that the elector has failed to vote for an office or has failed to vote the number of allowable candidates for an office and require the elector to confirm his or her intent to undervote before casting the ballot.

(VIII) The voting system shall warn the elector of the consequences of overvoting for an office.

(IX) The elector shall have the opportunity to input a candidate's name for each office that allows a write-in candidate.

(X) The elector shall have the opportunity to review the elector's write-in input to the voter interface device, edit that input, and confirm that the edits meet the elector's intent.

(XI) The voting system shall require a clear, identifiable action from the elector to cast the ballot. The voting system shall explain to the elector how to take this action so that the elector has minimal risk of taking the action accidentally, but when the elector intends to cast the ballot, the action can be easily performed.

(XII) After the ballot is cast, the voting system shall confirm to the elector that the ballot has been cast and the elector's process of voting is complete.

(XIII) After the ballot is cast, the voting system shall prevent the elector from modifying the ballot cast or voting another ballot.

(o) Ballot marking devices shall meet the following standards:

(I) The elector shall be able simultaneously to view ballot choices on a high-resolution visual display and to listen to ballot choices with headphones.

(II) The elector shall be able to listen to ballot choices in complete privacy and to turn off the visual display.

(III) The ballot marking device shall have multiple output connections to accommodate various headsets so that the elector is able to use the headset provided with the ballot marking device or his or her own headset.

(IV) The elector shall be able to mark the ballot card in complete independence and in accordance with federal and state law on mandatory accessibility for persons with disabilities.

(V) The ballot marking device shall allow a blind or visually impaired elector to vote in complete privacy.

(VI) The ballot marking device shall have a completely integrated input keypad containing commonly accepted voter accessibility keys with Braille markings.

(VII) The elector shall be able to enter ballot choices using an assistive device, including but not limited to a sip and puff device and a jelly switch.

(VIII) The elector shall be able to magnify the ballot choices on the visual display and to adjust the volume and speed of the audio output.

(IX) The ballot marking device shall have multiple language capability.

(X) The elector shall have the opportunity to input a candidate's name for each office that allows a write-in candidate and to review the elector's write-in input, edit that input, and confirm that the edits meet the elector's intent.

(XI) The elector shall be able independently to review all ballot choices and make corrections before the ballot card is marked, including by receiving a replacement ballot if the elector is otherwise unable to change the ballot or correct an error.

(XII) The elector shall be able to verify, visually or using the audio interface, that the ballot card inserted into the device at the start of voting is blank and that the marked ballot card produced by the ballot marking device is marked as the elector intended.

(XIII) The ballot marking device shall alert the elector before the ballot is marked that the elector

has made an overvote, as defined in section 1-1-104 (23.4), or an undervote, as defined in section 1-1-104 (49.7), and allow the elector to make corrections.

Source: L. 2004: Entire part added, p. 1355, § 15, effective May 28. **L. 2007:** (1)(o) added, p. 1975, § 19, effective August 3.

1-5-705. Accessible voter interface devices - minimum requirement. (1) A voting system shall include at least one direct recording electronic voting system specially equipped for individuals with disabilities or other accessible voter interface device installed at each polling place that meets the requirements of this section.

(2) This section shall apply to elections held on and after January 1, 2006.

Source: L. 2004: Entire part added, p. 1357, § 15, effective May 28.

PART 8

VOTER-VERIFIED PAPER RECORD

1-5-801. Acquisition of voting systems - voter-verified paper record. (1) On and after June 6, 2005, a political subdivision shall not acquire a voting system unless the voting system is capable of producing a voter-verified paper record of each elector's vote.

(2) A political subdivision shall not acquire a voting device that has been retrofitted to comply with this part 8 unless the voting device has been certified by the secretary of state.

Source: L. 2005: Entire part added, p. 1402, § 22, effective June 6; entire part added, p. 1438, § 22, effective June 6. **L. 2009:** (2) amended, (HB 09-1335), ch. 260, p. 1194, § 9, effective May 15.

1-5-802. Use of voting systems - voter-verified paper record. (1) In addition to the other requirements of this article, the voting system used in each primary, general, coordinated, or congressional district vacancy election held in the state on and after January 1, 2010, shall have the capability to produce a voter-verifiable paper record of each elector's vote. Before an elector's vote is cast, the elector shall have the opportunity, in private and without assistance, to inspect and verify that the voter-verified paper record correctly reflects the elector's choices. Any political subdivision that has not complied with the provisions of this section on or before January 1, 2009, shall comply with such provisions by January 1, 2014.

(2) The requirements of subsection (1) of this section shall apply to each primary, general, coordinated, or congressional district vacancy election conducted by a county clerk and recorder on and after January 1, 2008, if the governing body of the county determines that:

(a) The technology necessary to comply with the requirements of subsection (1) of this section is available; and

(b) (I) Sufficient federal or state funds are available to acquire or retrofit voting devices that comply with the requirements of subsection (1) of this section; or

(II) It is otherwise financially feasible for the county to comply with the requirements of subsection (1) of this section.

(3) Upon satisfaction by a county of the requirements of this section, the voter-verified paper record of each eligible elector's vote, whether filled out by hand or produced by a voting machine or ballot marking device, shall be preserved as an election record pursuant to section 1-7-802 and shall constitute an official record of the election.

(4) No voting device shall be remotely accessed or remotely accessible until after the close of voting and a results total tape has been printed, as applicable.

Source: L. 2005: Entire part added, p. 1403, § 22, effective June 6; entire part added, p. 1438, § 22, effective June 6. **L. 2009:** (1) amended, (HB 09-1335), ch. 260, p. 1194, § 10, effective May 15.

ARTICLE 5.5

Internet-based Voting Pilot Program for
Absent Uniformed Services Electors

1-5.5-101. Pilot program - internet voting system - absent uniformed services elector - secretary of state - fund - rules.

1-5.5-101. Pilot program - internet voting system - absent uniformed services elector - secretary of state - fund - rules. (1) Subject to the availability of funds pursuant to subsection (4) of this section, the secretary of state, in coordination with the county clerk and recorders, shall develop an internet-based voting pilot program to facilitate voting by absent uniformed services electors serving outside the United States commencing with the general election held in 2012. The secretary of state shall select one or more political subdivisions to participate in the pilot program. The internet-based voting system developed for use by political subdivisions that participate in the pilot program shall:

(a) Transmit encrypted information over a secure network;

(b) Provide for secure identification and authentication of:

(I) Any information transmitted on the system; and

(II) Each designated or coordinated election official of a county or political subdivision and the servers of such officials and all other related electronic equipment being used by the secretary of state and each official in the conduct of elections via the internet;

(c) Protect the privacy, anonymity, and integrity of each elector's ballot;

(d) Prevent the casting of multiple ballots via the internet in an election by each elector;

(e) Provide protection against abuse, including tampering, fraudulent use, and illegal manipulation by electors, election officials, or any other individual or group; and

(f) Provide uninterrupted and reliable internet availability for the purpose of casting votes via the internet by the electors.

(2) The secretary of state shall implement the internet-based voting system so that each designated or coordinated election official of a county or other political subdivision participating in the pilot program shall:

(a) Assure that each absent uniformed services elector serving outside the United States who logs in to vote via the internet is eligible and registered to vote;

(b) Verify that each elector who logs in to vote via the internet is the same person who is registered and qualified to vote;

(c) Verify that the votes of the electors transmitted to the election officials via the internet are private and secure and have not been viewed or altered by sites that lie between the voting location and the vote-counting destination;

(d) Verify that all votes cast via the internet by electors were cast by 7 p.m. mountain standard time on the day of the election; and

(e) Verify that all votes cast via the internet by electors were indeed counted and attributed correctly to the elector who cast the vote.

(3) The secretary of state may by rule promulgated in accordance with article 4 of title 24, C.R.S., establish procedures necessary to implement this article.

(4) There is hereby created in the state treasury the internet-based voting pilot program fund to provide for the direct and indirect costs associated with implementing this article. The fund shall consist of gifts, grants, and donations to the fund from private or public sources for the purposes of this article. All private and public funds received through gifts, grants, and donations shall be transmitted to the state treasurer, who shall credit the same to the fund. Moneys in the fund shall be subject to annual

appropriation by the general assembly to the department of state for the purposes specified in this article. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be transferred to the general fund or any other fund.

(5) Notwithstanding the provisions of subsections (1), (2), and (3) of this section, the department of state shall not implement the internet-based voting system until sufficient gifts, grants, and donations are obtained to cover the costs of implementing the system.

Source: L. 2009: Entire article added, (HB 09-1205), ch. 383, p. 2078, § 2, effective August 5.

Editor's note: This section was added in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

ARTICLE 6

Election Judges

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this article was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of this article for 1980 and 1992, see the comparative tables located in the back of the index.

1-6-101. Definitions - qualifications for election judges - student election judges - legislative declaration.
1-6-102. List furnished by precinct committeepersons.
1-6-103. Recommendations by county chairperson.
1-6-103.5. Recommendations by minor political parties.
1-6-103.7. Unaffiliated voters - self-nomination.
1-6-104. Appointment of election judges by the county clerk and recorder and designated election officials.
1-6-105. Appointment of election judges for elections not coordinated by the county clerk and recorder.
1-6-106. Confirmation and acceptance of election judge appointment.
1-6-107. Acceptances - school of instruction - appointment of supply judge. (Repealed)
1-6-108. Lists of election judges.
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1-6-101. Definitions - qualifications for election judges - student election judges - legislative declaration. (1) As used in this article, "election judge" means a registered elector appointed by the county clerk and recorder or designated elected official to perform the election duties assigned by the county clerk and recorder or designated election official. As used in this article, "election judge" also includes a student election judge appointed pursuant to the provisions of subsection (7) of this section.

(2) The persons appointed as election judges, except for persons appointed as student election judges pursuant to the provisions of subsection (7) of this section, shall certify in writing that they meet the following qualifications:

(a) They are registered electors who reside in the political subdivision, unless otherwise excepted, and are willing to serve;

(b) They are physically and mentally able to perform and complete the assigned tasks;

(c) They will attend a class of instruction concerning the tasks of an election judge prior to each election;

(d) They have never been convicted of election fraud, any other election offense, or fraud; and

(e) They are neither a candidate whose name appears on the ballot in the precinct that they are appointed to serve nor a member of the immediate family, related by blood or marriage to the second degree, of a candidate whose name appears on the ballot in the precinct that they are appointed to serve.

(3) With regard to any nonpartisan election that is not coordinated by the county clerk and recorder, the election judge shall be a registered elector of the political subdivision for which the election is being held. If enough registered electors of the political subdivision are not available, then the appointing authority may appoint election judges who are registered electors of the state.

(4) Before serving as an election judge, any person recommended as an election judge in accordance with section 1-6-102, 1-6-103, 1-6-103.5, or 1-6-103.7 shall complete and file an acceptance form with the county clerk and recorder or other designated election official as provided in section 1-6-106. The acceptance forms may be kept on file with the county clerk and recorder or other designated election official for up to two years from the date of signing the acceptance form.

(5) The county clerk and recorder or the designated election official shall hold a class of instruction concerning the tasks of an election judge and a special school of instruction concerning the task of a supply judge not more than forty-five days prior to each election.

(6) Each person appointed as an election judge shall be required to attend one class of instruction prior to the first election in an election cycle in which the person will serve as an election judge. The county clerk and recorder or other designated election official may require a person appointed as an election judge to attend more than one class of instruction in an election cycle.

(7) (a) The general assembly hereby finds and declares that, in order to promote a greater awareness among young people concerning the electoral process, the rights and responsibilities of voters, and the importance of citizen participation in public affairs, as well as to provide additional qualified individuals willing and able to assist with the electoral process, qualified students may be allowed to serve as student election judges. Therefore, it is the intent of the general assembly in enacting this subsection (7) to authorize county clerk and recorders to appoint qualified students to serve as election judges in conformity with the requirements of this section.

(b) As used in this article, "student election judge" means a student who meets the requirements of this subsection (7) and who is appointed by a county clerk and recorder for service as an election judge pursuant to the requirements of this section.

(c) The county clerk and recorders may work with school districts and public or private secondary educational institutions to identify students willing and able to serve as student election judges. Such school districts or educational institutions may submit the names of the students to the clerk and recorder of the county in which the school district or educational institution is located for appointment as student election judges. Home-schooled students may apply to the county clerk and recorder for appointment as a student election judge pursuant to the requirements of this section. From among the names submitted,

the county clerk and recorders may select students to serve as student election judges who meet the following qualifications:

(I) They are a United States citizen or will be a citizen at the time of the election to which the student is serving as a student election judge;

(II) They are willing to serve;

(III) They are physically and mentally able to perform and complete the assigned tasks;

(IV) They will attend a class of instruction concerning the tasks of an election judge prior to each election;

(V) They have never been convicted of election fraud, any other election offense, or fraud;

(VI) They are not a member of the immediate family, related by blood or marriage to the second degree, of a candidate whose name appears on the ballot in the precinct that they are appointed to serve;

(VII) They are sixteen years of age or older and either a junior or senior in good standing attending a public or private secondary educational institution or being home-schooled at the time of the election to which the student is serving as a student election judge; and

(VIII) Their parent or legal guardian has consented to their service as a student election judge.

Source: L. 92: Entire article R&RE, p. 723, § 8, effective January 1, 1993. **L. 93:** IP(1) amended and (3) and (4) added, p. 1414, § 58, effective July 1. **L. 96:** (1)(d) and (2) amended, p. 1744, § 38, effective July 1. **L. 98:** Entire section amended, p. 574, § 1, effective April 30. **L. 2000:** (1) and IP(2) amended and (7) added, p. 1333, § 1, effective July 1. **L. 2002:** (4) and (6) amended, p. 1631, § 8, effective June 7. **L. 2005:** (5) amended, p. 1403, § 23, effective June 6; (5) amended, p. 1438, § 23, effective June 6. **L. 2007:** (5) amended, p. 1977, § 20, effective August 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in §§ 1-5-107 and 1-5-109 as said sections existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in §§ 1-3-106 and 1-3-108 as said sections existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For transferring names of electors when precinct boundaries changed, see § 1-2-223; for the power of the board of county commissioners to form new precincts, change the names of precincts, or reduce the numbers of precincts, see § 30-11-114.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 86-92.

C.J.S. See 29 C.J.S., Elections, § 114.

Annotator's note. The following annotations are taken from cases decided under former provisions similar to this section.

Judicial notice taken of boundaries of election precincts. Courts take judicial notice of matters of common knowledge in the community where they sit, such as the boundaries of election precincts. Nat'l Optical Co. v. United States Fid. & Guar. Co., 77 Colo. 130, 235 P. 343 (1925); Antlers Athletic Ass'n v. Hartung, 85 Colo. 125, 274 P. 831 (1928); Israel v. Wood, 93 Colo. 500, 27 P.2d 1024 (1933).

And a court will take judicial notice of the fact that there has been a precinct established in a county, it not being material whether the precinct was established upon proper petition or by virtue of authority so to do under this section. Bd. of Comm'rs v. People ex rel. McPherson, 36 Colo. 246, 91 P. 36 (1906).

Whereupon a mandamus proceeding will be dismissed. When a court takes judicial notice that an election precinct has been established, a mandamus proceeding to compel the board of county commissioners to establish such precinct pending upon review in such court will be dismissed, there being no live question for determination. Bd. of Comm'rs v. People ex rel. McPherson, 36 Colo. 246, 91 P. 36 (1906).

1-6-102. List furnished by precinct committeepersons. (1) No later than ten days after the precinct caucus in even-numbered years, the committeepersons of each precinct from each major political party shall submit to the county chairpersons of their respective political parties a list that was initiated at the precinct caucus and that recommends registered electors as election judges. The registered electors

recommended as election judges must reside in the precinct and have a current affiliation with the political party that held the precinct caucus.

(2) If there is no county chairperson, the committeeperson of each precinct shall submit the list that was initiated at the precinct caucus and that recommends registered electors as election judges directly to the county clerk and recorder. If a precinct has no committeeperson, the district captain, if any, shall submit the list of recommended election judges to the county chairperson or county clerk and recorder, as appropriate.

Source: L. 92: Entire article R&RE, p. 723, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 575, § 2, effective April 30.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-106 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 89.

1-6-103. Recommendations by county chairperson. (1) (a) No later than the last Tuesday of April in even-numbered years, the county chairperson of each major political party in the county shall certify to the county clerk and recorder the names and addresses of registered electors recommended to serve as election judges for each precinct in the county.

(b) Repealed.

(2) The county chairperson, or, if there is no county chairperson, the committeepersons who submitted the list of registered electors in accordance with section 1-6-102 (2) shall designate the order of preference of the names of the registered electors recommended to serve as election judges for each precinct. The county clerk and recorder shall select election judges from each precinct list in the county chairperson's, or, if there is no county chairperson, the committeeperson's, order of preference.

(3) In recommending registered electors as election judges, the county chairperson may select only names from the list submitted by the precinct committeepersons. However, the county chairperson may recommend additional registered electors to the county clerk and recorder if the precinct committeepersons do not provide enough names to the county chairperson.

(4) and (5) (Deleted by amendment, L. 98, p. 576, § 3, effective April 30, 1998.)

Source: L. 92: Entire article R&RE, p. 724, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 576, § 3, effective April 30. **L. 2002:** (1) amended, p. 134, § 6, effective March 27.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-107 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective July 1, 2002. (See L. 2002, p. 134.)

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 89.

C.J.S. See 29 C.J.S., Elections, § 118.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Section applies to municipal elections. The right of the elector to be safeguarded in the exercise of his franchise - a right conferred by the sovereign authority of the state - carries with it the corresponding duty, on the part of the state, to furnish all needed protection; this is of public concern, therefore, even municipal elections are within the provisions of this section requiring the county chairman to submit a list of names to serve as election judges. Mauff v. People ex rel. Clay, 52 Colo. 562, 123 P. 101 (1912)

(decided under former law).

Requirement that persons serving as election judges must be affiliated with one of two major political parties does not violate right to freedom of speech and association or right to equal protection since the statute is rationally related to the legitimate ends of efficiently running an election by pairing Democrats and Republicans as election monitors to provide the appearance of propriety. MacGuire v. Houston, 717 P.2d 948 (Colo. 1986).

Applied in Nichol v. Bair, 626 P.2d 761 (Colo. App. 1981).

1-6-103.5. Recommendations by minor political parties. No later than the last Tuesday of April in even-numbered years, the county chairperson or other authorized official of a minor political party may certify to the county clerk and recorder the names and addresses of registered electors recommended to serve as election judges for one or more precincts in the county. If the list contains more than one name for any precinct in the county, the order of preference shall be indicated. The county clerk and recorder shall select election judges from the party according to such order of preference, if indicated.

Source: L. 2002: Entire section added, p. 1631, § 9, effective June 7.

1-6-103.7. Unaffiliated voters - self-nomination. No later than the last Tuesday of April in even-numbered years, any registered elector who is unaffiliated with a political party or political organization may give notice in writing to the clerk and recorder of the county in which such elector resides offering to serve as an election judge and stating that the elector is a registered elector and is unaffiliated with any political party or political organization.

Source: L. 2002: Entire section added, p. 1631, § 9, effective June 7.

1-6-104. Appointment of election judges by the county clerk and recorder and designated election officials. (1) For each election coordinated by the county clerk and recorder, the county clerk and recorder shall appoint election judges for each precinct in the county. An election judge for a precinct shall serve for a two-year period beginning on the last Tuesday of May in even-numbered years and ending on the last Monday in May of the next even-numbered year or until the designated election official appoints another person to replace that election judge for that precinct, whichever is earlier.

(2) The county clerk and recorder may appoint an election judge to serve in a precinct of the county other than the precinct in which the election judge resides.

(3) If, at the time the county clerk and recorder appoints election judges for a precinct, the list of recommended election judges submitted in accordance with section 1-6-102 contains an insufficient number of names for a major political party's share of the total number of election judges as required in section 1-6-109, the designated election official shall appoint any additional election judges necessary from among the persons recommended by minor political parties in accordance with section 1-6-103.5 and the unaffiliated voters who have offered to serve as election judges in accordance with section 1-6-103.7.

(4) For each election coordinated by the county clerk and recorder, the county clerk and recorder may appoint one or more student election judges that satisfy the requirements contained in section 1-6-101 (7) to serve as an election judge, and shall designate the precinct in which the student election judge shall serve based upon the number of qualified students and vacancies in the number of available positions for election judges throughout the county, notwithstanding the fact that a student election judge may serve in a precinct of the county other than the precinct in which the student election judge resides.

Source: L. 92: Entire article R&RE, p. 725, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 576, § 4, effective April 30. **L. 99:** (3) amended, p. 161, § 13, effective August 4. **L. 2000:** (4) added, p. 1334, § 2, effective July 1. **L. 2002:** (3) amended, p. 1632, § 10, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this

section, as it existed in 1992, are similar to those contained in 1-5-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For removal of election judges, see §§ 1-6-119 and 1-6-120.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 86-92.

C.J.S. See 29 C.J.S., Elections, § 114.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Election judges have both judicial and ministerial duties to perform. People ex rel. Griffith v. Bundy, 107 Colo. 102, 109 P.2d 261 (1940).

Such judicial conclusions are not subject to review by mandamus. People ex rel. Griffith v. Bundy, 107 Colo. 102, 109 P.2d 261 (1940).

And the actual count and determination of election results is a duty of election judges, and their disposition of disputes as to count or the result of a ballot is judicial. People ex rel. Griffith v. Bundy, 107 Colo. 102, 109 P.2d 261 (1940).

1-6-105. Appointment of election judges for elections not coordinated by the county clerk and recorder. (1) Except as provided for special district elections in subsection (1.5) of this section, no later than forty-five days before the regular election, the governing body with authority to call elections shall appoint election judges for the political subdivision. The term of office of election judges shall be two years from the date of appointment.

(1.5) No later than forty-five days before a regular special district election, the designated election official shall appoint election judges for the special district unless otherwise directed by the board of directors of such district.

(2) Any person who has been appointed by a county clerk and recorder and meets the qualifications as prescribed in section 1-6-101 may be appointed as an election judge for elections not coordinated by the county clerk and recorder.

Source: L. 92: Entire article R&RE, p. 725, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 577, § 5, effective April 30. **L. 99:** (1) amended and (1.5) added, p. 451, § 7, effective August 4.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-106. Confirmation and acceptance of election judge appointment. (1) The designated election official shall confirm the appointments of election judges by mailing each appointed election judge a certification of appointment and an acceptance form.

(2) The acceptance form shall contain:

(a) The statement of qualifications as prescribed in section 1-6-101; and

(b) A statement that, if the person appointed as an election judge either fails to file the acceptance form within seven days after the certification of appointment and acceptance form are mailed or fails to attend a class of instruction as required in section 1-6-101 (5), the designated election official may determine that a vacancy has been created.

(3) Each person appointed as an election judge shall file an acceptance form in the office of the designated election official within seven days after the certification of appointment and acceptance form have been mailed. If a person appointed as an election judge fails to file the acceptance form as described in subsection (2) of this section or fails to attend a class of instruction as required in section 1-6-101 (5), the designated election official may determine that a vacancy has been created.

Source: L. 92: Entire article R&RE, p. 725, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 577, § 6, effective April 30.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-108 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-107. Acceptances - school of instruction - appointment of supply judge. (Repealed)

Source: L. 92: Entire article R&RE, p. 725, § 8, effective January 1, 1993. **L. 98:** Entire section repealed, p. 584, § 19, effective April 30.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-5-109 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-3-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-108. Lists of election judges. (1) The designated election official shall make and maintain a master list of election judges who have filed an acceptance form in accordance with section 1-6-101 (4). The master list shall include the name, affiliation, and precinct number of each election judge who has filed an acceptance form, including whether such judge is unaffiliated, affiliated with a minor political party, or affiliated with a qualified political organization.

(2) Any person may obtain, upon written request and payment of the appropriate fee, an exact copy of the list of county election judges from the county clerk and recorder.

Source: L. 92: Entire article R&RE, p. 726, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 578, § 7, effective April 30. **L. 99:** (1) amended, p. 161, § 14, effective August 4.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-108 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-109. Party affiliation of election judges in partisan elections. (1) For partisan elections in precincts that have an even number of election judges, each major political party is entitled to one-half of the number of election judges.

(2) For partisan elections in precincts that have an odd number of election judges, one major political party is entitled to the extra election judge in one-half of the precincts, as determined by the county clerk and recorder, and the other major political party is entitled to the extra election judge in the other one-half of the precincts, as determined by the county clerk and recorder.

(3) If an odd number of precincts exist, the county clerk and recorder shall determine which major political party is entitled to any extra election judge. The county clerk and recorder shall make this determination either by mutual agreement of both of the major political parties or, if the two major political parties cannot agree, by lot.

(4) Repealed.

Source: L. 92: Entire article R&RE, p. 726, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 578, § 8, effective April 30. **L. 2002:** (4) repealed, p. 1642, § 39, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 86-92. **C.J.S.** See 29 C.J.S., Elections, §§ 118, 119.

1-6-109.5. Appointment and duties of supply judge. (1) The designated election official shall appoint one election judge in each precinct as supply judge. To the extent possible, the supply judge shall be from a major political party. The designated election official shall notify the supply judge of the appointment.

(2) For partisan elections, each major political party is entitled to one-half of the total number of supply judges appointed. If an odd number of supply judges is appointed, the county clerk and recorder shall determine which major political party is entitled to the one extra supply judge. The county clerk and recorder shall make this determination by the mutual agreement of the two major political parties or, if the two major political parties cannot agree, by lot.

(3) Prior to the election, the supply judge shall attend a special school of instruction held by the designated election official.

(4) (a) The supply judge shall coordinate the conduct of the election in the precinct. For nonpartisan elections, the supply judge's responsibilities shall include receiving election supplies and equipment from the designated election official, delivering election supplies and equipment to the polling place, and returning all election supplies, election equipment, and ballots to the designated election official once the election is concluded.

(b) For partisan elections, the county clerk and recorder may deputize a courier to return the election supplies, election equipment, and ballots to the county clerk and recorder once the election is concluded. If the county clerk and recorder does not deputize a courier, the supply judge and a second election judge from the precinct shall return the election supplies, election equipment, and the ballots to the county clerk and recorder. The second election judge shall be selected by the election judges in the precinct other than the supply judge and shall be of a political affiliation different than the supply judge.

Source: L. 98: Entire section added, p. 579, § 9, effective April 30.

1-6-110. Judges at primary elections. (Repealed)

Source: L. 92: Entire article R&RE, p. 727, § 8, effective January 1, 1993. **L. 98:** Entire section repealed, p. 584, § 20, effective April 30.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-5-103 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-15-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-111. Number of election judges. (1) For partisan elections, the county clerk and recorder shall appoint at least three election judges to serve as polling place judges for each precinct to perform the designated functions, one of whom may be a student election judge appointed pursuant to the provisions of section 1-6-101 (7). In each precinct, notwithstanding any other provision of this article and subject to the availability of election judges who meet the affiliation requirements of section 1-6-109, of the election judges appointed to serve as polling place judges pursuant to the provisions of this subsection (1), there shall be at least one election judge from each major political party who is not a student election judge.

(2) (Deleted by amendment, L. 98, p. 580, § 10, effective April 30, 1998.)

(3) When two election judges who are not of the same political affiliation are present at the polls, voting may proceed.

(4) For nonpartisan elections, the designated election official shall appoint no less than two election judges to serve as polling place judges for each precinct to perform the designated functions.

(5) The designated election official and, for partisan elections, the county clerk and recorder may appoint other election judges as needed to perform duties other than polling place duties. These duties may include but are not limited to inspecting ballots, duplicating ballots, and counting paper ballots. For partisan elections, if the county clerk and recorder appoints election judges to perform duties other than polling place duties, the county clerk and recorder shall appoint two election judges to perform such duties. The two election judges so appointed shall not be of the same political affiliation.

(6) For any election in which polling places or precincts are combined or vote centers are established in accordance with section 1-5-102.7, the county clerk and recorder or the designated election official may assign one set of election judges to perform the functions for all precincts and polling places so combined or for each vote center. The number of student election judges assigned to a combined polling place or vote center shall not exceed the number of election judges assigned to the combined polling place or vote center who are not student election judges.

(7) Where student election judges have been appointed by the county clerk and recorder to serve in a particular precinct pursuant to the provisions of this article, no more than two such student election judges shall serve as election judges in any one precinct.

(8) Subject to the requirements of this article regarding the number and party affiliation of election judges, the county clerk and recorder or designated election official may allow an election judge to work at a polling place for a shift lasting less than the entire day; except that, at least two judges of different affiliations at each polling place shall work the entire day.

Source: L. 92: Entire article R&RE, p. 727, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 580, § 10, effective April 30. **L. 2000:** (1) amended and (7) added, p. 1335, § 3, effective July 1. **L. 2004:** (6) amended, p. 1106, § 5, effective May 27. **L. 2007:** (6) amended and (8) added, p. 1977, § 21, effective August 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in §§ 1-5-104 and 1-5-105 as said sections existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in §§ 1-3-102 and 1-3-103 as said sections existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-112. Number of judges in nonpartisan elections. (Repealed)

Source: L. 92: Entire article R&RE, p. 727, § 8, effective January 1, 1993. **L. 98:** Entire section repealed, p. 584, § 21, effective April 30.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-5-104 and 1-5-105 as said sections existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-3-102 and 1-3-103 as said sections existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-113. Vacancies. (1) If for any reason any person selected to serve as an election judge fails to attend the class of instruction for election judges, or refuses, fails, or is unable to serve, or is removed by preemption in accordance with section 1-6-119 (1) or for cause in accordance with section 1-6-119 (2), the designated election official thereafter may appoint an election judge to fill such vacancy. For a partisan election, an election judge shall be appointed to fill such vacancy from the list of names previously submitted by the county chairperson of the political party to which the person belongs. If a vacancy occurs in a partisan election and no persons are available from such list, then the county clerk and recorder may appoint a person from among the persons recommended by minor political parties in accordance with section 1-6-103.5 and the unaffiliated voters who have offered to serve as election

judges in accordance with section 1-6-103.7.

(2) If any election judge is not present at the opening of the polls but appears at the polling place within thirty minutes after the opening of the polls, that election judge is entitled to serve as an election judge, and in such event the election judges shall make note of this fact in their official returns. If a vacancy occurs on the date of any election by failure of any election judge to appear at the polling place by 7:30 a.m., the vacancy may be filled by the designated election official.

Source: L. 92: Entire article R&RE, p. 727, § 8, effective January 1, 1993. **L. 93:** (1) amended, p. 1415, § 59, effective July 1. **L. 2002:** (1) amended, p. 1632, § 11, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-110 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 114.

1-6-114. Oath of judges. (1) Before beginning the duties of an election judge, each person appointed as an election judge shall take a self-affirming oath or affirmation in substantially the following form:

"I, ..., do solemnly swear (or affirm) that I am a citizen of the United States and the state of Colorado; that I am an eligible elector who resides in the county of ..... or within the ..... political subdivision; that I am a member of the ..... party (or that I am unaffiliated with a political party) as shown on the registration books of the county clerk and recorder; that I will perform the duties of judge according to law and the best of my ability; that I will studiously strive to prevent fraud, deceit, and abuse in conducting the same; that I will not try to determine how any elector voted, nor will I disclose how any elector voted if in the discharge of my duties as judge such knowledge shall come to me, unless called upon to disclose the same before some court of justice; that I have never been convicted of election fraud, any other election offense, or fraud and that, if any ballots are counted before the polls close on the date of the election, I will not disclose the result of the votes until after the polls have closed and the results are formally announced by the designated election official."

(2) (Deleted by amendment, L. 95, p. 838, § 54, effective July 1, 1995.)

(3) For nonpartisan elections, the election judges shall not be required to declare their affiliation on the oath or affirmation.

Source: L. 92: Entire article R&RE, p. 728, § 8, effective January 1, 1993. **L. 93:** (1) amended, p. 1415, § 60, effective July 1. **L. 95:** (1) and (2) amended, p. 838, § 54, effective July 1. **L. 98:** (1) amended, p. 580, § 11, effective April 30. **L. 99:** (3) amended, p. 162, § 15, effective August 4. **L. 2002:** (1) amended, p. 1632, § 12, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-111 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-111 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 105.

1-6-115. Compensation of judges. (1) In all elections, including primary and general elections, each election judge serving in the precincts on election day shall receive not less than five dollars as

compensation for services provided as judge at any election. At the discretion of the county clerk and recorder or designated election official, a student election judge appointed pursuant to the provisions of this article may receive the same compensation received by an election judge but, in any case, not less than seventy-five percent of the compensation received by an election judge for service provided as a judge at any election.

(2) In addition to the compensation provided by subsection (1) of this section, each election judge and student election judge may be paid expenses and reasonable compensation for attending election schools which may be established by the county clerk and recorder or the designated election official. Each supply judge appointed by the county clerk and recorder shall be reimbursed no less than five dollars for attending a special school of instruction.

(2.5) The supply judge and, for partisan elections, the second election judge selected in accordance with section 1-6-109.5 (4) (b) shall be paid no less than four dollars for returning the election supplies, election equipment, and the ballots to the designated election official. The person providing the transportation may be paid a mileage allowance, to be set by the designated election official but not to exceed the mileage rate authorized for county officials and employees, for each mile necessarily traveled in excess of ten miles in going to and returning from the office of the designated election official.

(3) Compensation for election judges shall be determined and paid by the governing body calling the election. Compensation for all judges shall be uniform throughout a particular political subdivision, except the compensation of student election judges shall be set in conformity with subsection (1) of this section.

(4) Election judges must give the designated election officials their social security numbers in order to receive compensation; however, service as an election judge shall not be considered employment pursuant to articles 70 to 82 of title 8, C.R.S.

Source: L. 92: Entire article R&RE, p. 728, § 8, effective January 1, 1993. **L. 93:** (2) amended, p. 1416, § 61, effective July 1. **L. 95:** (1) amended, p. 839, § 55, effective July 1. **L. 98:** (1) and (2) amended and (2.5) added, p. 581, § 12, effective April 30. **L. 2000:** (1), (2), and (3) amended, p. 1335, § 4, effective July 1. **L. 2002:** (1) amended, p. 1633, § 13, effective June 7. **L. 2006:** (1) amended, p. 48, § 1, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-112 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-113 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the mileage rate authorized for county officers and employees, see § 30-11-107 (1)(t).

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 106.

1-6-116. Delivery of election returns and other election papers - compensation. (Repealed)

Source: L. 92: Entire article R&RE, p. 729, § 8, effective January 1, 1993. **L. 93:** (1) amended, p. 1416, § 62, effective July 1. **L. 94:** (1) amended, p. 1162, § 32, effective July 1. **L. 98:** Entire section repealed, p. 585, § 22, effective April 30.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-5-113 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-3-114 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-117. Judges for new or changed precincts. (Repealed)

Source: L. 92: Entire article R&RE, p. 729, § 8, effective January 1, 1993. **L. 98:** Entire section repealed, p. 585, § 23,

effective April 30.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-5-114 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-3-115 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-118. Judges may change polling place. (Repealed)

Source: L. 92: Entire article R&RE, p. 729, § 8, effective January 1, 1993. **L. 93:** (1) amended, p. 1416, § 63, effective July 1. **L. 98:** Entire section repealed, p. 585, § 24, effective April 30.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-5-115 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-4-202 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-119. Removal of election judge by designated election official. (1) If a county chairperson of a major political party or the county chairperson or other authorized official of a minor political party believes that an election judge appointed to represent that party is not faithfully or fairly representing the party or that an election judge has moved from the county, the county chairperson or authorized official may exercise a preemptive removal of the election judge. The county chairperson or authorized official shall notify the county clerk and recorder and the election judge of the preemptive removal in writing. The county clerk and recorder shall fill any vacancy created by the preemptive removal as provided in section 1-6-113.

(2) Prior to election day, the designated election official may remove an election judge for cause. Cause includes but is not limited to the election judge's failure to file an acceptance form in accordance with sections 1-6-101 and 1-6-106 and the election judge's failure to attend a class of instruction as required in section 1-6-101 (5).

(3) On election day, the designated election official may remove an election judge who has neglected the duties of the office by failing to appear at the polling place by 7:30 a.m., by leaving the precinct polling place before completing all of the duties assigned, by being unable or unwilling or by refusing to perform the duties of the office, or by electioneering.

(4) Upon receipt of a written complaint made by an eligible elector of the political subdivision concerning an election judge, the designated election official shall investigate the complaint and may remove the election judge and appoint another election judge in accordance with section 1-6-113.

Source: L. 92: Entire article R&RE, p. 730, § 8, effective January 1, 1993. **L. 95:** (3) amended, p. 839, § 56, effective July 1. **L. 98:** Entire section amended, p. 581, § 13, effective April 30. **L. 2002:** (1) and (4) amended, p. 1633, § 14, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-116 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 120-122.

1-6-120. Removal of election judges by the court. (1) Upon the failure or neglect of any election judge to perform the duties of the office, any other election judge, the designated election official, the county chairperson of a political party, or an eligible elector of the political subdivision for which the

election judge is appointed, having knowledge of the failure or neglect, shall cause proper action for removal to be instituted against the election judge.

(2) Election judges who neglect their duties, who commit, encourage, or connive in any fraud in connection with their duties, who violate any of the election laws or knowingly permit others to do so, who are convicted of any crime, who violate their oath, who wrongfully hamper or interfere or tend to interfere with the regular performance of the duties of the other election judges, who commit any other act that interferes or tends to interfere with a fair and honest registration and election, or who are not appointed in accordance with the provisions of this article may be removed in the following manner:

(a) Any eligible elector may file a brief petition in the district court at any time up to twelve days before any election, setting out in brief and concise language the facts constituting the cause for the removal of the election judge. The petition shall be verified, but the verification may be upon information and belief. Upon filing of the petition, the court shall issue a citation to the election judge directing an appearance within forty-eight hours to answer the petition if the election judge desires to do so.

(b) The court shall proceed summarily to hear and finally dispose of the petition and may set a hearing within forty-eight hours after the answer is filed. Evidence given by any accused election judge at the hearing shall not be used against that election judge in any civil, criminal, or other proceedings. If the court decides that the election judge should be removed for any cause stated in the petition, the court shall so order and shall immediately notify the appropriate election official.

(3) The validity of any part of the registration or election already completed or other acts performed under this code, if otherwise legally performed, shall not be affected by the removal of an election judge and shall be in every respect valid and regular. The successor of any election judge removed shall proceed with the duties of the election judge with the same power and effect as though originally appointed.

Source: L. 92: Entire article R&RE, p. 730, § 8, effective January 1, 1993. **L. 95:** (2)(a) amended, p. 839, § 57, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-117 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-12-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-121. Election judge vacancies. (Repealed)

Source: L. 98: Entire section added, p. 582, § 14, effective April 30. **L. 2002:** Entire section repealed, p. 1642, § 39, effective June 7.

1-6-122. State employees - leave to serve as election judge. (1) An employee of a state agency, as defined in section 24-18-102 (9), C.R.S., shall be entitled to take administrative leave with pay on election day for the purpose of serving as an election judge, unless the employee's supervisor determines that the employee's attendance at work on election day is essential.

(2) An employee of a state agency who takes administrative leave with pay to serve as an election judge in accordance with this section shall not receive compensation pursuant to section 1-6-115.

(3) An employee of a state agency who serves as an election judge in accordance with this section shall submit to the employee's supervisor evidence of service as an election judge.

Source: L. 2006: Entire section added, p. 2032, § 12, effective June 6.

ARTICLE 7

Conduct of Elections

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this article was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of this article for 1980 and 1992, see the comparative tables located in the back of the index.

Cross references: For election offenses relating to conduct of elections, see part 7 of article 13 of this title.

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PART 1

HOURS OF VOTING, REGISTRATION, OATHS, AND ASSISTANCE TO VOTE

1-7-101. Hours of voting. (1) All polls shall be opened continuously from 7 a.m. until 7 p.m. of each election day. If a full set of election judges is not present at the hour of 7 a.m. and it is necessary for judges to be appointed to conduct the election as provided in section 1-6-113 (2), the election may commence when two judges who are not of the same political affiliation for partisan elections are present at any hour before the time for closing the polls. The polls shall remain open after 7 p.m. until every eligible elector who was at the polling place at or before 7 p.m. has been allowed to vote. Any person arriving after 7 p.m. shall not be entitled to vote.

(2) Upon the opening of the polls, a proclamation shall be made by one of the judges that the polls are open, and, thirty minutes before the closing of the polls, a proclamation shall be made that the polls will close in thirty minutes.

Source: L. 92: Entire article R&RE, p. 731, § 9, effective January 1, 1993. **L. 98:** (1) amended, p. 583, § 17, effective April 30.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the date of general and primary elections, see § 1-1-104 (17) and (32).

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 299, 300.

C.J.S. See 29 C.J.S., Elections, § 317.

1-7-102. Employees entitled to vote. (1) Eligible electors entitled to vote at an election shall be entitled to absent themselves for the purpose of voting from any service or employment in which they are then engaged or employed on the day of the election for a period of two hours during the time the polls are open. Any such absence shall not be sufficient reason for the discharge of any person from service or employment. Eligible electors, who so absent themselves shall not be liable for any penalty, nor shall any deduction be made from their usual salary or wages, on account of their absence. Eligible electors who are employed and paid by the hour shall receive their regular hourly wage for the period of their absence, not to exceed two hours. Application shall be made for the leave of absence prior to the day of election. The employer may specify the hours during which the employee may be absent, but the hours shall be at the beginning or end of the work shift, if the employee so requests.

(2) This section shall not apply to any person whose hours of employment on the day of the election are such that there are three or more hours between the time of opening and the time of closing of the polls during which the elector is not required to be on the job.

Source: L. 92: Entire article R&RE, p. 732, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-7-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-5-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For employer guilty of a misdemeanor for violation of this section, see § 1-13-719 (1)(b) and (2).

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 298.

Law reviews. For article, "Punitive Damages in Wrongful Discharge Cases", see 15 Colo. Law. 658 (1986).

1-7-103. No voting unless eligible - first-time voters casting a ballot in person after having registered by mail to vote. (1) No person shall be permitted to vote at any election unless the person's name is found in the registration record and all other requirements for voting as may be required by authorizing legislation have been met.

(2) A person otherwise eligible to vote whose name has been omitted from the registration list or property owner's list shall be permitted to vote upon taking substantially the following oath: "I do solemnly swear or affirm that I am a citizen of the United States of the age of eighteen years or older;

that I have been a resident of this state and precinct for thirty days immediately preceding this election and have not maintained a home or domicile elsewhere; that I am a registered elector in this precinct; that I am eligible to vote at this election; and that I have not previously voted at this election."; and

(a) Presenting to an election judge a certificate of registration issued on election day by the county clerk and recorder or a certificate of property ownership issued on election day by the county assessor; or

(b) An election judge obtaining verbal verification of the registration from the county clerk and recorder on election day, or obtaining verbal verification of property ownership from the county assessor on election day.

(3) The election judges, or any one of them, shall promptly contact the county clerk and recorder or the county assessor for the verbal verification so that every eligible elector present at the polling place is allowed to vote. Notation of verbal verification of registration or property ownership shall be made in the records of the election judges and in the records of the county clerk and recorder and assessor. All certificates of registration shall be surrendered to the election judges and returned to the designated election official with other election records and supplies.

(4) The self-affirming oath or affirmation provided in section 32-1-806 (2), C.R.S., if applicable to the election, may be accepted by an election judge in place of the oath and certificate or verbal verification required by subsection (2) of this section so that every eligible elector present at the polling place is allowed to vote.

(5) (a) Subject to the requirements of section 1-2-501 (2), the requirements of this subsection (5) shall apply to any person who has registered to vote by mail in accordance with part 5 of article 2 of this title and who:

(I) Has not previously voted in an election in Colorado; or

(II) Is reregistering to vote after moving from one county in this state to another and the election in which the person intends to vote takes place prior to the creation by the department of state of a computerized statewide voter registration list that satisfies the requirements of part 3 of article 2 of this title.

(b) Any person who matches either of the descriptions specified in subparagraph (I) or (II) of paragraph (a) of this subsection (5) and intends to cast his or her ballot in person shall present to the appropriate election official at the polling place identification within the meaning of section 1-1-104 (19.5).

(c) Any person who desires to cast his or her ballot in person but does not satisfy the requirements of paragraph (b) of this subsection (5) may cast a provisional ballot in accordance with the requirements of article 8.5 of this title.

Source: L. 92: Entire article R&RE, p. 732, § 9, effective January 1, 1993. **L. 94:** (2) amended, p. 1769, § 29, effective January 1, 1995. **L. 96:** (2) amended and (4) added, p. 1745, § 39, effective July 1. **L. 99:** (2) amended, p. 774, § 49, effective May 20. **L. 2003:** (5) added, p. 2078, § 14, effective May 22. **L. 2004:** (5)(c) amended, p. 1186, § 2, effective August 4. **L. 2005:** (5)(c) amended, p. 1404, § 24, effective June 6; (5)(c) amended, p. 1439, § 24, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-103 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-8-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For certificate of registration, see § 1-2-215.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 179-181.

C.J.S. See 29 C.J.S., Elections, § 58.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Election held without prior registration of voters is of no force and effect. Where the law requires registration

of voters preceding an election, and provides that no one shall be permitted to vote unless he is registered, and no registration is had, the election, where the omission occurs, is of no force and effect, and no one may claim the right to an office as a result thereof. Fish v. Kugel, 63 Colo. 101, 165 P. 249 (1917).

1-7-104. Affidavits of eligibility. (1) In any election where the list of registered electors and property owners is not divided by precinct, where an eligible elector may vote at any polling place in a political subdivision, or where an elector's name is not on the list of registered electors or property owners, an affidavit signed by the eligible elector stating that the elector has not previously voted in the election may be required prior to allowing the elector to cast a ballot.

(2) (Deleted by amendment, L. 96, p. 1745, § 40, effective July 1, 1996.)

Source: L. 92: Entire article R&RE, p. 733, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1416, § 64, effective July 1. **L. 94:** Entire section amended, p. 1162, § 33, effective July 1. **L. 95:** (2) amended, p. 840, § 58, effective July 1. **L. 96:** Entire section amended, p. 1745, § 40, effective July 1.

1-7-105. Watchers at primary elections. (1) Each political party participating in a primary election shall be entitled to have a watcher in each precinct in the county. The chairperson of the county central committee of each political party shall certify the persons selected as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the chairperson shall submit the names by the close of business on the Friday immediately preceding the election.

(2) In addition, candidates for nomination on the ballot of any political party in a primary election shall be entitled to appoint some person to act on their behalf in every precinct in which they are a candidate. Each candidate shall certify the persons appointed as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the candidate shall submit the names by the close of business on the Friday immediately preceding the election.

Source: L. 92: Entire article R&RE, p. 733, § 9, effective January 1, 1993. **L. 2007:** Entire section amended, p. 1977, § 22, effective August 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-7-202 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-15-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

I. General Consideration.
II. Irregularities.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 304.

C.J.S. See 29 C.J.S., Elections, §§ 319, 320.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Designation of poll watchers for political organizations is not required in order to ensure constitutional access to the voting process. Baer v. Meyer, 728 F.2d 471 (10th Cir. 1984).

II. IRREGULARITIES.

The presumption that election officers have faithfully discharged their duties always obtains until the contrary is shown. Londoner v. People ex rel. Barton, 15 Colo. 557, 26 P. 135 (1890); Baldauf v. Gunson, 90 Colo. 243, 8 P.2d 265 (1932).

And the will of the people should not be defeated by an honest mistake of election officers. Baldauf v. Gunson, 90 Colo. 243, 8 P.2d 265 (1932).

Moreover, literal compliance with prescribed forms is not required if the spirit of the law is not violated. Baldauf v. Gunson, 90 Colo. 243, 8 P.2d 265 (1932).

And form should be subservient to substance when no legal voter has been deprived of his vote and no injury of any kind has been done to anyone. Baldauf v. Gunson, 90 Colo. 243, 8 P.2d 265 (1932).

But where there is a gross disregard of the

procedure and formalities required in the conduct of elections, whether permitted by design, through ignorance, or negligence, the returns should be rejected. People v. Lindsey, 80 Colo. 465, 253 P. 465 (1927).

However, it is not necessary that actual fraud should be committed. People v. Lindsey, 80 Colo. 465, 253 P. 465 (1927).

Rather, when it is clearly established that frauds subversive of the purity of the ballot box and tending to nullify the popular will have been perpetrated by the election officers of a precinct, or have been perpetrated by others with their knowledge, connivance, and consent, and the extent of such frauds cannot be disclosed with reasonable certainty, the official returns from the precinct should be thrown out. Londoner v. People ex rel. Barton, 15 Colo. 557, 26 P. 135 (1890); Baldauf v. Gunson, 90 Colo. 243, 8 P.2d 265 (1932).

However, where the counting officers divulged how the vote stood and left the tally books in an unlocked box, such irregularities did not constitute fraud subversive of the purity of the ballot box and tending to nullify the popular will or such culpable negligence as to render the doings of the election officials unworthy of credence and destroy the integrity of the returns. Baldauf v. Gunson, 90 Colo. 243, 8 P.2d 265 (1932).

Entire poll ordinarily not rejected. The fact that illegal ballots have been cast, or that other irregularities have taken place, does not ordinarily warrant the rejection of the entire poll. Londoner v. People, 15 Colo. 557, 26 P. 135 (1890); Baldauf v. Gunson, 90 Colo. 243, 8 P.2d 265 (1932).

But where it is impossible to separate with reasonable certainty legal from illegal votes, the entire vote should be rejected. People v. Lindsey, 80 Colo. 465, 253 P. 465 (1927).

1-7-106. Watchers at general and congressional vacancy elections. Each participating political party or issue committee whose candidate or issue is on the ballot, and each unaffiliated and write-in candidate whose name is on the ballot for a general or congressional vacancy election, shall be entitled to have no more than one watcher at any one time in each precinct polling place in the county and at each place where votes are counted in accordance with this article. The chairperson of the county central committee of each major political party, the county chairperson or other authorized official of each minor political party, the issue committee, or the write-in or unaffiliated candidate shall certify the names of one or more persons selected as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the chairperson, authorized official, issue committee, or candidate shall submit the names by the close of business on the Friday immediately preceding the election. The watchers shall surrender the certificates to the election judges at the time they enter the polling place and are sworn by the judges. This section shall not prevent party candidates or county party officers from visiting polling places to observe the progress of voting in the precincts.

Source: L. 92: Entire article R&RE, p. 733, § 9, effective January 1, 1993. **L. 95:** Entire section amended, p. 862, § 122, effective July 1. **L. 2002:** Entire section amended, p. 1633, § 15, effective June 7. **L. 2007:** Entire section amended, p. 1978, § 23, effective August 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-7-104 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-5-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-107. Watchers at nonpartisan elections. Candidates for office in nonpartisan elections, and proponents and opponents of a ballot issue, are each entitled to appoint one person to act as a watcher in every polling place in which they are a candidate or in which the issue is on the ballot. The candidates or proponents and opponents shall certify the names of persons so appointed to the designated election official on forms provided by the official and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the candidate, proponent, or opponent shall submit the names by the close of business on the Friday immediately preceding the election.

Source: L. 92: Entire article R&RE, p. 734, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1416, § 65, effective July 1. **L. 2007:** Entire section amended, p. 1978, § 24, effective August 3.

1-7-108. Requirements of watchers. (1) Watchers shall take an oath administered by one of the election judges that they are eligible electors, that their name has been submitted to the designated election official as a watcher for this election, and that they will not in any manner make known to anyone the result of counting votes until the polls have closed.

(2) Neither candidates nor members of their immediate families by blood or marriage to the second degree may be poll watchers for that candidate.

(3) Each watcher shall have the right to maintain a list of eligible electors who have voted, to witness and verify each step in the conduct of the election from prior to the opening of the polls through the completion of the count and announcement of the results, to challenge ineligible electors, and to assist in the correction of discrepancies.

Source: L. 92: Entire article R&RE, p. 734, § 9, effective January 1, 1993. **L. 93:** (1) amended, p. 1417, § 66, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-105 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-112 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 320.

1-7-109. Judges to keep pollbooks. (1) The election judges shall keep a pollbook which shall contain one column headed "names of voters" and one column headed "number on ballot". The name and the number on the ballot of each eligible elector voting shall be entered successively under the appropriate headings in the pollbook.

(2) When preprinted signature cards are provided for each eligible elector containing the elector's name, address, birth date, and for primary elections the elector's affiliation, the use of a pollbook shall not be required. The ballot stub number of the ballot issued to the elector shall be written on the preprinted signature card. The preprinted signature cards may also constitute the computer list of eligible electors.

Source: L. 92: Entire article R&RE, p. 734, § 9, effective January 1, 1993. **L. 99:** (2) amended, p. 162, § 16, effective August 4.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-106 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-104 and 1-1-104(20) as said sections existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur. 2d, Elections, §§ 98, 99; 26 Am. Jur. 2d, Elections, §§ 329, 351.

1-7-110. Preparing to vote. (1) Except as provided in subsection (4) of this section, an eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104 (19.5), write his or her name and address on the signature card, and give the signature card to one of the election judges. An eligible elector who is unable to write may request assistance from one of the election judges, who shall also sign the signature card and witness the eligible elector's mark. The signature card shall

provide: "I, ..., who reside at ....., am an eligible elector of this precinct or district and desire to vote at this ..... election.
Date ....."

(2) If the eligible elector shows his or her identification within the meaning of section 1-1-104 (19.5) and the elector's name is found on the registration list or, where applicable, the property owner's list by the election judge in charge, the judge in charge of the pollbook or list shall enter the eligible elector's name, and the eligible elector shall be allowed to enter the immediate voting area. Besides the election officials, no more than four electors more than the number of voting booths shall be allowed within the immediate voting area at one time.

(2.5) If the elector's qualification to vote is established by the completion of an affidavit, and if the affidavit contains all of the information required in subsection (1) of this section, then the designated election official may consider the affidavit the signature card or may require the completion of an additional signature card.

(3) The completed signature cards shall be returned with other election materials to the designated election official.

(4) An eligible elector who is unable to produce identification may cast a provisional ballot in accordance with article 8.5 of this title.

Source: L. 92: Entire article R&RE, p. 735, § 9, effective January 1, 1993. **L. 94:** (2.5) added, p. 1163, § 34, effective July 1. **L. 2003:** (1) and (2) amended and (4) added, p. 1277, § 2, effective April 22. **L. 2004:** (2) amended, p. 1053, § 5, effective May 21; (2) amended, p. 1357, § 16, effective May 28. **L. 2005:** (4) amended, p. 1404, § 25, effective June 6; (4) amended, p. 1439, § 25, effective June 6. **L. 2007:** (1) and (2) amended, p. 1978, § 25, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-7-107 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-5-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Amendments to subsection (2) by Senate Bill 04-213 and House Bill 04-1227 were harmonized.

Cross references: For the legislative declaration contained in the 2004 act amending subsection (2), see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 308, 315.

C.J.S. See 29 C.J.S., Elections, §§ 26-46.

1-7-111. Disabled registered elector - assistance. (1) (a) If at any election, any registered elector declares to the election judges that, by reason of blindness or other physical disability or inability to read or write, he or she is unable to prepare the ballot or operate the voting device or electronic voting device without assistance, the elector shall be entitled, upon making a request, to receive the assistance of any one of the election judges or, at the elector's option, any eligible elector selected by the disabled eligible elector.

(b) Any person other than an election judge or the spouse, parent, grandparent, sibling or child eighteen years or older of the elector who assists more than one eligible elector in the precinct in casting his or her ballot shall first complete the following voter assistance/disabled voter self-affirmation form: "I, ..., certify that I am the individual chosen by the disabled elector to assist the disabled elector in casting a ballot".

(2) Notwithstanding the provisions of sections 1-8-115 and 1-8-302, in every political subdivision, physically disabled eligible electors shall be allowed to vote at the mail-in voters' polling place on election day. More than one mail-in voters' polling place may be established in a county for the purposes of this subsection (2). Prior to voting, if possible, the disabled eligible elector intending to vote at the

mail-in voters' polling place on election day shall complete the following self-affirmation form. If the disabled elector cannot read or write, or is unable to sign his or her name, the election official or person assisting the elector shall read the form aloud to the elector, and, upon the affirmation of the elector, will mark that the elector requesting assistance has affirmed that the facts on the form are true and correct. If the disabled elector is able to read and write, he or she shall complete the voter assistance/disabled voter self-affirmation form. The form shall provide:

"I, ..., affirm that I am an eligible elector in this political subdivision located in the county of ....., state of Colorado; that I shall vote today at this polling place. I further affirm that I have not, nor will I, cast a vote by any other means in this election."

(3) After the voter assistance/disabled voter self-affirmation form is completed, a corresponding entry shall be made on the back of the printed list or computer list. If assistance to a disabled eligible elector occurs at the precinct polling place, an entry shall be made on the pollbook or list of the name of each eligible elector assisted and the name of each person assisting.

Source: L. 92: Entire article R&RE, p. 735, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1417, § 68, effective July 1. **L. 96:** (2) amended, p. 1773, § 78, effective July 1. **L. 2000:** (1) amended, p. 1086, § 2, effective May 26. **L. 2004:** (1)(a) amended, p. 1358, § 17, effective May 28. **L. 2007:** (2) amended, p. 1779, § 15, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-108 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: (1) For disclosing or identifying vote, see § 1-13-712.

(2) For the legislative declaration contained in the 2004 act amending subsection (1)(a), see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 309-311.

C.J.S. See 29 C.J.S., Elections, § 43.

Annotator's note. The following annotations include cases under former provisions similar to this section.

Election returns should be rejected where unauthorized persons were permitted to enter the voting booths with voters to assist them in marking their ballots when no assistance was asked for and no oath of the voter that he needed or desired assistance. People v. Lindsey, 80 Colo. 465, 253 P. 465 (1927).

Person not an election judge may assist. Where a verified statement of contest alleges, as ground for contesting a vote, that the election judges permitted a person who was not an election judge to assist the voter in marking his ballot, the guidelines for assistance of a disabled voter are controlling and the vote is not open to the objection that the voter had been assisted by a person not an election judge. Israel v. Wood, 98 Colo. 495, 56 P.2d 1324 (1936).

1-7-112. Non-English speaking electors - assistance. (1) (a) If at any election, any elector requests assistance in voting, by reason of difficulties with the English language, he or she is unable to prepare the ballot or operate the voting device or electronic voting device without assistance, the elector shall be entitled, upon making a request, to receive the assistance of an election judge, any person selected by the designated election official to provide assistance in that precinct, or any person selected by the eligible elector requesting assistance, provided that the person rendering assistance can provide assistance in both the language in which the elector is fluent and in English. No person, other than an election judge or person selected by the designated election official to provide assistance, shall be permitted to assist more than one elector per election unless the person is the elector's spouse, parent, grandparent, sibling, or child eighteen years or older.

(b) Any person who assists any eligible elector to cast his or her ballot shall first complete the following voter assistance/disabled voter self-affirmation form: "I, ..., shall not in any way attempt to persuade or induce the elector to vote in a particular manner nor will I cast the elector's vote other than as directed by the elector whom I am assisting."

(2) When assistance is provided to an elector, the name of each eligible elector assisted and the name of the person assisting shall be recorded in the pollbook or list.

Source: L. 92: Entire article R&RE, p. 736, § 9, effective January 1, 1993. **L. 93:** (1) amended, p. 1418, § 69, effective July 1. **L. 2004:** (1)(a) amended, p. 1358, § 18, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-109 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending subsection (1)(a), see section 1 of chapter 334, Session Laws of Colorado 2004.

1-7-113. Influencing electors. No person who assists an elector as authorized by this title shall seek to persuade or induce the eligible elector to vote in a particular manner.

Source: L. 92: Entire article R&RE, p. 737, § 9, effective January 1, 1993.

1-7-114. Write-in votes. (1) Eligible electors may cast a write-in vote for a candidate who has filed an affidavit of intent of write-in candidacy pursuant to section 1-4-1101 by writing the name of the person in the blank space provided for write-in candidates on the ballot. Each write-in vote may include a reasonably correct spelling of a given name, an initial or nickname, or both a given name and an initial or nickname, and shall include the last name of the person for whom the vote is intended. Whenever write-in votes are cast, they shall be counted only when the intention of the elector is clearly apparent.

(2) A vote for a write-in candidate shall not be counted unless that candidate is qualified to hold the office for which the elector's vote was cast.

(3) If the elector has cast more votes for an office than he or she is lawfully entitled to cast, by voting for both a candidate appearing on the ballot and a valid write-in candidate, neither of the votes for the office shall be counted.

(4) (a) The designated election official shall make a list of eligible write-in candidates and provide the list to the election judges. The order of the write-in candidates on such list may be determined by the time of filing the affidavit pursuant to section 1-4-1101.

(b) Except as may be required to accommodate a person with a disability, election judges shall not verbally comment on write-in candidates. Upon request of an eligible elector, an election judge may display to the requesting elector the list of eligible write-in candidates provided to the judges by the designated election official. The list shall not be posted nor may the list be taken into a voting booth.

Source: L. 92: Entire article R&RE, p. 737, § 9, effective January 1, 1993. **L. 93:** (1) amended, p. 1419, § 70, effective July 1. **L. 96:** (4) added, p. 1746, § 41, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-309 (3) and 1-7-507 (3) as said sections existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-114 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-115. Time in voting area. Eligible electors shall cast their ballots without undue delay and shall leave the immediate voting area as soon as voting is complete. An eligible elector shall not enter a voting booth already occupied by another eligible elector. An eligible elector shall not occupy a voting booth

for longer than the time determined by the secretary of state by rule if all the booths are in use and other eligible electors are waiting to use them. No eligible elector whose name has been entered on the pollbook shall be allowed to reenter the immediate voting area during the election, except an election judge.

Source: L. 92: Entire article R&RE, p. 737, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1766, § 7, effective June 6. **L. 94:** Entire section amended, p. 1163, § 35, effective July 1. **L. 2007:** Entire section amended, p. 1979, § 26, effective August 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-7-304 (3) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-5-106 (3) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-116. Coordinated elections. (1) If more than one political subdivision holds an election on the same day in November and the eligible electors for each such election are the same or the boundaries overlap, the county clerk and recorder shall be the coordinated election official and shall conduct the elections on behalf of all political subdivisions that are not utilizing the mail ballot procedure set forth in sections 1-7.5-101 to 1-7.5-112. As used in this subsection (1), "political subdivision" shall include the state, counties, municipalities, school districts, and special districts formed pursuant to title 32, C.R.S.

(2) The political subdivisions for which the county clerk and recorder will conduct the coordinated election shall enter into an agreement with the county clerk and recorder for the county or counties in which the political subdivision is located concerning the conduct of the coordinated election. The agreement shall be signed no later than seventy days prior to the scheduled election. The agreement shall include but not be limited to the following:

(a) Allocation of the responsibilities between the county clerk and recorder and the political subdivisions for the preparation and conduct of the coordinated election; and

(b) Provision for a reasonable sharing of the actual cost of the coordinated election among the county and the political subdivisions. For such purpose, political subdivisions are not responsible for sharing any portion of the usual costs of maintaining the office of the county clerk and recorder, including but not limited to overhead costs and personal services costs of permanent employees, except for such costs that are shown to be directly attributable to conducting coordinated elections on behalf of political subdivisions. Notwithstanding any other provision of this section, the state's share of the actual costs of the coordinated election shall be governed by the provisions of section 1-5-505.5. Where the state's reimbursement to a particular county for the costs of conducting a coordinated election pursuant to section 1-5-505.5 is less than the costs of conducting a coordinated election for which the county is entitled to reimbursement by means of a cost-sharing agreement entered into pursuant to the provisions of this subsection (2), such differential shall be assumed by the county. Where the state's reimbursement to a particular county for the costs of conducting a coordinated election pursuant to section 1-5-505.5 is greater than the costs of conducting a coordinated election for which the county is entitled to reimbursement by means of a cost-sharing agreement entered into pursuant to the provisions of this subsection (2), the county shall be entitled to retain such differential, with no obligation to return any portion of such amount to the state.

(2.5) Notwithstanding any other provision of this section, the scientific and cultural facilities district's share of the actual costs of the coordinated election shall be governed by the provisions of section 32-13-107 (5), C.R.S.

(3) Notwithstanding the provision for independent mail ballot elections in subsection (1) of this section, the ballot issue notice shall be prepared and mailed in substantial compliance with part 9 of this article, and the preparation and mailing thereof shall be made pursuant to an agreement as provided in subsection (2) of this section.

(4) (Deleted by amendment, L. 94, p. 1163, § 36, effective July 1, 1994.)

(5) If, by one hundred days before the election, a political subdivision has taken formal action to participate in a general election or other election that will be coordinated by the county clerk and recorder, the political subdivision shall notify the county clerk and recorder in writing.

Source: L. 92: Entire article R&RE, p. 737, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1419, § 71, effective July 1. **L. 94:** (1), (2)(b), and (4) amended, p. 1163, § 36, effective July 1. **L. 96:** (3) amended, p. 1746, § 42, effective July 1. **L. 99:** IP(2) amended and (5) added, p. 774, § 50, effective May 20. **L. 2000:** (2)(b) amended, p. 656, § 3, effective August 2. **L. 2001:** (5) amended, p. 1003, § 9, effective August 8. **L. 2005:** IP(2) amended, p. 1404, § 26, effective June 6; IP(2) amended, p. 1439, § 26, effective June 6. **L. 2006:** (2.5) added, p. 1779, § 1, effective June 6.

1-7-117. Joint elections. (Repealed)

Source: L. 92: Entire article R&RE, p. 738, § 9, effective January 1, 1993. **L. 93:** Entire section repealed, p. 1420, § 72, effective July 1.

PART 2

PRIMARY ELECTIONS

1-7-201. Voting at primary election. (1) Any registered elector who has declared an affiliation with a political party that is participating in a primary election and who desires to vote for candidates of that party at a primary election shall show identification, as defined in section 1-1-104 (19.5), and write his or her name and address on a form available at the polling place and give the form to one of the election judges, who shall clearly and audibly announce the name.

(2) If the name is found on the registration list, the election judge having charge of the list shall likewise repeat the elector's name and present the elector with the party ballot of the political party affiliation last recorded. If unaffiliated, the eligible elector shall openly declare to the election judges the name of the political party with which the elector wishes to affiliate, complete the approved form for voter registration information changes, and initial the registration list in the space provided. Declaration of affiliation with a political party shall be separately dated and signed or dated and initialed by the eligible elector in such manner that the elector clearly acknowledges that the affiliation has been properly recorded. Thereupon, the election judges shall deliver the appropriate party ballot to the eligible elector. Eligible electors who decline to state an affiliation with a political party that is participating in the primary shall not be entitled to vote at the primary election.

(3) Forms completed by eligible electors, as provided in subsection (1) of this section, shall be returned with other election materials to the county clerk and recorder. If no challenges have been made, the forms may be destroyed pursuant to section 1-7-802.

(4) Party ballots shall be cast in the same manner as in general elections. An elector shall not vote for more candidates for any office than are to be elected at the general election as indicated on the ballot.

(5) Instead of voting for a candidate whose name is printed on the party ballot, an elector may cast a write-in vote for any eligible candidate who is a member of the major political party and who has filed an affidavit of intent of write-in candidacy pursuant to section 1-4-1101. When no candidate has been designated by an assembly or by petition, a write-in candidate for nomination by any major political party must receive at least the number of votes at any primary election that is required by section 1-4-801 (2) to become designated as a candidate by petition.

Source: L. 92: Entire article R&RE, p. 738, § 9, effective January 1, 1993. **L. 94:** (3) amended, p. 1621, § 2, effective May 31. **L. 98:** (1), (2), and (5) amended, p. 259, § 12, effective April 13. **L. 99:** (2) amended, p. 162, § 17, effective August 4. **L. 2003:** (1) amended, p. 1277, § 3, effective April 22; (1) and (2) amended, p. 1313, § 13, effective April 22.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-201 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Amendments to subsection (1) by Senate Bill 03-102 and House Bill 03-1142 were harmonized.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 210-212.

1-7-202. Count and certification. As soon as the polls are closed, the election judges shall count the total number of ballots cast and shall then count all the ballots for each major political party separately, using the accounting forms furnished in accordance with section 1-7-203 and continuing until the count is completed. In no case shall party ballots be intermingled. After all ballots have been counted, the election judges shall certify the number of votes cast according to the method designated for the type of voting equipment used.

Source: L. 92: Entire article R&RE, p. 739, § 9, effective January 1, 1993. **L. 98:** Entire section amended, p. 259, § 13, effective April 13.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-203 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For procedure in counting ballots, see §§ 1-7-305 to 1-7-307, 1-7-309, 1-7-406, 1-7-507, and 1-7-508.

1-7-203. Accounting forms. The county clerk and recorder shall furnish each precinct with two sets of accounting forms for each major political party having candidates at the primary election. The forms shall be furnished at the same time and in the same manner as ballots. All accounting forms shall have the proper party designation at the top thereof and shall state the precinct, county, and date of the primary election. The secretary of state shall prescribe the accounting forms to be used.

Source: L. 92: Entire article R&RE, p. 739, § 9, effective January 1, 1993. **L. 98:** Entire section amended, p. 260, § 14, effective April 13.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-204 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

PART 3

PAPER BALLOTS

1-7-301. Judges open ballot box first. Immediately before proclamation is made of the opening of the polls, the election judges shall open the ballot box in the presence of those assembled and shall turn it upside down so as to empty it of anything that may be in it and then shall lock it securely. No ballot box shall be reopened until the time for counting the ballots therein.

Source: L. 92: Entire article R&RE, p. 739, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-301 as said section existed in 1991, the year prior to the most

recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 356.

1-7-302. Electors given only one ballot. Election judges shall give to each eligible elector a single ballot, which shall be separated from the stub by tearing or cutting along the perforated or dotted line. The election judge having charge of the ballots shall endorse his or her initials on the duplicate stub. Another election judge shall enter the date and the number of the ballot on the registration record of the eligible elector before delivering the ballot to the eligible elector. The election judge having charge of the pollbook shall write the name of the eligible elector and the number of the ballot on the pollbook.

Source: L. 92: Entire article R&RE, p. 739, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1420, § 73, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-302 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-105 (3) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-303. Spoiled ballots. No person shall remove any ballot from the polling place before the close of the polls. Any eligible elector who spoils a ballot may obtain others, one at a time, not exceeding three in all, upon returning each spoiled ballot. The spoiled ballots thus returned shall be immediately canceled and shall be preserved and returned to the designated election official, as provided in section 1-7-701.

Source: L. 92: Entire article R&RE, p. 740, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-303 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 322, 326, 357.

1-7-304. Manner of voting. (1) Each eligible elector, upon receiving a ballot, shall immediately proceed unaccompanied to one of the voting booths provided. To cast a vote, the eligible elector shall clearly mark or stamp in the appropriate square or place a cross mark (X) opposite the name of the candidate or the names of the joint candidates of the elector's choice for each office to be filled. In the case of a ballot issue, the elector shall clearly mark or stamp in the appropriate square or place a cross mark (X) opposite the answer which the elector desires to give. Before leaving the voting booth, the eligible elector shall fold the ballot without displaying the marks thereon, in the same way it was folded when received by the elector, so that the contents of the ballot are concealed and the stub can be removed without exposing any of the contents of the ballot, and shall keep the ballot folded until it is deposited in the ballot box.

(2) Each eligible elector who has completed the ballot and is ready to vote shall then leave the voting booth and approach the election judges having charge of the ballot box. The elector shall give his or her name to one of the election judges, who shall clearly and audibly announce the name in a loud and

distinct tone of voice. The elector's ballot shall be handed to the election judge in charge of the ballot box, who shall announce the name of the eligible elector and the number upon the duplicate stub of the ballot, which number shall correspond with the stub number previously placed on the registration list. If the stub number of the ballot corresponds and is identified by the initials that the issuing election judge placed thereupon, the election judge shall then remove the duplicate stub from the ballot. The ballot shall then be returned by the election judge to the elector, who shall, in full view of the election judges, deposit it in the ballot box, with the official endorsement on the ballot uppermost.

Source: L. 92: Entire article R&RE, p. 740, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-304 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For ballots for general and congressional vacancy elections, see § 1-5-403; for method of counting paper ballots, see § 1-7-307; for ballots improperly marked, see § 1-7-309.

ANNOTATION

I. General Consideration.
II. Marking of Ballots.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 319-323.

C.J.S. See 29 C.J.S., Elections, §§ 291-293, 324, 325.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. MARKING OF BALLOTS.

A voter is required to express his choice by making an "X" in the space left, for the purpose, opposite the name of the candidate for whom he desires to vote. Riley v. Trainor, 57 Colo. 155, 140 P. 469 (1914).

And a cross mark has to be made when voters write in more than one name. Riley v. Trainor, 57 Colo. 155, 140 P. 469 (1914).

1-7-305. Counting by counting judges. (1) In precincts having counting judges, the receiving judges, at 8 a.m., or as soon thereafter as the counting judges request the ballot box, shall deliver to the counting judges the ballot box containing all ballots that have been cast up to that time, and the receiving judges shall then proceed to use the other ballot box furnished for voting. The receiving judges shall open, empty, and lock the alternate ballot box in the manner prescribed in section 1-7-301.

(2) When the counting judges have counted the votes in a ballot box, they shall return the empty ballot box to the receiving judges and exchange it for the box containing ballots cast since taking possession of the first ballot box. The judges shall continue to exchange ballot boxes in the same manner during the day until the polls are closed and shall continue counting until all ballots have been counted.

(3) When an exchange of ballot boxes is made as described in subsection (2) of this section, the receiving judges shall sign and furnish to the counting judges a statement showing the number of ballots that are to be found in each ballot box as indicated by the pollbooks. The counting judges shall then count ballots in the manner prescribed in section 1-7-307.

(4) The governing body may provide a separate room or building for the counting judges but, when ballot boxes are moved from one room or building to another, they shall be under the constant observation of at least one of the counting judges.

Source: L. 92: Entire article R&RE, p. 741, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-305 as said section existed in 1991, the year prior to the most

recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the election judges opening, emptying, and then locking ballot boxes, see §§ 1-7-301 and 1-7-501.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 356. **C.J.S.** See 29 C.J.S., Elections, §§ 359, 360.

1-7-306. Counting by receiving judges. In precincts which do not have counting judges, as soon as the polls at any election have closed, the receiving judges shall immediately open the ballot box and proceed to count the ballots in the manner prescribed in section 1-7-307. The receiving judges shall not adjourn until the counting is finished.

Source: L. 92: Entire article R&RE, p. 741, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1420, § 74, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-306 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-111 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 356-361. **C.J.S.** See 29 C.J.S., Elections, §§ 359, 360.

1-7-307. Method of counting paper ballots. (1) The election judges shall first count the number of ballots in the box. If the ballots are found to exceed the number of names entered on each of the pollbooks, the election judges shall then examine the official endorsements. If, in the unanimous opinion of the judges, any of the ballots in excess of the number on the pollbooks are deemed not to bear the proper official endorsement, they shall be put into a separate pile and into a separate record, and a return of the votes in those ballots shall be made under the heading "excess ballots". When the ballots and the pollbooks agree, the judges shall proceed to count the votes.

(2) Each ballot shall be read and counted separately. Every name and all names of joint candidates separately marked as voted for on the ballot shall be read and an entry made on each of two accounting forms before any other ballot is counted. The entire number of ballots, excepting "excess ballots", shall be read, counted, and placed on the accounting forms in like manner. When all of the ballots, except "excess ballots", have been counted, the election judges shall post the votes from the accounting forms.

(3) When all the votes have been read and counted, the ballots shall be returned to the ballot box, the opening shall be carefully sealed, and the election judges shall place their initials on the seal. The cover shall then be locked and the ballot box delivered to the designated election official, as provided in section 1-7-701.

(4) All persons, except election judges and watchers, shall be excluded from the place where the ballot counting is being held until the count has been completed.

Source: L. 92: Entire article R&RE, p. 741, § 9, effective January 1, 1993. **L. 93:** (1) amended, p. 1421, § 75, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-307 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-112 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the form of ballots, see §§ 1-5-407, 1-5-408, 1-7-304 (1), and 1-7-503 (1); for improperly marked ballots, see § 1-7-309; for penalty for divulging information concerning the count prior to 7:00 p.m., see § 1-13-718.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 356-361.

C.J.S. See 29 C.J.S., Elections, § 362.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The intention of the voter, as expressed upon the face of his ballot, has always been regarded as the cardinal principle controlling the count. Under a system providing for balloting like the Australian, it is necessary that certain rules be prescribed to prevent confusion and secure uniformity; by this means the intention of the voter is to be ascertained. Young v. Simpson, 21 Colo. 460, 42 P. 666 (1895); Heiskell v. Landrum, 23 Colo. 65, 46 P. 120 (1896); Rhode v. Steinmetz, 25 Colo. 308, 55 P. 814 (1898); Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900); Wiley v. McDowell, 55 Colo. 236, 133 P. 757 (1913).

So neither the judges of the election nor the courts are authorized to go beyond what the voter has set down upon his ballot to ascertain his intention. Wiley v. McDowell, 55 Colo. 236, 133 P. 757 (1913).

But in order to designate his choice, a voter must use a cross mark as the law requires. Riley v. Trainor, 57 Colo. 155, 140 P. 469 (1914).

Hence, where no cross mark is used anywhere with reference to any of the candidates for the particular office in question, the ballots ought not to be counted. Riley v. Trainor, 57 Colo. 155, 140 P. 469 (1914).

1-7-308. Judges to keep accounting forms. As the election judges open and read the ballots, other election judges shall carefully enter the votes each of the candidates, each pair of joint candidates, and each ballot issue has received on the accounting forms furnished by the designated election official for that purpose. The names of the candidates and the names of each pair of joint candidates shall be placed on the accounting forms in the order in which they appear on the official ballots.

Source: L. 92: Entire article R&RE, p. 742, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-308 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-113 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 362-368.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Where there is a discrepancy between the tally list and the certificate of the judges of election as to the number of votes any candidate received, the certificate only can be considered and cannot be changed by the canvassers by reference to the tally list. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

1-7-309. Determination of improperly marked ballots. (1) Votes cast for an office to be filled or a ballot issue to be decided shall not be counted if an elector marks more names than there are persons to be elected to an office or if for any reason it is impossible to determine the elector's choice of candidate or vote concerning the ballot issue.

(2) A defective or an incomplete cross mark on any ballot in a proper place shall be counted if no other cross mark appears on the ballot indicating an intention to vote for some other candidate or ballot issue.

(3) No ballot shall be counted unless it has the official endorsement required by section 1-7-302.

(4) Ballots not counted because of the election judges' inability to determine the elector's intent for all candidates and ballot issues shall be marked "defective" on the back, banded together and separated from the other ballots, returned to the ballot box, and preserved by the designated election official pursuant to section 1-7-801.

(5) When the election judges in any precinct discover in the counting of votes that the name of any write-in candidate voted for is misspelled or omitted in part, the vote for that candidate shall be counted if the writing meets the requirements of section 1-7-114 (1).

Source: L. 92: Entire article R&RE, p. 742, § 9, effective January 1, 1993. **L. 93:** (5) amended, p. 1421, § 76, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-309 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-114 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the form of ballots, see §§ 1-5-407, 1-5-408, 1-7-304 (1), and 1-7-503 (1); for the method of counting paper ballots, see § 1-7-307.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 326, 367, 379.

C.J.S. See 29 C.J.S., Elections, §§ 291, 296, 297.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Ballot not rejected if choice can be gathered. Unless the statute declares that a strict compliance with its requirements by the elector is essential to have his ballot counted, courts will not undertake to disfranchise him by rejecting his ballot where his choice can be gathered from the ballot viewed in the light of the circumstances surrounding the election. Young v. Simpson, 21 Colo. 460, 42 P. 666 (1895).

As where cross mark is before candidates's name. Where a ballot has no mark opposite any party emblem, but is marked with a cross mark to the left and before the candidate's name, it should be counted, although the customary and better practice is to put the cross mark to the right of the name of the candidate intended to be voted for. Young v. Simpson, 21 Colo. 460, 42 P. 666 (1895).

Or slightly to the right of the appropriate square. Where a voter designates his choice by placing a cross mark not in the space prepared for the purpose, but slightly to the right of the square opposite it, the ballot is properly counted. Young v. Simpson, 21 Colo. 460, 42 P. 666 (1895).

Similarly, a ballot should be counted if intent can be ascertained with reasonable certainty. A ballot cast by a qualified elector, at an election held according to law and at the time and place provided by law, should be counted if the intent of the voter can be ascertained with reasonable certainty, unless this is forbidden by some positive provision of statute. Baldwin v. Wade, 50 Colo. 109, 114 P. 399 (1911).

As where name is written in under printed name. In the official ballot of a municipal election the name of A was printed as a candidate; below this, and in the same space, the voter wrote the name of B; and in the space left for this purpose, he placed a cross mark, the intersection of which was not directly opposite either name. Considering that the voter, if he desired to vote for A, had no occasion to insert the name of B, it was held that the ballot must be counted for B. Baldwin v. Wade, 50 Colo. 109, 114 P. 399 (1911).

Or above an obliterated printed name. Where a voter obliterates a printed name with ink and writes in a name above it, placing a cross mark at the right, the ballot should be counted. Baldwin v. Wade, 50 Colo. 109, 114 P. 399 (1911).

Nevertheless, an elector, in order to properly express his choice, must do so substantially in the manner provided by statute. Young v. Simpson, 21 Colo. 460, 42 P. 666 (1895); Heiskell v. Landrum, 23 Colo. 65, 46 P. 120 (1896); Rhode v. Steinmetz, 25 Colo. 308, 55 P. 814 (1898); Wiley v. McDowell, 55 Colo. 236, 133 P. 757 (1913); Bromley v. Hallock, 57 Colo. 148, 140 P. 186 (1914).

Thus a voter must express his choice by making a "X" opposite candidate's name. Riley v. Trainor, 57 Colo. 155, 140 P. 469 (1914).

Likewise, voters must make cross marks when they write in more than one name. Where there are several candidates for an office and voters write in the spaces left for this purpose, under the word indicating the office, the names of those persons, among them the name of the contestor but no cross mark set opposite the contestor's name upon any of these ballots, they are not to be counted for the contestor. Riley v. Trainor, 57 Colo. 155, 140 P. 469 (1914).

An indelible pencil may be used. Where a ballot is in perfect form, but the name of the person voted for and the cross marks are written with an indelible pencil, it should be counted. Baldwin v. Wade, 50 Colo. 109, 114 P. 399 (1911).

A voter prohibited from marking more names on a ballot than there are persons to be elected to an office cannot be construed to prohibit only the double marking of eligible candidates for such office. Moran v. Carlstrom, 775 P.2d 1176 (Colo. 1989).

This section and § 1-4-1001 (now § 1-4-1101) do not conflict. This section regulates the conduct of voters and rejects ballots showing more names than persons to be elected to an office whereas § 1-4-1001 (now § 1-4-1101)

regulates the conduct of write-in candidates and prohibits the write-in candidate who fails to file an affidavit of intent from accumulating votes. Moran v. Carlstrom, 775 P.2d 1176 (Colo. 1989) (decided prior to 1992 repeal and reenactment of this article).

PART 4

VOTING MACHINES

1-7-401. Judges to inspect machines. In each precinct using voting machines, the election judges shall meet at the polling place at least forty-five minutes before the time set for the opening of the polls at each election. Before the polls are open for election, each judge shall carefully examine each machine used in the precinct to ensure that no vote has yet been cast and that every counter, except the protective counter, registers zero.

Source: L. 92: Entire article R&RE, p. 743, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-401 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-402. Sample ballots - ballot labels. (1) The designated election official shall provide each election precinct in which voting machines are to be used with two sample ballots, which shall be arranged in the form of a diagram showing the front of the voting machine as it will appear after the official ballot labels are arranged thereon for voting on election day. The sample ballots may be either in full or reduced size and shall be delivered and submitted for public inspection in the same manner as provided by law for sample ballots used in nonmachine voting.

(2) The designated election official shall also prepare the official ballot for each voting machine and shall place the official ballot on each voting machine to be used in precinct polling places under the election official's supervision and shall deliver the required number of voting machines to each election precinct no later than the day before the polls open.

Source: L. 92: Entire article R&RE, p. 743, § 9, effective January 1, 1993. **L. 99:** (2) amended, p. 775, § 51, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-402 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 266.

1-7-403. Instruction to electors. In case any elector, after entering the voting machine, asks for further instructions concerning the manner of voting, an election judge shall give instructions to the elector. No election judge or other election official or person assisting an elector shall enter the voting machine, except as provided in sections 1-7-111 and 1-7-112. After receiving instructions, the elector shall vote as if unassisted.

Source: L. 92: Entire article R&RE, p. 743, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-403 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 327, 328.

1-7-404. Judge to watch voting machine. No person shall deface or damage any voting machine or the ballot thereon. The election judges shall designate at least one election judge to be stationed beside the entrance to the voting machine during the entire period of the election to see that it is properly closed after each voter has entered. At such intervals as may be deemed necessary, the election judge shall also examine the face of the machine to ascertain whether it has been defaced or damaged, to detect any wrongdoing, and to repair any damage.

Source: L. 92: Entire article R&RE, p. 744, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-404 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303.

1-7-405. Seal on voting machine. The designated election official shall supply each election precinct with a seal for each voting machine to be used in the precinct for the purpose of sealing the machine after the polls are closed. The designated election official shall also provide an envelope for the return of the keys to each voting machine along with the election returns.

Source: L. 92: Entire article R&RE, p. 744, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-7-405 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-6-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-406. Close of polls and count - seals. As soon as the polls are closed, the election judges shall immediately lock and seal each voting machine against further voting, and it shall so remain for a period of thirty days unless otherwise ordered by the court and except as provided in section 1-7-407. Immediately after each machine is locked and sealed, the election judges shall open the counting compartment and proceed to count the votes. After the total vote for each candidate and ballot issue has been ascertained, the election judges shall record on a certificate the number of votes cast, in numerical figures only, and return it in the manner prescribed by section 1-7-701.

Source: L. 92: Entire article R&RE, p. 744, § 9, effective January 1, 1993. **L. 94:** Entire section amended, p. 1621, § 3, effective May 31.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-406 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-111 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 299, 300, 362-368.

C.J.S. See 29 C.J.S., Elections, §§ 357-369.

1-7-407. Close of polls - primary. In the event no election contest is filed by any candidate in a primary election within the time prescribed by section 1-11-203, the county clerk and recorder may unlock and break the seals of voting machines at any time after the fifteenth day following the date of the primary election.

Source: L. 92: Entire article R&RE, p. 744, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1767, § 8, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-406 (2) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-111 (2) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 299.

Where there is a discrepancy between the tally list and the certificate of the judges of election as to the number of votes any candidate received, the certificate only can be considered and cannot be changed by the canvassers by reference to the tally list. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231, (1905)(decided under former law).

1-7-408. Judges to keep accounting forms. As some election judges open and read the ballots, other election judges, utilizing the accounting forms prescribed by the secretary of state and furnished by the designated election official, shall carefully record the votes cast for each of the candidates, for each pair of joint candidates, and for each ballot issue.

Source: L. 92: Entire article R&RE, p. 744, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-407 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-113 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 362-368.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Where there is a discrepancy between the tally list and the certificate of the judges of election as to the number of votes any candidate received, the certificate only can be considered and cannot be changed by the canvassers by reference to the tally list. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

PART 5

ELECTRONIC VOTING EQUIPMENT

1-7-501. Judges open ballot box first. Immediately before proclamation is made of the opening of the polls, the election judges shall open the ballot box in the presence of those assembled and shall turn it upside down so as to empty it of anything that may be in it and then shall lock it securely. No ballot box shall be reopened until the time for counting the ballots or ballot cards therein.

Source: L. 92: Entire article R&RE, p. 745, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-501 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 356-361.

1-7-502. Elector given only one ballot or ballot card. An election judge shall give to each eligible elector only one ballot or ballot card, which shall be removed from the package by tearing it along the perforated line below the stub. The election judge having charge of the pollbook shall write the name of the eligible elector and the number of the ballot or ballot card upon the pollbook.

Source: L. 92: Entire article R&RE, p. 745, § 9, effective January 1, 1993. **L. 97:** Entire section amended, p. 185, § 4, effective August 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-502 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-105 (3) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-503. Manner of voting. (1) Each eligible elector, upon receiving a ballot, shall immediately proceed unaccompanied to one of the voting booths provided. To cast a vote, the eligible elector shall clearly mark or stamp in the appropriate square or place a cross mark (X) opposite the name of the candidate or the names of the joint candidates of the elector's choice for each office to be filled. In the case of a ballot issue, the elector shall clearly mark or stamp in the appropriate square or place a cross mark (X) opposite the answer which the elector desires to give. Before leaving the voting booth, the eligible elector, without displaying the marks thereon, shall place the ballot in the privacy envelope so that the contents of the ballot or ballot card are concealed and shall place the envelope and the ballot or ballot card in the ballot box.

(2) Each eligible elector who has prepared the ballot and is ready to vote shall then leave the voting booth and approach the election judges having charge of the ballot box. The eligible elector shall give his or her name to one of the election judges. The elector shall, in full view of the election judges, deposit the ballot or ballot card in the ballot box, with the official endorsement on the ballot or ballot card facing upward.

(3) In precincts which use electronic voting equipment in which voting is by a method other than a ballot, each voter shall be listed by name in the pollbook and shall be given an entry card to the electronic voting device.

(4) Notwithstanding any provision of subsection (1) or (2) of this section to the contrary, at a polling place at which a ballot marking device, as defined in section 1-5-702 (2.5), is available for accessible voting, the election judge in charge of the ballot box shall deposit every elector's ballot card in the ballot box.

Source: L. 92: Entire article R&RE, p. 745, § 9, effective January 1, 1993. **L. 97:** (1) and (2) amended, p. 185, § 5, effective August 6. **L. 2007:** (4) added, p. 1979, § 27, effective August 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-7-503 as said section existed in 1991, the year prior to the

most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-5-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For ballots for general and congressional vacancy elections, see § 1-5-403; for method of counting paper ballots, see § 1-7-307; for ballots improperly marked, see § 1-7-309.

ANNOTATION

I. General Consideration.
II. Marking of Ballots.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303.

C.J.S. See 29 C.J.S., Elections, §§ 291-293, 325-327.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. MARKING OF BALLOTS.

A voter is required to express his choice by making an "X" in the space left, for the purpose, opposite the name of the candidate for whom he desires to vote. Riley v. Trainor, 57 Colo. 155, 140 P. 469 (1914).

And a cross mark has to be made when voters write in more than one name. Riley v. Trainor, 57 Colo. 155, 140 P. 469 (1914).

1-7-504. Spoiled ballots or ballot card. In precincts in which voting is on a ballot or ballot card, no person shall remove any ballot or ballot card from the polling place before the close of the polls. Any eligible elector who spoils a ballot or ballot card may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled ballot or ballot card. The spoiled ballots or ballot cards thus returned shall be immediately canceled and shall be preserved and returned to the designated election official, as provided in section 1-7-701.

Source: L. 92: Entire article R&RE, p. 746, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-504 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 303, 340-347.

C.J.S. See 29 C.J.S., Elections, § 324.

1-7-505. Close of polls - count and seals in electronic voting. (1) After the polls have been closed, the election judges shall secure the vote recorders or the voting devices, or both, against further use.

(2) In precincts in which voting is on a ballot or ballot card, election judges shall prepare a return in duplicate showing the number of eligible electors, as indicated by the pollbook, who have voted in the precinct, the number of official ballots or ballot cards received, and the number of spoiled and unused ballots or ballot cards returned. The original copy of the return shall be deposited in the metal or durable plastic transfer box, along with all voted and spoiled ballots. The transfer box shall then be sealed in such a way as to prevent tampering with the box or its contents. The designated election official shall provide a numbered seal. The duplicate copy of the return shall be mailed at the nearest post office or post-office box to the designated election official by an election judge other than the one who delivers the transfer box to the designated counting center. For partisan elections, two election judges of different political affiliations, as provided in section 1-6-109.5, shall deliver the sealed transfer box to the counting center designated by the county clerk and recorder.

(3) In precincts in which electronic voting is by a method other than a ballot or ballot card, election judges shall, after securing the voting devices, prepare the paper tape containing the votes.

Source: L. 92: Entire article R&RE, p. 746, § 9, effective January 1, 1993. **L. 93:** (2) amended, p. 1767, § 9, effective June 6; (2) amended, p. 1421, § 77, effective July 1. **L. 98:** (2) amended, p. 586, § 26, effective April 30.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-505 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-119 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 299, 300, 362-368.

C.J.S. See 29 C.J.S., Elections, § 317.

1-7-506. Electronic vote-counting - test. (Repealed)

Source: L. 92: Entire article R&RE, p. 747, § 9, effective January 1, 1993. **L. 95:** (2) amended, p. 840, § 59, effective July 1. **L. 96:** (2) amended, p. 1746, § 43, effective July 1. **L. 2002:** (2) amended, p. 1634, § 16, effective June 7. **L. 2004:** (1)(b) amended, p. 1358, § 19, effective May 28. **L. 2005:** Entire section repealed, p. 1425, § 56, effective June 6; entire section repealed, p. 1461, § 56, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-7-506 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-6-120 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-506.5. Testing of voting systems and tabulating equipment. (Repealed)

Source: L. 2004: Entire section added, p. 1358, § 20, effective May 28. **L. 2005:** Entire section repealed, p. 1425, § 56, effective June 6; entire section repealed, p. 1461, § 56, effective June 6.

Editor's note: Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act enacting this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

1-7-507. Electronic vote-counting - procedure. (1) All proceedings at the counting centers shall be under the direction of the designated election official and the representatives of the political parties, if a partisan election, or watchers, if a nonpartisan election. No persons, except those authorized for the purpose, shall touch any ballot, ballot card, "prom" or other electronic device, or return.

(2) All persons who are engaged in the processing and counting of the ballots or recorded precinct votes shall be deputized in writing and take an oath that they will faithfully perform their assigned duties.

(3) The return printed by the electronic vote-tabulating equipment, to which have been added write-in votes, shall, when certified by the designated election official, constitute the official return of each precinct. The designated election official may, from time to time, release unofficial returns. Upon completion of the count, the official returns shall be open to the public.

(4) Mail-in ballots shall be counted at the counting centers in the same manner as precinct ballots.

(5) Write-in ballots may be counted in their precincts by the precinct election judges or at the counting centers.

(6) If for any reason it becomes impracticable to count all or a part of the ballots with electronic vote-tabulating equipment, the designated election official may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots as provided in 1-7-307.

(7) The receiving, opening, and preservation of the transfer boxes and their contents shall be the responsibility of the designated election official, who shall provide adequate personnel and facilities to assure accurate and complete election results. Any indication of tampering with the ballots, ballot card,

or other fraudulent action shall be immediately reported to the district attorney, who shall immediately investigate the action and report the findings in writing within ten days to the designated election official and shall prosecute to the full extent of the law any person or persons responsible for the fraudulent action.

(8) Repealed. / (Deleted by amendment, L. 2004, p. 1359, § 21, effective January 1, 2006.)

Source: L. 92: Entire article R&RE, p. 748, § 9, effective January 1, 1993. **L. 2004:** (7) and (8) amended and (8) repealed, pp. 1359, 1361, 1213, §§ 21, 30, 31, 108, effective January 1, 2006. **L. 2007:** (4) amended, p. 1779, § 16, effective June 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-507 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-121 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing subsection (8) takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for the repeal of subsection (8). For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

Cross references: (1) For counting procedure for paper ballots, see § 1-7-307; for counting procedure in use of voting machines, see §§ 1-7-406 and 1-7-505.

(2) For the legislative declaration contained in the 2004 act amending subsections (7) and (8) and repealing subsection (8), see section 1 of chapter 334, Session Laws of Colorado 2004.

1-7-508. Determination of improperly marked ballots. (1) If any ballot is damaged or defective so that it cannot properly be counted by the electronic vote-counting equipment, a true duplicate copy shall be made of the damaged ballot in the presence of two witnesses. The duplicate ballot shall be substituted for the damaged ballot. Every duplicate ballot shall be clearly labeled as such and shall bear a serial number which shall be recorded on the damaged ballot.

(2) Votes cast for an office to be filled or a ballot question or ballot issue to be decided shall not be counted if a voter marks more names than there are persons to be elected to an office or if for any reason it is impossible to determine the elector's choice of candidate or vote concerning the ballot question or ballot issue. A defective or an incomplete mark on any ballot in a proper place shall be counted if no other mark is on the ballot indicating an intention to vote for some other candidate or ballot question or ballot issue.

(3) No ballot shall be counted unless it has the official endorsement required by section 1-7-502.

(4) Ballots not counted because of the election judges' inability to determine the elector's intent for all candidates and ballot issues shall be marked "defective" on the back, banded together, separated from the other ballots, and preserved by the designated election official pursuant to section 1-7-801.

Source: L. 92: Entire article R&RE, p. 749, § 9, effective January 1, 1993. **L. 2004:** (2) amended, p. 1359, § 22, effective January 1, 2006.

Editor's note: Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act amending subsection (2) takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for subsection (2). For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

Cross references: For the legislative declaration contained in the 2004 act amending subsection (2), see section 1 of chapter 334, Session Laws of Colorado 2004.

1-7-509. Electronic and electromechanical vote counting - testing of equipment required. (1) (a) An electronic or electromechanical voting system shall be tested at the conclusion of maintenance and testing. The tests shall be sufficient to determine that the voting system is properly programmed, the election is correctly defined on the voting system, and all of the voting system's input, output, and communication devices are working properly.

(b) The designated election official shall conduct at least three tests on all electronic and electromagnetic voting equipment, including a hardware test, a public logic and accuracy test conducted in accordance with subsection (2) of this section, and a postelection test or audit conducted in accordance with rules promulgated by the secretary of state. Each type of ballot, including mail-in, early voting, provisional, precinct, and audio ballots, shall be tested in accordance with rules promulgated by the secretary of state. The tests shall ensure that the equipment will correctly count the votes cast for all offices and on all ballot questions and ballot issues and that the voting system will accurately count ballots of all types.

(c) The designated election official shall select a testing board comprising at least two persons, one from each major political party, from the list provided by the major political parties pursuant to section 1-6-102.

(2) (a) A public test of voting equipment shall be conducted prior to the commencement of voting in accordance with this section by processing a preaudited group of ballots produced so as to record a predetermined number of valid votes for each candidate and on each ballot question or ballot issue. The test shall ensure that the system accurately records votes when the elector has the option of voting for more than one candidate in a race. The test shall ensure that the voting system properly rejects and does not count overvotes and undervotes.

(b) The public test shall be open to representatives of the political parties, the press, and the public, subject to the rules promulgated by the secretary of state pursuant to subsection (6) of this section. Each major political party, minor political party, ballot issue committee that has an issue on the ballot, and coordinating entity may designate one person, who shall be allowed to witness all public tests and the counting of pretest votes. If an observer or designee hinders or disturbs the test process, the designated election official may remove the person from the test area. An observer or designee who has been removed from a public test may be barred from future tests. The absence of observers or designees shall not delay or stop the public test.

(c) The testing board shall convene and designate at least one member to represent the board during the testing, sign the necessary reports, and report to the board. The programs and ballots used for testing shall be attested to and sealed by the board and retained in the custody of the designated election official. The absence of a member of the testing board shall not delay or stop the test.

(d) Upon completion of the testing conducted pursuant to this section, the testing board or its representative and the representatives of the political parties, ballot issue committees, and coordinating entities who attended the test may witness the resetting of each device that passed the test to a preelection state of readiness and the sealing of each such device in order to secure its state of readiness.

(e) The testing board or its representative shall sign a written statement indicating the devices tested, the results of the testing, the protective counter numbers of each device, if applicable, the number of the seal attached to each device upon completion of the testing, any problems reported to the designated election official as a result of the testing, and whether each device tested is satisfactory or unsatisfactory.

(3) Notice of the fact that the public test will take place shall be posted in the designated public place for posting notices in the county for at least seven days before the public test. The notice shall indicate the general time frame during which the test may take place and the manner in which members of the public may obtain specific information about the time and place of the test. Nothing in this subsection (3) shall preclude the use of additional methods of providing information about the public test to members of the public.

(4) (a) If any tested device is found to have an error in tabulation, it shall be deemed unsatisfactory. For each device deemed unsatisfactory, the testing board shall attempt to determine the cause of the error, attempt to identify and test other devices that could reasonably be expected to have the same error, and test a number of additional devices sufficient to determine that all other devices are satisfactory. The

cause of any error detected shall be corrected, and an errorless count shall be made before the voting equipment is approved. The test shall be repeated and errorless results achieved before official ballots are counted.

(b) If an error is detected in the operation or output of an electronic voting device, including an error in spelling or in the order of candidates on a ballot, the problem shall be reported to the testing board and the designated election official. The designated election official shall correct the error.

(c) A voting device deemed unsatisfactory shall be recoded, repaired, or replaced and shall be made available for retesting unless a sufficient number of tested backup devices is available to replace the unsatisfactory device. The backup device may not be used in the election unless the testing board or its representative determines that the device is satisfactory. The designated election official shall announce at the conclusion of the first testing the date, place, and time that an unsatisfactory device will be retested, or, at the option of the testing board, the designated election official shall notify by telephone each person who was present at the first testing of the date, place, and time of the retesting.

(5) The designated election official shall keep records of all previous testing of electronic and electromechanical tabulation devices used in any election. Such records shall be available for inspection and reference during public testing by any person in attendance. The need of the testing board for access to such records during the testing shall take precedence over the need of other attendees for access so that the work of the testing board will not be hindered. Records of testing shall include, for each device, the name of the person who tested the device and the date, place, time, and results of each test. Records of testing shall be retained as part of the official records of the election in which the device is used.

(6) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., prescribing the manner of performing the logic and accuracy testing required by this section.

Source: L. 2005: Entire section added, p. 1404, § 27, effective June 6; entire section added, p. 1439, § 27, effective June 6. **L. 2007:** (1)(b) amended, p. 1779, § 17, effective June 1.

1-7-510. Election software code - escrow - definitions. (1) As used in this section, unless the context otherwise requires, "election setup records" means the electronic records generated by election tabulation software during election setup to define ballots, tabulation instructions, and other functions related to the election.

(2) At the conclusion of programming and after it has been determined that a voting system is in proper working order and ready for voting, the designated election official shall deposit a copy of the election setup records for a county, statewide, or congressional vacancy election with the secretary of state no later than 5:00 p.m. on the seventh day before the election.

(3) If the election setup records are modified or altered after they are submitted to the secretary of state, the designated election official shall immediately report the change to the secretary of state and deposit the modified election setup records with the secretary of state no later than noon on the day of the election.

(4) The secretary of state shall retain election setup records for six months, after which the secretary of state shall return the election setup records to the designated election official. The designated election official shall retain the election setup records for the period of time for which the designated election official is required to retain official election records.

(5) Election setup records deposited with the secretary of state shall not be used for any purpose, except as directed by the secretary of state or ordered by a court. The tape, diskette, cartridge, or other magnetic or electronic storage medium containing election setup records deposited with the secretary of state shall be kept in a secure location when not being used for an official purpose in accordance with this subsection (5).

(6) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., to implement this section.

(7) Notwithstanding any other provision of law, election setup records deposited with the secretary of state pursuant to this section shall not be public records for purposes of article 72 of title 24, C.R.S.

Source: L. 2005: Entire section added, p. 1406, § 27, effective June 6; entire section added, p. 1442, § 27, effective June 6.

1-7-511. Election software - voting equipment providers - escrow - definitions. (1) When a voting system provider submits an electronic or electromechanical voting system for certification pursuant to part 6 of article 5 of this title, the voting system provider shall place in escrow with the secretary of state or an independent escrow agent approved by the secretary of state one copy of the election software being certified and supporting documentation. The voting system provider shall place in escrow any subsequent changes to the escrowed election software or supporting documentation.

(2) An officer of the voting system provider with legal authority to bind the voting system provider shall sign a sworn affidavit that the election software in escrow is the same as the election software being used in its voting systems in this state. The officer shall ensure that the statement is true on a continuing basis.

(3) As an additional requirement for certification, the voting system provider shall deposit one copy of the election software with the national software reference library at the national institute of standards and technology.

(4) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., prescribing the manner and procedures that voting system providers shall follow to comply with this section.

(5) As used in this section, unless the context otherwise requires, "election software" means the software to be installed or residing on election equipment firmware or on election management computers that controls election setup, vote recording, vote tabulation, and reporting.

(6) Notwithstanding any other provision of law, election software and supporting documentation placed in escrow in accordance with this section shall not be public records for purposes of article 72 of title 24, C.R.S.

Source: L. 2005: Entire section added, p. 1407, § 27, effective June 6; entire section added, p. 1442, § 27, effective June 6.

1-7-512. Voting system providers - duties. (1) A voting system provider under contract to provide a voting system to a political subdivision in this state shall:

(a) Notify the secretary of state of the installation of any hardware, firmware, or software prior to the installation or of any change in the election software or the voting system;

(b) Place in escrow with the secretary of state or an independent escrow agent approved by the secretary of state, immediately after the installation of election software, one copy of the state certified election software that was installed in each political subdivision, along with supporting documentation;

(c) Place in escrow with the secretary of state any subsequent changes to the escrowed election software or supporting documentation;

(d) Provide to the secretary of state a sworn statement by an officer of the voting system provider with legal authority to bind the voting system provider attesting that the election software in escrow is the same as the election software certified for use in its voting systems in this state, and ensure that the statement is true on a continuing basis;

(e) Notify the secretary of state and the designated election official of any political subdivision using its voting system of any defect in the same system known to occur anywhere; and

(f) Notify the secretary of state and the designated election official of any political subdivision using its voting system of any change in the election software or the voting system.

(2) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., establishing procedures for voting system providers to comply with this section.

(3) As used in this section, unless the context otherwise requires, "election software" means the software to be installed or residing on election equipment firmware or on election management computers that controls election setup, vote recording, vote tabulation, and reporting.

Source: L. 2005: Entire section added, p. 1408, § 27, effective June 6; entire section added, p. 1443, § 27, effective June 6.

1-7-513. Voting equipment - records. (1) The designated election official shall maintain separate, detailed records for each component of a voting system used in an election. Such records shall include, but not be limited to, the manufacturer, make, model, serial number, hardware, firmware, software version or release number, date of acquisition, description of services, repairs, maintenance, upkeep, and version upgrades, and date of performance of such services.

(2) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., prescribing the manner of maintenance of records required by this section.

Source: L. 2005: Entire section added, p. 1409, § 27, effective June 6; entire section added, p. 1444, § 27, effective June 6.

1-7-514. Random audit. (1) (a) (I) Following each primary, general, coordinated, or congressional district vacancy election, the secretary of state shall publicly initiate a manual random audit to be conducted by each county. Unless the secretary approves an alternative method for a particular county that is based on a proven statistical sampling plan and will achieve a higher level of statistical confidence, the secretary shall randomly select not less than five percent of the voting devices used in each county to be audited; except that, where a central count voting device is in use in the county, the rules promulgated by the secretary pursuant to subsection (5) of this section shall require an audit of a specified percentage of ballots counted within the county.

(II) For an election taking place in a county prior to the date the county has satisfied the requirements of section 1-5-802, the audit shall be for the purpose of comparing the manual tallies of the ballots counted by each voting device selected for each such audit with the corresponding tallies recorded directly by each such device.

(III) For an election taking place in a county on or after the date the county has satisfied the requirements of section 1-5-802, the audit shall be conducted for the purpose of comparing the manual tallies of the voter-verified paper records produced or employed by each voting device selected for such audit with the corresponding ballot tallies recorded directly by each such device in the original election tally.

(b) To the extent practicable, no voting device that is used for the random audit required by paragraph (a) of this subsection (1) shall be used for conducting the testing of voting devices for recount purposes required by section 1-10.5-102 (3) (a).

(2) (a) Upon completion of the audit required by subsection (1) of this section, if there is any discrepancy between the manual tallies, as specified in accordance with the requirements of subparagraph (II) or (III) of paragraph (a) of subsection (1) of this section, as applicable, of the voting device selected for the audit, and the corresponding tallies recorded by such devices, and the discrepancy is not able to be accounted for by voter error, the county clerk and recorder, in consultation with the canvass board of the county established pursuant to section 1-10-101, shall investigate the discrepancy and shall take such remedial action as necessary in accordance with its powers under this title.

(b) Upon receiving any written complaint from a registered elector from within the county containing credible evidence concerning a problem with a voting device, the canvass board along with the county clerk and recorder shall investigate the complaint and take such remedial action as necessary in accordance with its powers under this title.

(c) The canvass board and the county clerk and recorder shall promptly report to the secretary of state a description of the audit process undertaken, including any initial, interim, and final results of any completed audit or investigation conducted pursuant to paragraph (a) or (b) of this subsection (2).

(3) The secretary of state shall post the reports of any completed audit or investigation received pursuant to paragraph (c) of subsection (2) of this section on the official web site of the department of state not later than five business days after receiving the results of the completed audit or investigation. The clerk and recorder of the affected county may timely post the results of the completed audit or investigation on the official web site of the county. The secretary shall publish once in a newspaper of general circulation throughout the state notification to the public that the results have been posted on the department's web site.

(4) Any audit conducted in accordance with the requirements of this section shall be observed by at least two members of the canvass board of the county.

(5) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to administer and enforce any requirement of this section, including any rules necessary to provide guidance to the counties in conducting any audit required by this section. The rules shall account for:

(a) The number of ballots cast in the county;

(b) An audit of each type of voting device utilized by the county;

(c) The confidentiality of the ballots cast by the electors; and

(d) An audit of the voting on each office, ballot issue, and ballot question in the election.

Source: L. 2005: Entire section added, p. 1409, § 27, effective June 6; entire section added, p. 1444, § 27, effective June 6. **L. 2007:** (1)(a)(I), (1)(a)(III), (2)(c), and (3) amended and (5)(d) added, pp. 1979, 1980, §§ 28, 29, effective August 3. **L. 2009:** (3) amended, (HB 09-1335), ch. 260, p. 1194, § 11, effective May 15.

1-7-515. Risk-limiting audits - pilot program - rules - legislative declaration - definitions. (1) (a) The general assembly hereby finds, determines, and declares that the auditing of election results is necessary to ensure effective election administration and public confidence in the election process. Further, risk-limiting audits provide a more effective manner of conducting audits than traditional audit methods in that risk-limiting audit methods typically require only limited resources for election races with wide margins of victory while investing greater resources in close races.

(b) By enacting this section, the general assembly intends that the state move toward an audit process that is developed with the assistance of statistical experts and that relies upon risk-limiting audits making use of best practices for conducting such audits.

(2) (a) Commencing with the 2014 general election and following each primary, general, coordinated, or congressional vacancy election held thereafter, each county shall make use of a risk-limiting audit in accordance with the requirements of this section. Races to be audited shall be selected in accordance with procedures established by the secretary of state, and all contested races shall be eligible for such selection.

(b) Upon written application from a county, the secretary of state may waive the requirements of paragraph (a) of this subsection (2) upon a sufficient showing by the county that the technology in use by the county will not enable the county to satisfy such requirements in preparation for the 2014 general election.

(3) Prior to the 2010 primary election, the secretary of state shall establish a pilot program in selected counties for the purpose of testing the procedures and technical requirements necessary to conduct a risk-limiting audit in accordance with the requirements of this section. The secretary shall work with equipment vendors to identify technical modifications to election equipment that may be necessary to support the use of risk-limiting audits in the state. The secretary shall draw upon the experiences of the pilot program in making future recommendations for modifications to this code.

(4) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., as may be necessary to implement and administer the requirements of this section. In connection with the promulgation of the rules, the secretary shall consult recognized statistical experts, equipment vendors, and county clerk and recorders, and shall consider best practices for conducting risk-limiting audits.

(5) As used in this section:

(a) "Incorrect outcome" means an outcome that is inconsistent with the election outcome that would be obtained by conducting a full recount.

(b) "Risk-limiting audit" means an audit protocol that makes use of statistical methods and is designed to limit to acceptable levels the risk of certifying a preliminary election outcome that constitutes an incorrect outcome.

Source: L. 2009: Entire section added, (HB 09-1335), ch. 260, p. 1195, § 12, effective May 15.

PART 6

ELECTION RETURNS

1-7-601. Judges' certificate and statement. (1) As soon as all the votes have been read and counted, either at the precincts or at the electronic balloting counting centers, the election judges shall make a certificate for each precinct, stating the name of each candidate, the office for which that candidate received votes, and stating the number of votes each candidate received. The number shall be expressed in numerical figures. The entry shall be made, as nearly as circumstances will permit, in the following form:

"At an election held ....., in precinct ....., in the county of ..... and state of Colorado, on the ..... day of ..... in the year ....., the following named candidates received the number of votes annexed to their respective names for the following described offices: Total number of ballots or votes cast was ..... A.B. and E.F. had 72 votes for governor and lieutenant governor; C.D. and G.H. had 69 votes for governor and lieutenant governor; J.K. had 68 votes for representative in congress; L.M. had 70 votes for representative in congress; N.O. had 72 votes for state representative; P.Q. had 71 votes for state representative; R.S. had 84 votes for sheriff; T.W. had 60 votes for sheriff; (and the same manner for any other persons voted for).

Certified by us:
A.B.)
C.D.)
E.F.) Election Judges"

(1.5) In addition to the information required by subsection (1) of this section, the certificate prepared by the election judges for each precinct shall state the ballot title and submission clause of any ballot issue or ballot question voted upon in the election and the number of votes counted for and against the ballot issue or ballot question.

(2) In addition, the election judges shall make a written statement showing the number of ballots voted, making a separate statement of the number of unofficial and substitute ballots voted, the number of ballots delivered to electors, the number of spoiled ballots, the number of ballots not delivered to electors, and the number of ballots returned, identifying and specifying the same. All unused ballots, spoiled ballots, and stubs of ballots voted shall be returned with the statement.

(3) Any judges' certificates and statements may be combined into one document if so directed by the designated election official.

Source: L. 92: Entire article R&RE, p. 750, § 9, effective January 1, 1993. **L. 93:** (3) added, p. 1422, § 78, effective July 1. **L. 2007:** (1) amended and (1.5) added, p. 1980, § 30, effective August 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-7-310 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-5-115 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 369, 370.

C.J.S. See 29 C.J.S., Elections, §§ 371, 372.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The judges are required to make a certificate in such form that it could not be changed except it would show evidence of having been tampered with. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

Therefore, tally sheets are insufficient to contradict certificates. In the face of this section it certainly was not the purpose of the general assembly to allow mere tally sheets, which are not certified, contain nothing more than strokes of pen or pencil with respect to the number of votes cast for any candidate, and can be readily changed, to be taken as evidence sufficient to contradict the certificates in case of a discrepancy between such certificates and the tally sheets. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

Furthermore, irregularities committed by judges of election in the certification of their returns do not invalidate the returns unless they are in such a state as to render it impossible to ascertain therefrom the vote and for whom cast. Lehman v. Pettingell, 39 Colo. 258, 89 P. 48 (1907).

And such returns must be canvassed and certified by the canvassing board. Lehman v. Pettingell, 39 Colo. 258, 89 P. 48 (1907).

Hence, where the judges did not receive the pollbooks required in time for use on election day and thereupon kept a list of the voters and made a tally of the votes on sample ballots, and the judges, after certifying to the result of the election, although not in the manner and form prescribed, delivered the returns to the county clerk within a few days after election, but the board of canvassers refused to count and canvass said returns, although no other returns were received from that precinct, solely because the certificates and oaths were not in the form and the returns upon the proper blanks, such irregularities did not invalidate the returns, and it further appearing that the precinct judges in good faith undertook to certify the true result of the precinct election and that the result could be ascertained therefrom, it became the duty of the board to canvass such returns and to issue certificates in accordance with the result. Lehman v. Pettingell, 39 Colo. 258, 80 P. 48 (1907).

Injunction lies to prevent judges of election from committing or permitting fraud. The state upon the relation of the attorney general may invoke the powers of the supreme court for a writ of injunction to prevent the judges of election and other officers in control of an election from committing, and from permitting others to commit, frauds at elections and to secure a judicial enforcement of the statutes relating to elections so as to prevent the perpetration of such frauds. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

Such questions being purely judicial and not political. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

1-7-602. Judges to post returns. At any election at a polling place where voting is by paper ballot, voting machine, or electronic or electromechanical voting system, the election judges shall make an abstract of the count of votes, which abstract shall contain the names of the offices, names of the candidates, ballot titles, and submission clauses of all initiated, referred, or other ballot issues voted upon and the number of votes counted for or against each candidate or ballot issue. The abstract shall be posted in a conspicuous place that can be seen from the outside of the polling place immediately upon completion of the counting. The abstract may be removed at any time after forty-eight hours following the election. Suitable blanks for the abstract required by this section shall be prepared, printed, and furnished to all election judges at the same time and in the same manner as other election supplies.

Source: L. 92: Entire article R&RE, p. 750, § 9, effective January 1, 1993. **L. 2004:** Entire section amended, p. 1359, § 23, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-311 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-117 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 362-368.

C.J.S. See 29 C.J.S., Elections, § 373.

1-7-603. Preparation of election returns. If any designated election official wishes to count the votes cast at a location or by a method other than authorized by this code, the designated election official may present a plan, for approval by the secretary of state, that delineates the process for assuring accuracy and confidentiality of counting. The plan shall be submitted to the secretary of state and approved no later than forty-five days before the election at which the plan is to be implemented.

Source: L. 93: Entire section added, p. 1422, § 79, effective July 1. **L. 99:** Entire section amended, p. 775, § 52, effective May 20.

PART 7

DELIVERY OF ELECTION RETURNS

1-7-701. Delivery of election returns, ballot boxes, and other election papers. When all the votes have been read and counted, the election judges selected in accordance with section 1-6-109.5 shall deliver to the designated election official the certificate and statement required by section 1-7-601, ballot boxes and all keys to the boxes, paper tapes, "proms" or other electronic devices, the registration book, pollbooks, accounting forms, spoiled ballots, unused ballots, ballot stubs, oaths, affidavits, and other election papers and supplies. The delivery shall be made at once and with all convenient speed, and informality in the delivery shall not invalidate the vote of any precinct when delivery has been made previous to the completion of the official abstract of the votes by the board of canvassers. The designated election official shall give a receipt for all items delivered.

Source: L. 92: Entire article R&RE, p. 751, § 9, effective January 1, 1993. **L. 98:** Entire section amended, p. 586, § 27, effective April 30.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-7-601 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-5-116 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 362-368.

PART 8

PRESERVATION OF BALLOTS AND ELECTION RECORDS

1-7-801. Ballots preserved. The designated election official shall remove the ballots from the ballot box after the time period for election contests has passed and preserve the ballots as election records pursuant to section 1-7-802.

Source: L. 92: Entire article R&RE, p. 751, § 9, effective January 1, 1993. **L. 93:** Entire section R&RE, p. 1422, § 80, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-701 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-118 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 356.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Fraud must be shown to require ballot box opening. Where the court, in a contested election case in which fraud was alleged, refused to require the opening of the ballot boxes and a recounting of the ballots until some evidence of the fraud alleged was introduced, its discretion was, under the circumstances, commendably exercised. Kindel v. Le Bert, 23 Colo. 385, 48 P. 641 (1897).

And court may decline ruling when ballots destroyed. When, pending an appeal in the matter of a contested election, an event occurs, such as the destruction of the ballots cast at the election, which under the circumstances of the case, renders any ruling which might be made ineffectual, the court may decline to pass upon any of the controverted questions. Kindel v. Le Bert, 23 Colo. 385, 48 P. 641 (1897).

1-7-802. Preservation of election records. The designated election official shall be responsible for the preservation of any election records for a period of at least twenty-five months after the election or until time has expired for which the record would be needed in any contest proceedings, whichever is later. Unvoted ballots may be destroyed after the time for a challenge to the election has passed. If a federal candidate was on the ballot, the voted ballots and any other required election materials shall be kept for at least twenty-five months after the election.

Source: L. 92: Entire article R&RE, p. 752, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1422, § 81, effective July 1. **L. 99:** Entire section amended, p. 775, § 53, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-702 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-119 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

PART 9

BALLOT ISSUE NOTICES

Editor's note: This part 9 was added in 1994. This part 9 was amended with relocations in 1996, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 9 prior to 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

1-7-901. Receipt of comments concerning ballot issues. (1) Each political subdivision shall accept written comments concerning ballot issues in accordance with this section.

(2) All comments filed in writing will be received and kept on file with the designated election official for the political subdivision submitting to its eligible electors the ballot issue to which the comments pertain. However, only those comments that are filed by persons eligible to vote in the political subdivision submitting the ballot issue to its electors must be summarized in the ballot issue notice. The filed comments shall be retained by the designated election official as election records.

(3) To be summarized in the ballot issue notice, the comments shall address a specific ballot issue and shall include a signature and an address where the signor is registered to vote and shall be filed with the designated election official for the political subdivision and not the county clerk and recorder of the county in which the political subdivision is located unless the issue is a county issue for which the county clerk and recorder is the designated election official.

(4) Since section 20 (3) (b) (v) of article X of the state constitution requires that comments pertaining to a ballot issue be filed by forty-five days before the election and since such day is always a Saturday, all comments shall be filed by the end of the business day on the Friday before the forty-fifth day before the election.

Source: L. 96: Entire part amended with relocations, p. 1747, § 44, effective July 1. **L. 97:** (4) amended, p. 1099, § 1, effective May 27. **L. 99:** (4) amended, p. 775, § 54, effective May 20.

1-7-902. Preparation of fiscal information. A governing body submitting a referred measure, or its designee, shall be responsible for providing to its designated election official the fiscal information that must be included in the ballot issue notice. For political subdivisions, the governing body shall be the board that authorized submission of the ballot issue to the electorate.

Source: L. 96: Entire part amended with relocations, p. 1747, § 44, effective July 1. **L. 2000:** Entire section amended, p. 299, § 9, effective August 2.

1-7-903. Preparation of written comments. (1) For referred measures, the designated election official shall summarize the filed comments in favor of and in opposition to the ballot issue for the ballot issue notice.

(2) For initiated measures, the petition representatives shall be solely responsible for summarizing all comments filed in favor of the ballot issue. The designated election official shall summarize all comments filed in opposition to the ballot issue.

(3) Petition representatives required to summarize favorable comments in favor of their petition shall submit the summary in typewritten form to the designated election official for the jurisdiction in which the petition is presented no later than forty-three days before the election. If a summary is not filed by the petition representatives within the time allowed, the designated election official shall print the following in the ballot issue notice where the summary would appear: "No summary was filed by the statutory deadline."

(4) If no comments are filed in opposition to or in support of a ballot issue, the designated election official shall not prepare any summaries and shall state substantially the following in the ballot issue notice where the summary or summaries would appear: "No comments were filed by the constitutional deadline."

(5) The provisions of this section shall not apply to a statewide ballot issue that is subject to the provisions of section 1 (7.5) of article V of the state constitution.

Source: L. 96: Entire part amended with relocations, p. 1747, § 44, effective July 1. **L. 97:** (3) amended, p. 1099, § 2, effective May 27. **L. 99:** (3) amended, p. 776, § 55, effective May 20.

1-7-904. Transmittal of notices. Notwithstanding the provision for independent mail ballot elections in section 1-7-116 (1), the designated election official or the official's designee for a political subdivision conducting an election in November shall prepare and deliver to the county clerk and recorder for the county or counties in which the political subdivision is located no later than forty-two days before the election the full text of any required ballot issue notices.

Source: L. 96: Entire part amended with relocations, p. 1748, § 44, effective July 1. **L. 97:** Entire section amended, p. 1100, § 3, effective May 27. **L. 99:** Entire section amended, p. 776, § 56, effective May 20. **L. 2000:** Entire section amended, p. 299, § 10, effective August 2.

1-7-905. Preparation of notices. (1) For November elections, the county clerk and recorder shall be responsible for placing the ballot issue notices received from the various political subdivisions participating in the election in the proper order in the ballot issue notice packet. As nearly as practicable, the notice shall be in the order the ballot issues will appear on the ballot. The ballot issue notice shall be followed by a certification by the county clerk and recorder that the ballot issue notices are complete as submitted by the political subdivisions. No additional information shall be included as part of the ballot issue notice except as may be required by law. A general disclaimer may precede or follow the ballot issue notice which may state: "The information contained in this notice was prepared by persons required by law to provide summaries of ballot issues and fiscal information."

(2) The designated election officials of overlapping political subdivisions conducting an election other than in November shall confer concerning the preparation of the ballot issue notice no later than forty days prior to the date of the election. The political subdivisions conducting the election shall provide for preparation of any required ballot issue notice package by agreement in a form substantially as provided in section 1-7-116.

Source: L. 96: Entire part amended with relocations, p. 1748, § 44, effective July 1. **L. 99:** (2) amended, p. 776, § 57, effective May 20.

1-7-905.5. Form of notice. (1) The ballot issue notice shall begin with the words "All registered voters", regardless of whether the electors of the political subdivision must be registered electors to be eligible to vote in the election, and shall end at the conclusion of the summary of comments. Any information included pursuant to section 1-5-206, information concerning procedure for a mail ballot election, ballot, polling place, or other information included with the ballot issue notice prior to the words "All registered voters" or after the conclusion of the summary of comments shall not be deemed to be part of the ballot issue notice.

(2) Ballot issue notices are not election materials that must be provided in a language other than English.

Source: L. 96: Entire part amended with relocations, p. 1748, § 44, effective July 1.

1-7-906. Mailing of notices. (1) For November elections, the county clerk and recorder as coordinated election official shall mail the ballot issue notice packet to each address of one or more active registered electors who reside in the county or portions of the county in which registered voters of those districts submitting ballot issues reside.

(2) The designated election official for the various political subdivisions shall be responsible for mailing the required notice to each address of one or more active registered electors who do not reside within the county or counties where the political subdivision is located.

(3) The political subdivisions shall by agreement, in a form substantially as provided in sections 1-7-116 and 1-7-905, provide for mailing of any required ballot issue notice package for elections conducted other than in November.

Source: L. 96: Entire part amended with relocations, p. 1749, § 44, effective July 1.

1-7-907. Ballot issue notice. The ballot issue notice shall be prepared and mailed in substantial compliance with section 20 of article X of the state constitution, the provisions of this title, and the rules and regulations of the secretary of state.

Source: L. 96: Entire part amended with relocations, p. 1749, § 44, effective July 1.

Editor's note: This section was formerly numbered as 1-5-206.5.

1-7-908. Additional notice - election to create financial obligation. (1) (a) A district submitting a ballot issue concerning the creation of any debt or other financial obligation at an election in the district shall post notice of the following information on the district's web site or, if the district does not maintain a web site, at the district's chief administrative office no later than twenty days before the election:

(I) The district's ending general fund balance for the last four fiscal years and the projected ending general fund balance for the current fiscal year;

(II) A statement of the total revenues in and expenditures from the district's general fund for the last four fiscal years and the projected total revenues in and expenditures from the general fund for the current fiscal year;

(III) The amount of any debt or other financial obligation incurred by the district for each of the last four fiscal years for cash flow purposes that has a term of not more than one year and the amount of any such financial obligation projected for the current fiscal year;

(IV) A statement as to whether the district's emergency reserve required by section 20 (5) of article X of the state constitution has been fully funded by cash or investments for the current fiscal year and each of the last four fiscal years and an identification of the funds or accounts in which the reserve is currently held. If the reserve has not been fully funded, the notice shall include a statement of the reasons the reserve has not been fully funded.

(V) The location or locations at which any person may review the district's audited financial statements for the last four fiscal years, any management letters that have been made public and have been provided to the district by its auditors in connection with the preparation of its audits for the last four fiscal years, and the district's budget for the current fiscal year.

(b) If the debt or other financial obligation for which the district is seeking voter approval is to be paid from a revenue source that is accounted for in a fund other than the district's general fund, the information required by subparagraphs (I) and (II) of paragraph (a) of this subsection (1) shall also be made available for such other fund.

(c) The information required by subparagraphs (I), (II), (III), and (IV) of paragraph (a) of this subsection (1) shall be based upon audited figures. If no audited figures are available, the information shall be based upon estimated figures.

(2) The notice required by this section shall be in addition to and shall not substitute, replace, or be combined with any other notice required by law.

(3) For purposes of this section, "district" shall have the same meaning as set forth in section 20 (2) (b) of article X of the state constitution.

Source: L. 2003: Entire section added, p. 748, § 1, effective August 6.

PART 10

RANKED VOTING METHODS

1-7-1001. Short title. This part 10 shall be known and may be cited as the "Voter Choice Act".

Source: L. 2008: Entire part added, p. 1249, § 2, effective August 5.

1-7-1002. Ranked voting methods - report - definitions. (1) As used in this part 10, unless the context otherwise requires, "local government" means a statutory city or town or a special district created pursuant to article 1 of title 32, C.R.S.

(2) A local government may conduct an election using a ranked voting method if:

(a) The use of the ranked voting method in the local government is not prohibited by the charter of the local government; and

(b) The election is conducted with a system of casting, recording, and tabulating votes that is capable of conducting the election using ranked voting and that has been approved by the governing body and the designated election official of the local government.

(3) The secretary of state shall submit a report to the state, veterans, and military affairs committees, or any successor committees, of the house of representatives and the senate no later than February 15, 2011, that includes, but is not limited to:

(a) An assessment of all elections conducted using ranked voting methods by local governments in accordance with this part 10 and by home rule cities or cities and counties in accordance with their charters from August 5, 2008, through the general election of November 2010;

(b) Recommendations for changes to statutes, rules, and local voting procedures that would be required to implement ranked voting as a permanent alternative election method for state, federal, and local special and general elections;

(c) An inventory of available election equipment necessary for conducting elections using ranked voting methods, including the costs associated with the equipment; and

(d) Any recommendations made by the designated election officials of local governments that conducted an election using a ranked voting method.

Source: L. 2008: Entire part added, p. 1249, § 2, effective August 5.

1-7-1003. Conduct of elections using ranked voting methods - instant runoff voting - choice voting or proportional voting - reports. (1) A ranked voting ballot shall allow an elector to rank as many choices as there are candidates. However, if the voting system cannot accommodate a number of rankings equal to the number of candidates, the designated election official may limit the number of choices an elector may rank to the maximum number allowed by the voting system; except that the number of choices shall not be less than three.

(2) A ranked voting ballot shall allow an elector to rank up to two write-in candidates. A vote for an unqualified write-in candidate shall not be considered a mark for a candidate.

(3) (a) In an election in which one candidate is to be elected to an office, the ranked voting method shall be known as instant runoff voting. The ballots shall be counted in rounds simulating a series of runoffs until two candidates remain or until one candidate has more votes than the combined vote total of all other candidates. The candidate having the greatest number of votes shall be declared the winner.

(b) In each round of counting ballots in an election using instant runoff voting, each ballot shall be counted as a vote for the remaining candidate ranked highest by the elector, and the candidate with the smallest number of votes shall be eliminated.

(c) If two or more candidates tie for the smallest number of votes, the candidate to eliminate shall be chosen by lot.

(4) In an election in which more than one candidate is to be elected to an office in a multiple-seat district or on a governing body that includes multiple at-large seats, a local government may conduct a ranked voting election using the single transferable vote method, in which a winning threshold is calculated based on the number of seats to be filled and the number of votes cast so that no more than the correct number of candidates can win. The ballots shall be counted in rounds, with surplus votes transferred from winning candidates and candidates with the fewest votes eliminated according to the methodology established by the secretary of state by rule, until the number of candidates remaining equals the number of seats to be filled. A local government may also conduct an election pursuant to this subsection (4) using the principles of instant runoff voting specified in subsection (3) of this section to ensure that each elector has equal voting power and that an elector's lower ranking of a candidate does not count against the candidate to whom the elector gave the highest rank.

(5) (a) In an election conducted using a ranked voting method, an explanation of ranked voting and instructions for electors in the form approved by the secretary of state by rule shall be posted at each polling place and included with each mail-in ballot.

(b) A local government that conducts an election using a ranked voting method shall conduct a voter education and outreach campaign to familiarize electors with ranked voting in English and in every language in which a ballot is required to be made available pursuant to this code and the federal "Voting Rights Act of 1965", 42 U.S.C. sec. 1973aa-1a.

(6) In an election using a ranked voting method, the election judges shall not count votes at the polling place but shall deliver all ballots cast in the election to the canvass board, which shall count the votes in accordance with this section and the rules adopted by the secretary of state pursuant to section 1-7-1004 (1).

(7) (a) For an election conducted using a ranked voting method, the designated election official shall issue the following reports:

(I) A summary report listing the total number of votes for each candidate in each round;

(II) A ballot image report listing for each ballot the order in which the elector ranked the candidates, the precinct of the ballot, and whether the ballot is a mail-in ballot; and

(III) A comprehensive report listing the results in the summary report by precinct.

(b) The secretary of state may by rule establish additional requirements for the reports issued pursuant to this subsection (7).

(c) Preliminary versions of the summary report and ballot image report shall be made available to the public as soon as possible after the commencement of the official canvass of the vote pursuant to subsection (6) of this section.

Source: L. 2008: Entire part added, p. 1250, § 2, effective August 5. **L. 2009:** (5)(b) amended, (SB 09-292), ch. 369, p. 1938, § 2, effective August 5.

Editor's note: Subsection (5)(b) was amended in a 2009 act that was passed without a safety clause. The act establishes an effective date of August 5, 2009, for this provision. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-7-1004. Secretary of state - rules - guidance to local governments. (1) The secretary of state shall adopt rules consistent with section 1-7-1003 and in accordance with article 4 of title 24, C.R.S., on the conduct of elections using ranked voting methods. The rules shall prescribe the methods and procedures for tabulating, auditing, and reporting results in an election using a ranked voting method.

(2) The secretary of state shall provide guidance and advice to the governing bodies and designated election officials of local governments of the state on the conduct of elections using ranked voting methods.

Source: L. 2008: Entire part added, p. 1252, § 2, effective August 5.

ARTICLE 7.5

Mail Ballot Elections

Editor's note: This article was added in 1990. This article was repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Law reviews: For article, "Voting Under Colorado's Mail Ballot Election Act", see 21 Colo. Law. 941 (1992).

1-7.5-101. Short title.
1-7.5-102. Legislative declaration.
1-7.5-103. Definitions.
1-7.5-104. Mail ballot elections - optional.
1-7.5-105. Preelection process.
1-7.5-106. Secretary of state - duties and powers.
1-7.5-107. Procedures for conducting mail ballot election - primary elections - first-time voters casting a mail ballot after having registered by mail to vote.
1-7.5-107.3. Verification of signatures - November coordinated elections.
1-7.5-107.5. Counting mail ballots.
1-7.5-108. Mail-in ballots.
1-7.5-108.5. Voter information card - verification of active status - designation of inactive status - mailing of mail ballots - repeal.
1-7.5-109. Write-in candidates.
1-7.5-110. Challenges.
1-7.5-111. Report to the general assembly. (Repealed)
1-7.5-112. Repeal of article. (Repealed)

1-7.5-101. Short title. This article shall be known and may be cited as the "Mail Ballot Election Act".

Source: L. 92: Entire article R&RE, p. 752, § 10, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-101 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

ANNOTATION

The Mail Ballot Election Act is constitutional because there is a compelling state interest in encouraging increased voter participation and mail ballot elections serve to meet that interest. Bruce v. City of Colo. Springs, 971 P.2d 679 (Colo. App. 1998).

1-7.5-102. Legislative declaration. The general assembly hereby finds, determines, and declares that self-government by election is more legitimate and better accepted as voter participation increases. The general assembly further finds, determines, and declares that mail ballot elections are cost-efficient and have not resulted in increased fraud. By enacting this article, the general assembly hereby concludes that it is appropriate to provide for mail ballot elections under specified circumstances.

Source: L. 92: Entire article R&RE, p. 752, § 10, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-102 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-7.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Designated election official" means official as defined in section 1-1-104 (8).

(2) "Election" means any election under the "Uniform Election Code of 1992" or the "Colorado Municipal Election Code of 1965", article 10 of title 31, C.R.S.

(3) "Election day" means the date either established by law or determined by the governing body of the political subdivision conducting the election, to be the final day on which all ballots are determined to be due, and the date from which all other dates in this article are set.

(4) "Mail ballot election" means an election for which eligible electors may cast ballots by mail and in accordance with this article in a primary election or an election that involves only nonpartisan candidates or ballot questions or ballot issues.

(5) "Mail ballot packet" means the packet of information provided by the designated election official to eligible electors in the mail ballot election. The packet includes the ballot, instructions for completing the ballot, a secrecy envelope, and a return envelope.

(6) "Political subdivision" means a governing subdivision of the state, including counties, municipalities, school districts, and special districts.

(7) "Return envelope" means an envelope that is printed with spaces for the name and address of, and a self-affirmation to be signed by, an eligible elector voting in a mail ballot election, that contains a secrecy envelope and ballot for the elector, and that is designed to allow election officials, upon examining the signature, name, and address on the outside of the envelope, to determine whether the enclosed ballot is being submitted by an eligible elector who has not previously voted in that particular election.

(8) "Secrecy envelope" means the envelope used for a mail ballot election that contains the eligible elector's ballot for the election, and that is designed to conceal and maintain the confidentiality of the elector's vote until the counting of votes for that particular election.

Source: L. 92: Entire article R&RE, p. 752, § 10, effective January 1, 1993. **L. 94:** (4) amended, p. 1166, § 38, effective July 1. **L. 2003:** (5) and (7) amended, p. 1277, § 4, effective April 22. **L. 2009:** (4) amended, (HB 09-1015), ch. 259, p. 1184, § 3, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is similar to 1-7.5-103 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

(2) Subsection (4) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

Cross references: For the "Uniform Election Code of 1992", see articles 1 to 13 of this title.

1-7.5-104. Mail ballot elections - optional. (1) If the governing board of any political subdivision determines that an election shall be by mail ballot, the designated election official for the political subdivision shall conduct any election for the political subdivision by mail ballot under the supervision of the secretary of state and shall be subject to rules which shall be promulgated by the secretary of state.

(2) Notwithstanding the provisions of subsection (1) of this section, a mail ballot election shall not be held for:

(a) Elections or recall elections that involve partisan candidates, except for primary elections;

(b) Elections held in conjunction with, or on the same day as, a primary or congressional vacancy election, unless the primary election is conducted as a mail ballot election.

(3) Notwithstanding any other provision of law to the contrary concerning the type of election to be held, elections by mail ballot shall be conducted as provided in this article.

Source: L. 92: Entire article R&RE, p. 753, § 10, effective January 1, 1993. **L. 93:** (2) amended, p. 1422, § 82, effective July 1. **L. 94:** (1) amended, p. 1166, § 39, effective July 1. **L. 2009:** (2) amended, (HB 09-1015), ch. 289, p. 1184, § 4, effective

August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-104 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

(2) Subsection (2) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-7.5-105. Preelection process. (1) The designated election official responsible for conducting an election that is to be by mail ballot pursuant to section 1-7.5-104 (1) shall notify the secretary of state no later than fifty-five days prior to the election, unless the election is a regular special district election, in which case the designated election official shall notify the secretary of state no later than sixty-five days prior to the election. The notification shall include a proposed plan for conducting the mail ballot election, which may be based on the standard plan adopted by the secretary of state.

(1.5) (a) Notwithstanding the provisions of subsection (1) of this section, if a primary election is conducted as a mail ballot election pursuant to this article, the designated election official shall notify the secretary of state no later than one hundred twenty days prior to the election. The notification shall include a proposed plan for conducting the mail ballot election, which may be based on the standard plan adopted by the secretary of state.

(b) Prior to making a determination to conduct a primary election as a mail ballot election, a county clerk and recorder shall give public notice and seek public comment on such determination. The secretary of state shall adopt rules in accordance with article 4 of title 24, C.R.S., as needed to implement this requirement.

(2) (a) The secretary of state shall approve or disapprove the written plan for conducting a mail ballot election, in accordance with section 1-7.5-106, within fifteen days after receiving the plan and shall provide a written notice to the affected political subdivision, unless the election is a regular special district election, in which case the secretary of state shall approve or disapprove the written plan within twenty-five days after receiving the plan.

(b) In the case of a primary election conducted as a mail ballot election, the secretary of state shall provide notice on its web site that a primary election is to be conducted by mail ballot.

(3) The designated election official shall supervise the distributing, handling, counting of ballots, and the survey of returns in accordance with rules promulgated by the secretary of state as provided in section 1-7.5-106 (2) and shall take the necessary steps to protect the confidentiality of the ballots cast and the integrity of the election.

(4) No elector information shall be delivered in the form of a sample ballot.

Source: L. 92: Entire article R&RE, p. 753, § 10, effective January 1, 1993. **L. 93:** (1) amended, p. 1423, § 83, effective July 1. **L. 94:** (1) amended, p. 1166, § 40, effective July 1. **L. 95:** (1) amended, p. 840, § 61, effective July 1. **L. 2007:** (1) and (2) amended, p. 922, § 1, effective May 17. **L. 2009:** (1.5) added and (2) amended, (HB 09-1015), ch. 259, p. 1184, § 5, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-105 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

(2) Subsection (1.5) was added and subsection (2) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-7.5-106. Secretary of state - duties and powers. (1) In addition to any other duties prescribed by law, the secretary of state, with advice from election officials of the several political subdivisions, shall:

(a) Prescribe the form of materials to be used in the conduct of mail ballot elections; except that all

mail ballot packets shall include a ballot, instructions for completing the ballot, a secrecy envelope, and a return envelope;

(b) Establish procedures for conducting mail ballot elections; except that the procedures shall be consistent with section 1-7.5-107;

(c) Supervise the conduct of mail ballot elections by the election officials as provided in section 1-7.5-105 (3).

(2) In addition to other powers prescribed by law, the secretary of state may adopt rules governing procedures and forms necessary to implement this article and may appoint any county clerk and recorder as an agent of the secretary to carry out the duties prescribed in this article.

Source: L. 92: Entire article R&RE, p. 754, § 10, effective January 1, 1993. **L. 2001:** (1)(a) amended, p. 1003, § 10, effective August 8. **L. 2003:** (1)(a) amended, p. 1278, § 5, effective April 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-106 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

ANNOTATION

Tri-fold envelope that conceals the voter's mark when folded in a certain way satisfies the requirement that a secrecy envelope be included with mail ballot packets. Bruce v. City of Colo. Springs, 971 P.2d 679 (Colo. App. 1998).

1-7.5-107. Procedures for conducting mail ballot election - primary elections - first-time voters casting a mail ballot after having registered by mail to vote. (1) Official ballots shall be prepared and all other preelection procedures followed as otherwise provided by law or rules promulgated by the secretary of state; except that mail ballot packets shall be prepared in accordance with this article.

(2) (a) Except for coordinated elections conducted as a mail ballot election where the county clerk and recorder is the coordinated election official, no later than thirty days prior to election day, the county clerk and recorder shall submit to the designated election official of the political subdivision conducting the mail ballot election a full and complete preliminary list of registered electors. For special district mail ballot elections, the county clerk and recorder and county assessor of each county in which a special district is located shall certify and submit to the designated election official a list of property owners and a list of registered electors residing within the affected district.

(b) No later than twenty days prior to election day, the county clerk and recorder and county assessor required to submit a preliminary list in accordance with paragraph (a) of this subsection (2) shall submit to the appropriate authority a supplemental list of the names of eligible electors or property owners whose names were not included on the preliminary list.

(c) All lists of registered electors and lists of property owners provided to a designated election official under this section shall include the last mailing address of each elector.

(2.3) (a) Not less than thirty days nor more than forty-five days before a primary election that is conducted as a mail ballot election pursuant to this article, the county clerk and recorder shall mail a notice by forwardable mail to each unaffiliated active registered eligible elector and to each unaffiliated registered eligible elector whose registration record has been marked as "Inactive - failed to vote".

(b) The notice shall indicate that the unaffiliated elector has the ability to and must affiliate with a political party in order to vote in the primary election.

(c) The notice shall have a returnable portion that allows the elector to request affiliation with a political party.

(d) The notice may be included with any other communication by mail from the county clerk and recorder to electors within the county.

(2.5) (a) (I) No later than twenty days before an election, the designated election official, or the coordinated election official if so provided by an intergovernmental agreement, shall provide notice by

publication of a mail ballot election conducted pursuant to the provisions of this article, which notice shall state, as applicable for the particular election for which the notice is provided, the items set forth in section 1-5-205 (1) (a) to (1) (d).

(II) If a primary election is conducted as a mail ballot election pursuant to this article, in addition to the items described in the notice required by subparagraph (I) of this paragraph (a), such notice shall advise eligible electors who are not affiliated with a political party of the ability to declare an affiliation with a political party and vote in the primary election.

(b) The notice required to be given by this subsection (2.5) shall be in lieu of the notice requirements set forth in sections 1-5-205 (1) and 31-10-501 (1), C.R.S., as applicable for the particular election for which such notice is required.

(3) (a) (I) Not sooner than twenty-two days before an election, and no later than eighteen days before an election, except as provided in subparagraph (II) of this paragraph (a), the designated election official shall mail to each active registered elector, at the last mailing address appearing in the registration records and in accordance with United States postal service regulations, a mail ballot packet, which shall be marked "DO NOT FORWARD. ADDRESS CORRECTION REQUESTED.", or any other similar statement that is in accordance with United States postal service regulations; except that, with prior approval from the secretary of state, the packets shall be sent no later than ten days before election day. Nothing in this subsection (3) shall affect any provision of this code governing the delivery of mail ballots to an absent uniformed services elector, nonresident overseas elector, or resident overseas elector covered by the federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff et seq.

(II) (A) If a primary election is conducted as a mail ballot election pursuant to this article, in addition to active registered electors who are affiliated with a political party, the mail ballot packet shall be mailed to each registered elector who is affiliated with a political party and whose registration record has been marked as "Inactive - failed to vote".

(B) If a primary election is conducted as a mail ballot election for a minor political party candidate, the mail ballot packet shall be mailed only to those registered electors described in sub-subparagraph (A) of this subparagraph (II) who are affiliated with the minor political party of such candidate.

(b) The ballot or ballot label shall contain the following warning:

"WARNING:

Any person who, by use of force or other means, unduly influences an eligible elector to vote in any particular manner or to refrain from voting, or who falsely makes, alters, forges, or counterfeits any mail ballot before or after it has been cast, or who destroys, defaces, mutilates, or tampers with a ballot is subject, upon conviction, to imprisonment, or to a fine, or both."

(b.5) (I) The return envelope shall have printed on it a self-affirmation substantially in the following form:

"I state under penalty of perjury that I am an eligible elector; that my signature and name are as shown on this envelope; that I have not and will not cast any vote in this election except by the enclosed ballot; and that my ballot is enclosed in accord with the provisions of the "Uniform Election Code of 1992".

....

Date Signature of voter"

(II) The signing of the self-affirmation on the return envelope shall constitute an affirmation by the eligible elector, under penalty of perjury, that the facts stated in the self-affirmation are true. If the eligible elector is unable to sign, the eligible elector may affirm by making a mark on the self-affirmation, with or without assistance, witnessed by another person.

(III) The return envelope shall not be required to have a flap covering the signature or otherwise impede the use of a signature verification device.

(c) No sooner than twenty-two days prior to election day, and until 7 p.m. on election day, mail ballots shall be made available at the designated election official's office, or the office designated in the mail ballot plan filed with the secretary of state, for eligible electors who are not listed or who are listed as "Inactive" on the county voter registration records or, for special district mail ballot elections, on the list of property owners or the registration list but who are authorized to vote pursuant to section 32-1-806, C.R.S., or other applicable law.

(d) (I) An eligible elector may obtain a replacement ballot if the ballot was destroyed, spoiled, lost, or for some other reason not received by the eligible elector. An eligible elector may obtain a ballot if a mail ballot packet was not sent to the elector because the eligibility of the elector could not be determined at the time the mail ballot packets were mailed. In order to obtain a ballot in such cases, the eligible elector must sign a sworn statement specifying the reason for requesting the ballot. The statement shall be presented to the designated election official no later than 7 p.m. on election day. The designated election official shall keep a record of each ballot issued in accordance with this paragraph (d) together with a list of each ballot obtained pursuant to paragraph (c) of this subsection (3).

(II) A designated election official shall not transmit a mail ballot packet under this paragraph (d) unless a sworn statement requesting the ballot is received on or before election day. A ballot may be transmitted directly to the eligible elector requesting the ballot at the designated election official's office or the office designated in the mail ballot plan filed with the secretary of state or may be mailed to the eligible elector at the address provided in the sworn statement. Ballots may be cast no later than 7 p.m. on election day.

(3.5) (a) Unless otherwise provided by section 1-2-501 (1.5), the requirements of this subsection (3.5) shall apply to a person who registered to vote by mail in accordance with part 5 of article 2 of this title and who:

(I) Has not previously voted in an election in Colorado; or

(II) Is reregistering to vote after moving from one county in this state to another and the election in which the person intends to vote takes place prior to the creation by the department of state of a computerized statewide voter registration list that satisfies the requirements of part 3 of article 2 of this title.

(b) Any person who matches either of the descriptions specified in subparagraph (I) or (II) of paragraph (a) of this subsection (3.5) and intends to cast his or her ballot by mail in accordance with this article shall submit with his or her mail ballot a copy of identification within the meaning of section 1-1-104 (19.5).

(c) The designated election official shall include with the mail ballot packet required by paragraph (a) of subsection (3) of this section written instructions advising an elector who matches the description specified in paragraph (a) of this subsection (3.5) of the manner in which the elector shall be in compliance with the requirements contained in paragraph (a) of this subsection (3.5).

(d) Any person who desires to cast his or her ballot by mail but does not satisfy the requirements of paragraph (b) of this subsection (3.5) may cast such ballot by mail. The designated election official shall, within three days after the receipt of a mail ballot that does not contain a copy of identification as defined in section 1-1-104 (19.5), but in no event later than two days after election day, send to the eligible elector at the address indicated in the registration records a letter explaining the lack of compliance with paragraph (b) of this subsection (3.5). If the designated election official receives a copy of identification in compliance with paragraph (b) of this subsection (3.5) within eight days after election day, and if the mail ballot is otherwise valid, the mail ballot shall be counted.

(e) The requirements of this subsection (3.5) shall be implemented by state and local election officials in a uniform and nondiscriminatory manner.

(f) Notwithstanding any other provision of law, the requirements of this subsection (3.5) shall not apply to any person who is:

(I) Entitled to vote by absentee ballot under the federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff et seq.;

(II) Provided the right to vote otherwise than in person under section (b) (2) (B) (ii) of the federal "Voting Accessibility for the Elderly and Handicapped Act", 42 U.S.C. sec. 1973ee-1; or

(III) Entitled to vote otherwise than in person under any other federal law.

(4) (a) Upon receipt of a ballot, the eligible elector shall mark the ballot, sign and complete the self-affirmation on the return envelope, enclose identification if required by subsection (3.5) of this section, and comply with the instructions provided with the ballot.

(b) The eligible elector may return the marked ballot to the designated election official by United States mail or by depositing the ballot at the office of the official or any place designated by the official. The ballot must be returned in the return envelope. If an eligible elector returns the ballot by mail, the elector must provide postage. The ballot shall be received at the office of the designated election official or a designated depository, which shall remain open until 7 p.m. on election day. For an election coordinated by the county clerk and recorder, the depository shall be designated by the county clerk and recorder and located in a secure place under the supervision of a municipal clerk, an election judge or a member of the clerk and recorder's staff. For an election not coordinated by the county clerk and recorder, the depository shall be designated by the designated election official and located in a secure place under the supervision of the designated election official, an election judge, or another person designated by the designated election official.

(c) and (d) Repealed.

(4.3) (a) If a primary election is conducted as a mail ballot election pursuant to this article, there shall be a minimum number of mail ballot drop-off locations where mail ballots may be deposited equal to at least one drop-off location for each thirty thousand affiliated active registered electors in the county. The drop-off locations shall be arrayed throughout the county in a manner that provides the greatest convenience to electors. The number and location of the drop-off locations shall be approved by the secretary of state as part of the mail ballot election plan required pursuant to section 1-7.5-105.

(b) The minimum number of drop-off locations described in paragraph (a) of this subsection (4.3) shall accept mail ballots delivered by electors during the fourteen days prior to and including the day of the primary election; except that mail ballots shall not be required to be accepted on Sundays or the first Saturday of such period. Mail ballots shall be accepted from electors at drop-off locations during, at a minimum, reasonable business hours.

(4.5) (a) (I) Except as provided in subparagraph (II) of this paragraph (a), if a primary election is conducted as a mail ballot election pursuant to this article, the county clerk and recorder shall designate service centers equal to no fewer than the number of county motor vehicle offices in the county; except that each county shall have no fewer than one service center for every sixty thousand affiliated active registered electors. Notwithstanding any provision of this subsection (4.5) to the contrary, if a county has fewer than fifteen thousand affiliated active registered electors for each county motor vehicle office in the county, the county clerk and recorder shall designate at least one service center for each twenty-five thousand affiliated active registered electors.

(II) Any county having thirty thousand or fewer affiliated active registered electors shall have a minimum of one service center, regardless of the number of motor vehicle offices in such county.

(b) Each service center shall provide the following for electors:

(I) The ability for unaffiliated registered electors to affiliate with a political party and cast ballots;

(II) Secure computer access;

(III) Facilities and equipment that are compliant with the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended;

(IV) Direct record electronic voting machines or other voting systems accessible to electors with disabilities as provided in part 7 of article 5 of this title;

(V) Voting booths;

(VI) Original and replacement ballots for distribution;

(VII) The ability to accept mail ballots that are deposited by electors;

(VIII) Emergency voter registration; and

(IX) The ability to cast provisional ballots.

(c) Service centers shall be open during the eight days prior to and including the day of the primary election; except that service centers shall not be required to be open on Sundays.

(5) (a) Once the ballot is returned, an election judge shall first qualify the submitted ballot by comparing the information on the return envelope with the registration records to determine whether the ballot was submitted by an eligible elector who has not previously voted in the election. If the ballot so qualifies and is otherwise valid, the election judge shall indicate in the pollbook that the eligible elector cast a ballot and deposit the ballot in an official ballot box.

(b) If the return envelope received from an eligible elector described in subsection (3.5) of this section does not contain identification, the ballot shall be treated as a provisional ballot and shall be verified and counted in accordance with article 8.5 of this title.

(c) For November coordinated elections only, the signature of the eligible elector on the return envelope shall be compared with the signature of the eligible elector on file in the office of the county clerk and recorder or in the statewide voter registration system in accordance with section 1-7.5-107.3.

(6) All deposited ballots shall be counted as provided in this article and by rules promulgated by the secretary of state. A mail ballot shall be valid and counted only if it is returned in the return envelope, the self-affirmation on the return envelope is signed and completed by the eligible elector to whom the ballot was issued, and the information on the return envelope is verified in accordance with subsection (5) of this section. Mail ballots shall be counted in the same manner provided by section 1-7-307 for counting paper ballots or section 1-7-507 for counting electronic ballots. If the election official determines that an eligible elector to whom a replacement ballot has been issued has voted more than once, the first ballot returned by the elector shall be considered the elector's official ballot. Rejected ballots shall be handled in the same manner as provided in section 1-8-310.

Source: L. 92: Entire article R&RE, p. 754, § 10, effective January 1, 1993. **L. 93:** (3)(c) and (5) amended, p. 1767, § 10, effective June 6; (2)(b) amended, p. 1423, § 84, effective July 1. **L. 94:** (2)(a), (3)(c), (3)(d), and (4)(b) amended, p. 1167, § 41, effective July 1. **L. 95:** (2), (3)(a), (3)(d), and (5) amended, p. 841, § 62, effective July 1. **L. 96:** (2)(b) and (6) amended, pp. 1749, 1774, §§ 45, 79, effective July 1. **L. 97:** (3)(a) and (3)(c) amended, p. 186, § 6, effective August 6. **L. 99:** (2.5) added, p. 776, § 58, effective May 20. **L. 2001:** (3)(b.5) added and (6) amended, pp. 1003, 1004, §§ 11, 12, effective August 8. **L. 2002:** (4)(b) amended, p. 1634, § 17, effective June 7. **L. 2003:** (3)(b.5), (4), (5), and (6) amended, p. 1278, § 6, effective April 22; (3.5) added, p. 2078, § 15, effective May 22. **L. 2004:** (4)(a) and (5)(b) amended and (4)(c) and (4)(d) repealed, pp. 1053, 1054, §§ 6, 9, effective May 21. **L. 2005:** (3.5)(d) and (5)(b) amended, p. 1410, § 28, effective June 6; (3.5)(d) and (5)(b) amended, p. 1445, § 28, effective June 6. **L. 2006:** IP(3.5)(a) amended, p. 2033, § 13, effective June 6. **L. 2007:** (6) amended, p. 1981, § 31, effective August 3. **L. 2008:** (3)(b.5)(III) added and (5)(c) amended, p. 358, §§ 3, 4, effective April 10. **L. 2009:** (2.3), (4.3), and (4.5) added and (2.5)(a), (3)(a), and (3)(c) amended, (HB 09-1015), ch. 259, p. 1185, § 6, effective August 5; (3)(b.5)(I) amended, (HB 09-1216), ch. 165, p. 729, § 3, effective August 5; (3.5)(d) amended, (HB 09-1337), ch. 262, p. 1201, § 1, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is similar to § 1-7.5-107 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

(2) Section 7 of chapter 262, Session Laws of Colorado 2009, provides that amendments to subsection (3.5)(d) are effective upon the effective date of House Bill 09-1337 or the effective date of House Bill 09-1015, whichever is later, only if House Bill 09-1015 is enacted and becomes law. House Bill 09-1015 and House Bill 09-1337 were signed by the governor on May 15, 2009, and became effective August 5, 2009.

(3) Subsections (2.3), (4.3), and (4.5) were added and subsections (2.5)(a), (3)(a), (3)(b.5)(I), (3)(c), and (3.5)(d) were amended in 2009 acts that were passed without safety clauses. The acts, or portions thereof, may not take effect if the people

exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective dates, see page ix of this volume.

ANNOTATION

Requirement that voter affix a postage stamp to a mail ballot in order to vote in a mail ballot election does not constitute an unconstitutional poll tax. Bruce v. City of Colo. Springs, 971 P.2d 679 (Colo. App. 1998).

City's failure to include the words "address correction requested" on the mail ballot packet did not constitute a lack of substantial compliance with this section. Bruce v. City of Colo. Springs, 971 P.2d 679 (Colo. App. 1998).

1-7.5-107.3. Verification of signatures - November coordinated elections. (1) (a) Except as provided in subsection (5) of this section, in every mail ballot election that is a November coordinated election, an election judge shall compare the signature on the self-affirmation on each return envelope with the signature of the eligible elector on file in the office of the county clerk and recorder or in the statewide voter registration system in accordance with subsections (2), (3), and (4) of this section.

(b) (Deleted by amendment, L. 2008, p. 356, § 2, effective April 10, 2008.)

(2) (a) If, upon comparing the signature of an eligible elector on the self-affirmation on the return envelope with the signature of the eligible elector on file with the county clerk and recorder or in the statewide voter registration system, the election judge determines that the signatures do not match, or if a signature verification device used pursuant to subsection (5) of this section is unable to determine that the signatures match, two other election judges of different political party affiliations shall simultaneously compare the signatures. If both other election judges agree that the signatures do not match, the county clerk and recorder shall, within three days after the signature deficiency has been confirmed, but in no event later than two days after election day, send to the eligible elector at the address indicated in the registration records a letter explaining the discrepancy in signatures and a form for the eligible elector to confirm that the elector returned a ballot to the county clerk and recorder. If the county clerk and recorder receives the form within eight days after election day confirming that the elector returned a ballot to the county clerk and recorder and enclosing a copy of the elector's identification as defined in section 1-1-104 (19.5), and if the ballot is otherwise valid, the ballot shall be counted. If the eligible elector returns the form indicating that the elector did not return a ballot to the county clerk and recorder, or if the eligible elector does not return the form within eight days after election day, the self-affirmation on the return envelope shall be categorized as incorrect, the ballot shall not be counted, and the county clerk and recorder shall send copies of the eligible elector's signature on the return envelope and the signature on file with the county clerk and recorder or in the statewide voter registration system to the district attorney for investigation.

(b) An original return envelope with an enclosed secrecy envelope containing a voted ballot that is not counted in accordance with paragraph (a) of this subsection (2) shall be stored under seal in the office of the county clerk and recorder in a secure location separate from valid return envelopes and may be removed only under the authority of the district attorney or by order of a court having jurisdiction.

(c) In the case of a disagreement among the election judges as to whether the signature of an eligible elector on the self-affirmation on the return envelope matches the signature of the eligible elector on file with the county clerk and recorder or in the statewide voter registration system pursuant to the procedures specified in paragraph (a) of this subsection (2), the signatures are deemed to match, and the election judge shall follow the procedures specified in section 1-7.5-107 (6) concerning the qualification and counting of mail ballots.

(3) If the election judge determines that the signature of an eligible elector on the self-affirmation matches the elector's signature on file with the county clerk and recorder or in the statewide voter registration system, the election judge shall follow the procedures specified in section 1-7.5-107 (6) concerning the qualification and counting of mail ballots.

(4) (a) An election judge shall not determine that the signature of an eligible elector on the self-affirmation does not match the signature of that eligible elector on file with the county clerk and recorder or in the statewide voter registration system solely on the basis of substitution of initials or use of a common nickname.

(b) The designated election official may provide training in the technique and standards of signature comparison to election judges who compare signatures pursuant to this section.

(5) (a) A designated election official may allow an election judge to use a signature verification device to compare the signature on the self-affirmation on a return envelope of an eligible elector's ballot with the signature of the elector on file with the county clerk and recorder or in the statewide voter registration system in accordance with this subsection (5) and the rules adopted by the secretary of state pursuant to section 1-8-114.5 (5) (c).

(b) If a signature verification device determines that the signature on the self-affirmation on a return envelope of an eligible elector's ballot matches the signature of the elector on file with the county clerk and recorder or in the statewide voter registration system, the signature on the self-affirmation is deemed verified, and the election judge shall follow the procedures specified in section 1-7.5-107 (6) concerning the qualification and counting of mail ballots. If a signature verification device is unable to determine that the signature on the self-affirmation on a return envelope of an eligible elector's mail ballot matches the signature of the elector on file with the county clerk and recorder or in the statewide voter registration system, an election judge shall compare the signatures in accordance with subsections (2), (3), and (4) of this section.

Source: L. 2003: Entire section added, p. 1280, § 7, effective April 22; entire section added, p. 1438, § 2, effective April 29. **L. 2004:** (2)(c) amended, p. 1186, § 3, effective August 4. **L. 2005:** (2)(a) amended, p. 1411, § 29, effective June 6; (2)(a) amended, p. 1446, § 29, effective June 6. **L. 2008:** (1), (2)(a), (2)(c), (3), and (4)(a) amended and (5) added, p. 356, § 2, effective April 10. **L. 2009:** (2)(a) amended, (HB 09-1337), ch. 262, p. 1201, § 2, effective August 5.

Editor's note: (1) Amendments to this section by House Bill 03-1241 and Senate Bill 03-102 were harmonized.

(2) Section 7 of chapter 262, Session Laws of Colorado 2009, provides that amendments to subsection (2)(a) are effective upon the effective date of House Bill 09-1337 or the effective date of House Bill 09-1015, whichever is later, only if House Bill 09-1015 is enacted and becomes law. House Bill 09-1015 and House Bill 09-1337 were signed by the governor on May 15, 2009, and became effective August 5, 2009.

(3) Subsection (2)(a) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-7.5-107.5. Counting mail ballots. The election officials at the mail ballot counting place may receive and prepare mail ballots delivered and turned over to them by the designated election official for tabulation. Counting of the mail ballots may begin fifteen days prior to the election and continue until counting is completed. The election official in charge of the mail ballot counting place shall take all precautions necessary to ensure the secrecy of the counting procedures, and no information concerning the count shall be released by the election officials or watchers until after 7 p.m. on election day.

Source: L. 99: Entire section added, p. 777, § 59, effective May 20. **L. 2009:** Entire section amended, (HB 09-1336), ch. 261, p. 1198, § 6, effective August 5.

Editor's note: This section was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-7.5-108. Mail-in ballots. Provisions for the allowance of and procedures for mail-in ballots shall be determined by rules promulgated by the secretary of state.

Source: L. 92: Entire article R&RE, p. 757, § 10, effective January 1, 1993. **L. 2007:** Entire section amended, p. 1779, § 18, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-108 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-7.5-108.5. Voter information card - verification of active status - designation of inactive status - mailing of mail ballots - repeal. (1) Not less than ninety days before a mail ballot election conducted pursuant to this article, the county clerk and recorder shall mail a voter information card to any registered elector whose registration record has been marked "Inactive - failed to vote". For purposes of this section, "Inactive - failed to vote" shall mean a registered elector who is deemed "Active" but who failed to vote in a general election in accordance with the provisions of section 1-2-605 (2); except that the term "Inactive - failed to vote" shall not include an elector whose previous communication from the county clerk and recorder was returned by the United States postal service as undeliverable and is, accordingly, referred to in the registration records of the county as "Inactive - undeliverable" pursuant to section 1-2-605 (2). The voter information card required by this section may be sent as part of the voter information card required to be mailed pursuant to section 1-5-206 (1). The voter information card shall be sent to the elector's address of record unless the elector has requested that such communication be sent to his or her deliverable mailing address pursuant to section 1-2-204 (2) (k) and shall be marked "DO NOT FORWARD".

(2) (a) If the voter information card required to be sent to a registered elector whose registration record has been marked as "Inactive - failed to vote" pursuant to subsection (1) of this section is returned by the United States postal service as undeliverable, the county clerk and recorder shall mark the registration record of that elector with the words "Inactive - undeliverable".

(b) (I) In connection with any mail ballot election to be conducted in November 2009, a mail ballot shall be mailed to all registered electors whose registration record has been marked as "Inactive - failed to vote". Such mail ballot shall not be sent to registered electors whose registration record has been marked as "Inactive - undeliverable".

(II) This paragraph (b) is repealed, effective July 1, 2011.

(c) In any mail ballot election conducted on or after July 1, 2008, if a mail ballot sent to a registered elector is returned by the United States postal service as undeliverable, the county clerk and recorder shall mark the registration record of that elector with the words "Inactive - undeliverable".

Source: L. 2008: Entire section added, p. 1742, § 2, effective July 1.

1-7.5-109. Write-in candidates. Write-in candidates shall be allowed on mail ballot elections provided that the candidate has filed an affidavit of intent with the designated election official pursuant to section 1-4-1101. Ballots for write-in candidates are to be counted pursuant to section 1-7-114.

Source: L. 92: Entire article R&RE, p. 757, § 10, effective January 1, 1993.

1-7.5-110. Challenges. Votes cast pursuant to this article may be challenged pursuant to and in accordance with law. Any mail ballot election held pursuant to this article shall not be invalidated on the grounds that an eligible elector did not receive a ballot so long as the designated election official for the political subdivision conducting the election acted in good faith in complying with the provisions of this article or with rules promulgated by the secretary of state.

Source: L. 92: Entire article R&RE, p. 757, § 10, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-109 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-7.5-111. Report to the general assembly. (Repealed)

Source: L. 92: Entire article R&RE, p. 757, § 10, effective January 1, 1993. **L. 96:** Entire section repealed, p. 1269, § 192, effective August 7.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is similar to 1-7.5-110 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-7.5-112. Repeal of article. (Repealed)

Source: L. 92: Entire article R&RE, p. 757, § 10, effective January 1, 1993. **L. 94:** Entire section repealed, p. 1167, § 42, effective July 1.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, was similar to 1-7.5-111 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

ARTICLE 8

Mail-in and Early Voting

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this article was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of this article for 1980 and 1992, see the comparative tables located in the back of the index.

Cross references: For election offenses relating to absentee voting, see part 8 of article 13 of this title.

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PART 1

MAIL-IN VOTING

1-8-101. Ballots and supplies for mail-in voting. (1) Mail-in ballots, applications, affidavits, certificates, envelopes, instruction cards, and other necessary supplies shall be provided by the designated election official in the same manner as other election supplies are provided for in all elections and shall be furnished without cost to any eligible elector wishing to vote pursuant to this article. Mail-in ballots shall be ready for delivery or mailing to mail-in voters as soon as available.

(2) The ballots shall be in the same form as other official ballots for the same election. On the stub of the mail-in ballot shall be printed "Mail-in Ballot No. M. I. V. .....(number)", and such stubs shall be numbered consecutively, commencing with number 1.

(3) In counties including more than one state senatorial district or more than one state representative district, or both, mail-in ballots shall be provided in a manner to be determined by the county clerk and recorder for each combination of state legislative districts. Distinctive markings or colors may be used to identify political subdivisions when such colors or distinctive markings will aid in the distribution and tabulation of the ballots. A complete ballot may consist of one or more pages or cards so long as each page or card is numbered and identified as provided for paper ballots in sections 1-5-407 and 1-5-410. This subsection (3) shall apply to ballots to be cast on voting machines as well as to paper ballots and ballot cards that can be electronically counted.

(4) (a) On the mail-in ballot instruction card and the secrecy envelope or sleeve or on the combined instruction card and secrecy envelope or sleeve, whichever is applicable, shall be printed "All ballots, both polling place and mail-in, are counted in the same manner."

(b) The mail-in ballot instruction card shall contain information on how the elector may verify that his or her mail-in ballot has been received by the county clerk and recorder as provided in section 1-8-307.5.

Source: L. 96: Entire article amended with relocations, p. 1749, § 46, effective July 1. **L. 2007:** Entire section amended, p. 1780, § 19, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this

section, as it existed in 1992, are similar to those contained in 1-8-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-7-121 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For ballots for primary elections and ballots for general and congressional vacancy elections, see §§ 1-5-402 and 1-5-403.

1-8-102. When mail-in voters may vote. Any eligible elector may vote by mail-in ballot at any election under the regulations and in the manner provided in this part 1.

Source: L. 96: Entire article amended with relocations, p. 1750, § 46, effective July 1. **L. 2007:** Entire section amended, p. 1780, § 20, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-8-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-7-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For mailing other materials with absent voter's ballot, absent voter's applications and deliveries outside county clerk's office, breaking seal on absent voter's ballot, and offenses relating to absentee voting, see §§ 1-13-723 (2) and 1-13-801 to 1-13-803.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339.

C.J.S. See 29 C.J.S., Elections, §§330-336.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision for absentee voting is constitutional. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

The provision for absentee voting was enacted for the purpose of procuring a fuller expression of the public will at the ballot box. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

1-8-103. Effect of "Uniformed and Overseas Citizens Absentee Voting Act" - emergency authority of secretary of state. (1) In the event of any conflict between this part 1 and any provisions of the federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff et seq., the provisions of the federal act shall control, and all designated election officials who are charged with the performance of duties under this code shall perform the duties and discharge the obligations placed upon them by the federal act.

(2) If a national or local emergency arises which makes substantial compliance with the provisions of this part 1 impossible or unreasonable, such as when congress has declared a national emergency or the president has ordered into active military service of the United States any units and members of the National Guard of this state, the secretary of state may prescribe, by emergency orders or rules, such special procedures or requirements as may be necessary to facilitate absentee voting by those members of the military or military support personnel directly affected by the emergency.

Source: L. 96: Entire article amended with relocations, p. 1750, § 46, effective July 1.

Editor's note: This section was formerly numbered as 1-8-102 (2) and (3).

1-8-103.3. Application for mail-in ballots by persons residing overseas and military personnel. (1) An absent uniformed services elector, nonresident overseas elector, or resident overseas elector, as defined in section 1-2-208 (2.5), may apply for a mail-in ballot by the use of a properly executed federal postcard application prescribed in accordance with the federal "Uniformed and Overseas Citizens Absentee Voting Act", Pub.L. 99-410, or by a letter of application that meets the requirements of section 1-8-104 (1). The elector may submit the application or letter to the county clerk

and recorder by electronic means, as defined in section 1-8-103.5 (4).

(2) (a) Notwithstanding subsection (1) of this section and section 1-8-104 (2), a county clerk and recorder shall accept an unsigned federal postcard application or an unsigned letter of application for a mail-in ballot that meets the requirements of section 1-8-104 (1) submitted on behalf of an absent uniformed services elector if the:

(I) Application is received from a commissioned officer in the unit to which the elector is assigned, attached, or under operational control or from an authorized voting assistance officer;

(II) Officer from whom the application is received is authorized to administer oaths; and

(III) Officer submits with the application a signed statement that the:

(A) Elector requested a mail-in ballot either directly from the officer or through the elector's chain of command;

(B) Officer is a commissioned officer in the unit to which the elector is assigned, attached, or under operational control or is an authorized voting assistance officer;

(C) Elector is serving outside the United States, is entitled to additional payment for serving in a zone of hostile fire or imminent danger, and does not have access to facilities or equipment necessary to send the application due to military circumstances; and

(D) Elector provided to the officer, in writing, the information required to apply for a mail-in ballot pursuant to section 1-8-104 (1).

(b) If the absent uniformed services elector wishes to register to vote using the federal postcard application, the officer shall state in the signed statement submitted by the officer pursuant to subparagraph (III) of paragraph (a) of this subsection (2) that an officer administered to the elector the affirmation required on the federal postcard application.

(c) A county clerk and recorder who accepts an unsigned federal postcard application pursuant to this subsection (2) shall cause the mail-in ballot to be delivered to the elector at the address shown on the application.

(3) If an absent uniformed services elector, nonresident overseas elector, or resident overseas elector, as defined in section 1-2-208 (2.5), submits a properly executed federal postcard application pursuant to subsection (1) of this section and the county clerk and recorder receiving the application determines that the applicant is otherwise eligible but not registered to vote, the county clerk and recorder shall register the applicant in accordance with section 1-2-208 and deliver a mail-in ballot and other voting materials to the elector.

Source: L. 2007: Entire section added, p. 1042, § 3, effective August 3. **L. 2008:** (1), IP(2)(a), (2)(a)(III)(A), (2)(a)(III)(D), (2)(c), and (3) amended, p. 1877, § 1, effective August 5.

1-8-103.5. Voting by persons residing overseas and military personnel - definitions. (1) (a) The designated or coordinated election official of a county or other political subdivision that meets the requirements of the rules promulgated by the secretary of state pursuant to subsection (3) of this section shall provide a mail-in ballot by electronic means to an eligible elector who is an absent uniformed services elector, a nonresident overseas elector, or a resident overseas elector, as defined in section 1-2-208 (2.5), if the elector timely filed a mail-in ballot application with the designated or coordinated election official requesting that the mail-in ballot be sent by electronic means.

(b) A mail-in ballot shall be provided by the same electronic means available under paragraph (a) of this subsection (1) to an absent uniformed services elector serving outside the United States not later than thirty days before the election if the elector:

(I) Filed a mail-in ballot application or has been placed on the permanent mail-in voter list pursuant to section 1-8-104.5 (2) not later than thirty-five days before such election; and

(II) Requested that the mail-in ballot be sent by electronic means.

(1.5) Notwithstanding section 1-8-104 (3), a designated or coordinated election official shall not

refuse to accept or process any otherwise valid mail-in ballot submitted by an absent uniformed services elector, as defined in section 1-2-208 (2.5), during a year on the grounds that the elector submitted the application before the first date on which the designated or coordinated election official otherwise accepts or processes such applications for that year.

(2) (a) The eligible elector may return the voted ballot to the designated or coordinated election official by electronic means. The returned ballot shall be counted if it arrives in the office of the designated or coordinated election official no later than the close of business on the eighth day following the day of the election, so long as the ballot is transmitted by electronic means by 7 p.m. mountain standard time on the day of the election. When the ballot is received by the designated or coordinated election official, a bipartisan team of judges shall duplicate the ballot, and the ballot shall be counted as all other mail-in ballots. The judges who duplicate the ballot shall not reveal to any other person how the elector has cast his or her ballot.

(b) The instructions for completing a mail-in ballot pursuant to this section shall inform the elector that a mail-in ballot returned by electronic means is not a confidential ballot.

(c) In handling a ballot returned pursuant to this section, all reasonable means shall be taken to ensure that only the judges who receive and duplicate the ballot are aware of information connecting the elector to the returned ballot.

(d) The provisions of sections 1-7.5-107.3 (2) (a) and 1-8-114.5 (2) (a) pertaining to signature verification shall be extended for purposes of signature comparison and verification of absent uniformed services electors serving outside the United States whose ballots are received no later than the close of business on the eighth day following the day of the election, pursuant to paragraph (a) of this subsection (2).

(3) The secretary of state shall prescribe by rule the procedures or requirements necessary to implement the provisions of this section. The rules shall specify the procedures for sending and returning a ballot by electronic means. The rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(4) For purposes of this section, "electronic means" means facsimile transmission; except that the secretary of state may by rule promulgated in accordance with article 4 of title 24, C.R.S., establish procedures by which a uniformed services elector serving outside the United States may receive and return a ballot by electronic mail in circumstances where another more secure voting method is not available or feasible.

Source: L. 2002: Entire section added, p. 242, § 1, effective July 1. **L. 2003:** (1) amended and (1.5) added, p. 1334, § 4, effective August 6. **L. 2006:** (1), (2), and (3) amended and (4) added, p. 580, § 1, effective August 7. **L. 2007:** (1), (1.5), (2)(a), and (2)(b) amended, p. 1780, § 21, effective June 1; (1) amended, p. 1043, § 4, effective August 3. **L. 2009:** (1) and (2)(a) amended, (HB 09-1205), ch. 383, p. 2080, § 3, effective August 5; (2)(d) added, (HB 09-1336), ch. 261, p. 1198, § 7, effective August 5.

Editor's note: (1) Amendments to subsection (1) by Senate Bill 07-234 and House Bill 07-1149 were harmonized.

(2) Subsections (1) and (2)(a) were amended and subsection (2)(d) was added in 2009 acts that were passed without safety clauses. The acts, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective dates, see page ix of this volume.

(3) Section 11 of chapter 261, Session Laws of Colorado 2009, provides that the enactment of subsection (2)(d) is effective upon the effective date of House Bill 09-1336 or the effective date of House Bill 09-1205, whichever is later, only if House Bill 09-1205 is enacted and becomes law. House Bill 09-1205 was signed by the governor on June 2, 2009, and House Bill 09-1336 was signed by the governor on May 15, 2009, and both bills became effective August 5, 2009.

1-8-104. Applications for mail-in ballot. (1) (a) The application for a mail-in ballot shall be made in writing or by fax, using the application form furnished by the designated election official or in the form of a letter that includes the applicant's printed name, signature, residence address, mailing address if the applicant wishes to receive the mail-in ballot by mail, date of birth, and whether the applicant wishes

to be designated as a permanent mail-in voter pursuant to section 1-8-104.5.

(b) If the application is made for a primary election ballot, the application shall name the political party with which the applicant is affiliated or wishes to affiliate.

(1.5) Repealed.

(2) The application for a mail-in ballot shall be personally signed by the applicant; or, in case of the applicant's inability to sign, the elector's mark shall be witnessed by another person.

(3) The application for a mail-in ballot shall be filed with the designated election official of the political subdivision in which the applicant resides or is entitled to vote. The application shall be filed no later than the close of business on the Friday immediately preceding the election; except that, if the applicant wishes to receive the mail-in ballot by mail, the application shall be filed no later than the close of business on the seventh day before the election.

(4) The application for a mail-in ballot is subject to the rules of residency contained in section 1-2-102 and is subject to challenge as provided in parts 1 and 2 of article 9 of this title.

(5) A prisoner in pretrial detention may apply for a mail-in ballot from the prisoner's county of residence. No application for a mail-in ballot shall be accepted unless personally signed by the applicant and accompanied by a certification from the institutional administrator or the administrator's designee that the applicant is in pretrial detention. The institutional administrator shall certify the application immediately upon request by the prisoner.

(6) No person shall give to any eligible elector any form for the purpose of requesting a mail-in ballot unless such form prompts the applicant to provide all the information required by subsection (1) of this section and contains the following statement: "Under Colorado law, your mail-in ballot application must contain your printed name, signature, residence address, mailing address if you wish to receive the ballot by mail, and date of birth. If you do not provide all of this information, you may not receive a mail-in ballot according to the rules established by the secretary of state." Violation of this subsection (6) is an offense punishable as provided in section 1-13-803.

(7) Notwithstanding any other provision of this section, no mail-in ballot shall be mailed to an applicant unless the designated election official has previously received an application for a mail-in ballot from the applicant.

Source: L. 96: Entire article amended with relocations, p. 1751, § 46, effective July 1. **L. 2002:** (1) and (3) amended and (6) added, p. 1570, § 1, effective June 7; (2) amended, p. 1634, § 18, effective June 7. **L. 2003:** (7) added, p. 1038, § 2, effective August 6. **L. 2005:** (3) amended, p. 1411, § 30, effective June 6; (3) amended, p. 1446, § 30, effective June 6. **L. 2006:** (3) amended, p. 14, § 1, effective July 1. **L. 2007:** Entire section amended, p. 1781, § 22, effective June 1. **L. 2009:** (3) amended, (HB 09-1216), ch. 165, p. 729, § 4, effective August 5.

Editor's note: (1) This section was formerly numbered as 1-8-103.

(2) Subsection (1.5)(b) provided for the repeal of subsection (1.5), effective January 1, 1999. (See L. 96, p. 1751.)

(3) Subsection (3) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339.

C.J.S. See 29 C.J.S., Elections, § 333.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Absentee voter statutes must be strictly construed, and a voter who wishes to cast such a ballot must comply exactly with all applicable statutory requirements. Jardon v. Meadowbrook-Fairview Metro. Dist., 190 Colo. 528, 549 P.2d 762 (1976).

Findings that voters came within the application requirements not disturbed on review. Israel v. Wood, 98 Colo. 495, 56 P.2d 1324 (1936).

1-8-104.5. Application for permanent mail-in voter status. (1) Any eligible elector may apply for permanent mail-in voter status. The application for permanent mail-in voter status shall be made in writing or by facsimile using an application form furnished by the designated election official or in the form of a letter. The application shall contain the same information submitted in connection with an application for a mail-in ballot pursuant to section 1-8-104.

(2) Upon receipt of an application for permanent mail-in voter status, the designated election official shall process the application in the same manner as an application for a mail-in ballot. If it is determined that the applicant is an eligible elector, the designated election official shall place the eligible elector's name upon the list maintained pursuant to section 1-8-108 of those eligible electors to whom a mail-in ballot is mailed each time there is a coordinated election.

Source: L. 2007: Entire section added, p. 1782, § 23, effective June 1.

1-8-105. Change of registration record. A change of name, residence, or affiliation request may be submitted to the county clerk and recorder at the same time the eligible elector submits an application for a mail-in ballot if the elector has moved within the county and states that the move occurred no later than thirty days before the election and that the elector has lived at the new residence for at least thirty days. The application shall include the elector's old and new addresses within the county, the elector's printed name and signature, and the date of the application. Upon receipt of the application, the county clerk and recorder shall verify the registration of the elector, amend the registration record, and mail to the elector an official mail-in ballot as provided in this part 1.

Source: L. 96: Entire article amended with relocations, p. 1751, § 46, effective July 1. **L. 99:** Entire section amended, p. 777, § 60, effective May 20; entire section amended, p. 162, § 18, effective August 4. **L. 2007:** Entire section amended, p. 1782, § 24, effective June 1.

Editor's note: (1) This section was formerly numbered as 1-8-104.
(2) Amendments to this section by Senate Bill 99-025 and House Bill 99-1152 were harmonized.

1-8-106. Verification of registration of elector. Upon receipt of an application for a mail-in ballot within the proper time, the designated election official shall examine the records of eligible electors to ascertain whether or not the applicant is eligible to vote as requested. If the applicant is eligible, the designated election official, either personally in the office of the designated election official or by mail to the mailing address given in the application, shall deliver an official mail-in ballot, a return envelope with information as to precinct and residence address as shown by the records in the office, and an instruction card.

Source: L. 96: Entire article amended with relocations, p. 1752, § 46, effective July 1. **L. 97:** Entire section amended, p. 186, § 7, effective August 6. **L. 2007:** Entire section amended, p. 1783, § 25, effective June 1.

Editor's note: This section was formerly numbered as 1-8-105.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339.

C.J.S. See 29 C.J.S., Elections, §§ 330, 335.

1-8-107. Registration record. (1) Before any mail-in ballot is delivered or mailed or before any eligible elector is permitted to cast a vote at an election where the county clerk and recorder is the designated election official, the designated election official shall record the number of the ballot, together with the date the ballot is delivered or mailed. The supply judge for the mail-in voter's precinct shall receive the list of mail-in ballots prepared pursuant to section 1-8-108. Mail-in voters for each precinct

shall be recorded on the precinct registration list for use at the polls as provided in section 1-5-302.

(2) For nonpartisan elections, mail-in voters shall be recorded on the precinct registration list for use at the polls as provided in section 1-5-303.

Source: L. 96: Entire article amended with relocations, p. 1752, § 46, effective July 1. **L. 97:** (1) amended, p. 187, § 8, effective August 6. **L. 2007:** Entire section amended, p. 1783, § 26, effective June 1.

Editor's note: This section was formerly numbered as 1-8-106.

Cross references: For inspection of public records generally, see part 2 of article 72 of title 24.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 330, 335.

1-8-108. List of mail-in ballots. (1) The designated election official shall keep a list of names and precinct numbers of eligible electors applying for mail-in ballots and permanent mail-in voters placed on the list pursuant to section 1-8-104.5 (2), together with the date on which each application was made, the date on which the mail-in ballot was sent, and the date on which each mail-in ballot was returned. If a mail-in ballot is not returned or if it is rejected and not counted, that fact shall be noted on the list. The list is open to public inspection under proper regulations.

(2) (a) An eligible elector whose name appears on the list as a permanent mail-in voter shall remain on the list and shall be mailed a mail-in ballot for each coordinated election.

(b) An eligible elector shall be deleted from the permanent mail-in voter list if:

(I) The eligible elector notifies the designated election official that he or she no longer wishes to vote by mail-in ballot;

(II) The mail-in ballot sent to the eligible elector is returned to the designated election official as undeliverable; or

(III) The eligible elector has been deemed "Inactive" pursuant to section 1-2-605.

Source: L. 96: Entire article amended with relocations, p. 1752, § 46, effective July 1. **L. 97:** Entire section amended, p. 187, § 9, effective August 6. **L. 2007:** Entire section amended, p. 1783, § 27, effective June 1.

Editor's note: This section was formerly numbered as 1-8-107.

Cross references: For inspection of public records generally, see part 2 of article 72 of title 24.

1-8-109. Watchers at mail-in polling places. Any political party, candidate, or proponents or opponents of a ballot issue entitled to have watchers at polling places shall each have the right to maintain one watcher in the office of the designated election official and mail-in polling places during the period in which mail-in ballots may be applied for or received.

Source: L. 96: Entire article amended with relocations, p. 1752, § 46, effective July 1. **L. 2007:** Entire section amended, p. 1784, § 28, effective June 1.

Editor's note: This section was formerly numbered as 1-8-108.

Cross references: For challenges of mail ballots, see § 1-9-207.

1-8-110. Challenges. The right to vote of any person voting by mail-in ballot may be challenged in the same manner and for the same causes as other persons are challenged.

Source: L. 96: Entire article amended with relocations, p. 1752, § 46, effective July 1. **L. 2007:** Entire section amended, p. 1784, § 29, effective June 1.

Editor's note: This section was formerly numbered as 1-8-109.

Cross references: For challenges of mail ballots, see § 1-9-207.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 47, 330.

1-8-111. Delivery of mail-in ballot and replacement mail-in ballots. (1) (a) The mail-in ballot and other materials shall be delivered or mailed to the elector within seventy-two hours after the receipt of the application, if the official ballots are then printed, or, if not then printed, within seventy-two hours after the printed ballots are delivered to the designated election official, but no sooner than twenty-two days before every odd-year, congressional vacancy, primary, and general election. If the mail-in ballot and other materials are mailed, the envelope shall be marked "DO NOT FORWARD" or by any other similar statement that is in accordance with United States postal service regulations. Except as otherwise provided in paragraph (b) of this subsection (1), nothing in this subsection (1) shall affect any provision of this code governing the delivery of mail or mail-in ballots to an absent uniformed services elector, nonresident overseas elector, or resident overseas elector covered by the federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff et seq.

(b) A mail-in ballot shall be delivered or mailed to an absent uniformed services elector serving outside the United States not later than thirty days before the election if the elector has applied for a mail-in ballot or has been placed on the permanent mail-in voter list pursuant to section 1-8-104.5 (2) not later than thirty-five days before such election.

(2) Upon a request by an eligible elector stating an emergency need, the designated election official may authorize one or more deputies or may deputize a courier service to deliver the mail-in ballot and return the ballot to the office of the designated election official.

(3) The designated election official may issue a replacement mail-in ballot if an eligible elector applied for a mail-in ballot but did not receive it or if the elector spoiled the mail-in ballot. An affidavit completed by either the elector or the designated election official shall give the reason for requesting a replacement mail-in ballot and shall state that the original mail-in ballot was not received or was spoiled, that the individual has not voted, and that the individual does not intend to vote at the election except by voting the replacement mail-in ballot. The mail-in record shall have the notation "Replacement Issued" entered to indicate the original mail-in ballot was not received or was spoiled, and the replacement mail-in ballot number shall be entered in the mail-in record. The first ballot returned by the elector shall be considered the elector's official ballot.

Source: L. 96: Entire article amended with relocations, p. 1752, § 46, effective July 1. **L. 97:** (1) amended, p. 187, § 10, effective August 6. **L. 2005:** (3) amended, p. 1411, § 31, effective June 6; (3) amended, p. 1446, § 31, effective June 6. **L. 2007:** Entire section amended, p. 1784, § 30, effective June 1. **L. 2009:** (1) amended, (HB 09-1205), ch. 383, p. 2081, § 4, effective August 5; (1) amended, (SB 09-292), ch. 369, p. 1987, § 138, effective August 5; (1) amended, (HB 09-1337), ch. 262, p. 1202, § 3, effective August 5.

Editor's note: (1) This section was formerly numbered as 1-8-110.

(2) Amendments to subsection (1) by Senate Bill 09-292, House Bill 09-1205, and House Bill 09-1337 were harmonized.

(3) Section 140 of chapter 369, Session Laws of Colorado 2009, provides that amendments to subsection (1) are effective on August 5, 2009, only if House Bill 09-1205 and House Bill 09-1337 are enacted and become law. House Bill 09-1337 was signed by the governor on May 15, 2009, and House Bill 09-1205 was signed by the governor on June 2, 2009.

(4) Section 7 of chapter 262, Session Laws of Colorado 2009, provides that amendments to subsection (1) are effective upon the effective date of House Bill 09-1337 or the effective date of House Bill 09-1015, whichever is later, only if House Bill 09-1015 is enacted and becomes law. House Bill 09-1015 and House Bill 09-1337 were signed by the governor on May 15, 2009, and became effective August 5, 2009.

(5) Subsection (1) was amended in 2009 acts that were passed without safety clauses. The acts, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective dates, see page ix of this volume.

1-8-112. Voting at group residential facilities. (1) When more than seven mail-in ballots are to be sent to the same group residential facility, as defined in section 1-1-104 (18.5), a committee consisting of one employee of the county clerk and recorder of the county in which the facility is located and, where available, a representative appointed by each of the major political parties shall deliver the mail-in ballots and return those ballots to the office of the county clerk and recorder.

(2) For nonpartisan elections, upon the request of an eligible elector, the designated election official may appoint a committee which consists of two or more election judges or employees or representatives of the designated election official.

Source: L. 96: Entire article amended with relocations, p. 1753, § 46, effective July 1. **L. 97:** (1) amended, p. 187, § 11, effective August 6. **L. 2007:** (1) amended, p. 1785, § 31, effective June 1. **L. 2009:** (1) amended, (HB 09-1336), ch. 261, p. 1197, § 3, effective August 5.

Editor's note: (1) This section was formerly numbered as 1-8-111.

(2) Subsection (1) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-8-113. Manner of mail-in voting - first-time voters casting a mail-in ballot after having registered by mail to vote. (1) (a) (I) Any eligible elector applying for and receiving a mail-in ballot, in casting the ballot, shall make and subscribe to the self-affirmation on the return envelope. The elector shall then mark the ballot, fold the ballot or insert the ballot card in the special envelope provided for the purpose so as to conceal the marking, deposit it in the return envelope, enclose identification if required by subsection (3) of this section, and seal the envelope securely. The envelope may be delivered personally or mailed by the elector to the designated election official issuing the ballot or delivered personally by the elector to an early voters' polling place during the time early voting is made available pursuant to section 1-8-202 or on election day to any polling place in the county in which the elector is registered to vote. Alternatively, an elector may deliver the ballot to any person of the elector's own choice or to any duly authorized agent of the designated election official for mailing or personal delivery to the designated election official; except that no one person other than a duly authorized agent of the designated election official may receive more than ten mail-in ballots in any election for mailing or delivery to the designated election official. Except as provided in subparagraph (II) of this paragraph (a), all envelopes containing mail-in ballots shall be in the hands of the designated election official no later than 7 p.m. on the day of the election. Mail-in envelopes received after 7 p.m. on the day of the election but postmarked on or before the day of the election will remain sealed and uncounted, but the elector's registration record will not be canceled for failure to vote in a general election.

(II) All envelopes containing mail-in ballots cast by 7 p.m. mountain standard time on the day of the election by absent uniformed services electors serving outside the United States shall be in the hands of the designated election official no later than the close of business on the eighth day following the day of the election.

(b) and (c) Repealed.

(d) If the return envelope received from an eligible elector described in subsection (3) of this section does not contain identification, the mail-in ballot shall be treated as a provisional ballot and shall be verified and counted in accordance with article 8.5 of this title.

(e) Nothing in this section shall be construed to prohibit any eligible elector from voting in person at a polling place during the time for early voting upon surrender of the elector's mail-in ballot.

(2) Upon receipt of a mail-in ballot from an eligible elector, the designated election official shall write or stamp upon the envelope containing the ballot the date the envelope was received in the office. The designated election official shall safely keep and preserve all mail-in ballots unopened in a ballot box or transfer case that is locked and secured with a numbered seal until the time prescribed for delivery to the supply judge in accordance with section 1-8-303.

(3) (a) Unless otherwise provided by section 1-2-501 (1.5), the requirements of this subsection (3) shall apply to a person who registered to vote by mail in accordance with part 5 of article 2 of this title and who:

(I) Has not previously voted in an election in Colorado; or

(II) Is reregistering to vote after moving from one county in this state to another and the election in which the person intends to vote takes place prior to the creation by the department of state of a computerized statewide voter registration list that satisfies the requirements of part 3 of article 2 of this title.

(b) Any person who matches either of the descriptions specified in subparagraph (I) or (II) of paragraph (a) of this subsection (3) and intends to cast his or her ballot by mail-in ballot in accordance with the requirements of this article shall submit with his or her mail-in ballot a copy of identification within the meaning of section 1-1-104 (19.5).

(c) The designated election official shall include with the mail-in ballot written instructions advising an elector who matches the description specified in paragraph (a) of this subsection (3) of the manner in which the elector shall be in compliance with the requirements contained in paragraph (a) of this subsection (3).

(d) Any person who desires to cast his or her ballot by mail-in ballot but does not satisfy the requirements of paragraph (b) of this subsection (3) may cast such ballot by mail. The designated election official shall, within three days after the receipt of a mail-in ballot that does not contain a copy of identification as defined in section 1-1-104 (19.5), but in no event later than two days after election day, send to the eligible elector at the address indicated in the registration records a letter explaining the lack of compliance with paragraph (b) of this subsection (3). If the designated election official receives a copy of identification in compliance with paragraph (b) of this subsection (3) within eight days after election day, and if the mail-in ballot is otherwise valid, the mail-in ballot shall be counted.

(e) The requirements of this subsection (3) shall be implemented by state and local election officials in a uniform and nondiscriminatory manner.

(f) Notwithstanding any other provision of law, the requirements of this subsection (3) shall not apply to any person who is:

(I) Entitled to vote by absentee ballot under the federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff et seq.;

(II) Provided the right to vote otherwise than in person under section (b) (2) (B) (ii) of the federal "Voting Accessibility for the Elderly and Handicapped Act", 42 U.S.C. sec. 1973ee-1 et seq.; or

(III) Entitled to vote otherwise than in person under any other federal law.

Source: L. 96: Entire article amended with relocations, p. 1753, § 46, effective July 1. **L. 97:** (2) amended, p. 188, § 12, effective August 6. **L. 2002:** (1) amended, p. 1635, § 19, effective June 7. **L. 2003:** (1) amended, p. 1281, § 8, effective April 22; (3) added, p. 2079, § 16, effective May 22. **L. 2004:** (1)(a) and (1)(d) amended and (1)(b) and (1)(c) repealed, pp. 1053, 1054, §§ 7, 9, effective May 21. **L. 2005:** (1)(d) and (3)(d) amended, p. 1412, § 32, effective June 6; (1)(d) and (3)(d) amended, p. 1447, § 32, effective June 6. **L. 2006:** IP(3)(a) amended, p. 2033, § 14, effective June 6. **L. 2007:** (1)(a), (1)(d), (2), (3)(b), (3)(c), and (3)(d) amended, p. 1785, § 32, effective June 1. **L. 2009:** (1)(a) amended, (HB 09-1186), ch. 98, p. 366, § 1, effective

April 3; (1)(a) amended, (HB 09-1205), ch. 383, p. 2081, § 5, effective August 5; (1)(e) added, (HB 09-1216), ch. 165, p. 729, § 5, effective August 5; (3)(d) amended, (HB 09-1336), ch. 261, p. 1199, § 8, effective August 5.

Editor's note: (1) This section was formerly numbered as 1-8-114 (1) and (2).

(2) Amendments to this subsection (1)(a) by House Bill 09-1186 and House Bill 09-1205 were harmonized.

(3) Subsections (1)(a) and (3)(d) were amended and subsection (1)(e) was added in 2009 acts that were passed without safety clauses. The acts, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective dates, see page ix of this volume.

ANNOTATION

I. General Consideration.
II. Casting Absentee Ballots.
III. Duty of Election Official.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339.

C.J.S. See 29 C.J.S., Elections, § 336.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. CASTING ABSENTEE BALLOTS.

A voter wishing to cast an absentee vote must comply with all the statutory demands, and the power of the board of elections is held within those lines. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

Absentee voting is in derogation of the general election law and should be strictly construed. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

For a strict construction of prescribed procedures is necessary to safeguard the exercise of the elective franchise. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

And the general assembly undoubtedly intended that a voter be held to a strict performance of the prescribed absentee voting procedures. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

Thus, execution by a voter of the affidavit is a mandatory precedent to the right to so vote, and if not furnished, the ballot should not be counted. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

However, objection to method of casting vote not considered where vote not mentioned in statement of contest. Israel v. Wood, 98 Colo. 495, 56 P.2d 1324 (1936).

III. DUTY OF ELECTION OFFICIAL.

Voter cannot be disenfranchised for clerk's mistake. A voter who has performed every act required of him cannot be disenfranchised because of irregularities or mistakes of the county clerk. Kellogg v. Hickman, 12 Colo. 256, 21 P. 325 (1888); Lehman v. Pettingell, 39 Colo. 258, 89 P. 48 (1907); Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

Election officials are presumed to comply with the law. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

1-8-114. Self-affirmation on return envelope. (1) The return envelope for the mail-in ballot shall have printed on it a self-affirmation substantially in the following form:

> I state under penalty of perjury that I am an eligible elector; that my signature and name are as shown on this envelope; that I have not and will not cast any vote in this election except by the enclosed ballot; and that my ballot is enclosed in accord with the provisions of the "Uniform Election Code of 1992".
>
> ....
>
> Date Signature of voter

(2) The signing of the self-affirmation on the return envelope for the mail-in ballot shall constitute an affirmation by the voter, under penalty of perjury, that the facts stated in the self-affirmation are true.

(3) Assistance to mail-in voters may be given by any person selected by the mail-in voter. No person other than an elector authorized by the designated election official pursuant to sections 1-8-112 and 1-8-205 shall be permitted to assist more than one mail-in voter unless the person is at least eighteen years of age and is the spouse, parent, grandparent, sibling, or child of the mail-in voter seeking

assistance. No elector who assists a mail-in voter shall attempt to persuade or unreasonably influence the voter to vote in a particular manner while the mail-in voter is voting.

(4) The return envelope shall not be required to have a flap covering the signature or otherwise impede the use of a signature verification device.

Source: L. 96: Entire article amended with relocations, p. 1754, § 46, effective July 1. **L. 98:** (1) and (2) amended, p. 32, § 1, effective March 16. **L. 2007:** Entire section amended, p. 1786, § 33, effective June 1. **L. 2008:** (4) added, p. 359, § 5, effective April 10. **L. 2009:** (1) amended, (HB 09-1216), ch. 165, p. 729, § 6, effective August 5.

Editor's note: (1) This section was formerly numbered as § 1-8-115.

(2) Subsection (1) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339.

C.J.S. See 29 C.J.S., Elections, § 334.

1-8-114.5. Verification of signatures - rules. (1) (a) Except as provided in subsection (5) of this section, in every coordinated, primary, and general election, an election judge shall compare the signature on the self-affirmation on each return envelope of each mail-in ballot with the signature of the eligible elector on file in the office of the county clerk and recorder or in the statewide voter registration system in accordance with subsections (2), (3), and (4) of this section.

(b) (Deleted by amendment, L. 2008, p. 359, § 6, effective April 10, 2008.)

(2) (a) If, upon comparing the signature of an eligible elector on the self-affirmation on the return envelope with the signature of that eligible elector on file with the county clerk and recorder or in the statewide voter registration system, the election judge determines that the signatures do not match, or if a signature verification device used pursuant to subsection (5) of this section is unable to determine that the signatures match, two other election judges of different political party affiliations shall simultaneously compare the signatures. If both other election judges agree that the signatures do not match, the county clerk and recorder shall, within three days after the signature deficiency has been confirmed, but in no event later than two days after election day, send to the eligible elector at the address indicated in the registration records a letter explaining the discrepancy in signatures and a form for the eligible elector to confirm that the elector voted, signed the self-affirmation, and returned a ballot to the county clerk and recorder. If the county clerk and recorder receives the form within eight days after election day confirming that the elector voted, signed the self-affirmation, and returned a ballot to the county clerk and recorder and enclosing a copy of the elector's identification as defined in section 1-1-104 (19.5), and if the ballot is otherwise valid, the ballot shall be counted. If the eligible elector does not enclose a copy of the elector's identification as defined in section 1-1-104 (19.5) along with the form, the self-affirmation on the return envelope shall be categorized as incorrect and the ballot shall not be counted. If the eligible elector returns the form indicating that the elector did not vote, sign the self-affirmation, or return a ballot to the county clerk and recorder, or if the eligible elector does not return the form within eight days after election day, the self-affirmation on the return envelope shall be categorized as incorrect, the ballot shall not be counted, and the county clerk and recorder shall send copies of the eligible elector's signature on the return envelope and the signature on file with the county clerk and recorder or in the statewide voter registration system to the district attorney for investigation.

(b) An original return envelope with an enclosed secrecy envelope containing a voted ballot that is not counted in accordance with paragraph (a) of this subsection (2) shall be stored under seal in the office of the county clerk and recorder in a secure location separate from valid return envelopes and may be removed only under the authority of the district attorney or by order of a court having jurisdiction.

(c) In the case of a disagreement among the election judges as to whether the signature of an eligible elector on the self-affirmation on the return envelope matches the signature of the eligible elector on file with the county clerk and recorder or in the statewide voter registration system pursuant to the procedures specified in paragraph (a) of this subsection (2), the signatures are deemed to match, and the election judge shall follow the procedures specified in section 1-8-304 concerning the qualification and counting of mail-in ballots.

(3) If the election judge determines that the signature of an eligible elector on the self-affirmation matches the elector's signature on file with the county clerk and recorder or in the statewide voter registration system, the election judge shall follow the procedures specified in section 1-8-304 concerning the qualification and counting of mail-in ballots.

(4) (a) An election judge shall not determine that the signature of an eligible elector on the self-affirmation does not match the signature of that eligible elector on file with the county clerk and recorder or in the statewide voter registration system solely on the basis of substitution of initials or use of a common nickname.

(b) The designated election official may provide training in the technique and standards of signature comparison to election judges who compare signatures pursuant to this section.

(5) (a) A designated election official may allow an election judge to use a signature verification device to compare the signature on the self-affirmation on the return envelope of an eligible elector's mail-in ballot with the signature of the elector on file with the county clerk and recorder or in the statewide voter registration system in accordance with this subsection (5) and the rules adopted by the secretary of state pursuant to paragraph (c) of this subsection (5).

(b) If a signature verification device determines that the signature on the self-affirmation on a return envelope of an eligible elector's mail-in ballot matches the signature of the elector on file with the county clerk and recorder or in the statewide voter registration system, the signature on the self-affirmation is deemed to meet the requirement of section 1-8-304 (1) (b) (III), and the election judge shall follow the procedures specified in section 1-8-304 concerning the qualification and counting of mail-in ballots. If a signature verification device is unable to determine that the signature on the self-affirmation on a return envelope of an eligible elector's mail-in ballot matches the signature of the elector on file with the county clerk and recorder or in the statewide voter registration system, an election judge shall compare the signatures in accordance with subsections (2), (3), and (4) of this section.

(c) The secretary of state shall adopt rules in accordance with article 4 of title 24, C.R.S., establishing procedures for using signature verification devices to process mail-in ballots pursuant to this article and ballots used in mail ballot elections pursuant to article 7.5 of this title.

Source: L. 2003: Entire section added, p. 1439, § 3, effective April 29. **L. 2004:** (2)(c) amended, p. 1187, § 4, effective August 4. **L. 2005:** (2)(a) amended, p. 1412, § 33, effective June 6; (2)(a) amended, p. 1447, § 33, effective June 6. **L. 2006:** (2)(a) amended, p. 14, § 2, effective July 1. **L. 2007:** (1)(a), (2)(c), and (3) amended, p. 1786, § 34, effective June 1. **L. 2008:** (1), (2)(a), (2)(c), (3), and (4)(a) amended and (5) added, p. 359, § 6, effective April 10. **L. 2009:** (2)(a) amended, (HB 09-1337), ch. 262, p. 1202, § 4, effective August 5.

Editor's note: (1) Section 7 of chapter 262, Session Laws of Colorado 2009, provides that the amendments to subsection (2)(a) are effective upon the effective date of House Bill 09-1337 or the effective date of House Bill 09-1015, whichever is later, only if House Bill 09-1015 is enacted and becomes law. House Bill 09-1015 and House Bill 09-1337 were signed by the governor on May 15, 2009, and became effective August 5, 2009.

(2) Subsection (2)(a) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-8-115. Emergency mail-in voting. (1) (a) In the event an eligible elector or a member of an eligible elector's immediate family, related by blood or marriage to the second degree, is confined in a hospital or place of residence on election day and the confinement occurred because of conditions arising

after the last day to apply for a mail-in ballot, the elector may request in a personally signed written statement that the designated election official send a mail-in ballot with the word "EMERGENCY" stamped on the stubs. The designated election official shall deliver the emergency mail-in ballot, at the official's office during the regular hours of business, to any authorized representative of the elector. For the purposes of this paragraph (a), "authorized representative" means a person who possesses a written statement from the elector containing the elector's signature, name, and address and indicating that the elector is or will be confined in a hospital or place of residence on election day and requesting that the emergency absentee ballot be given to the authorized person as identified by name and address. The authorized person shall acknowledge receipt of the emergency mail-in ballot with a signature, name, and address.

(b) A request for an emergency mail-in ballot under this section shall be made before 5 p.m. on the day of the election, and the ballot shall be returned no later than 7 p.m. on the day of the election.

(c) If the eligible elector is unable to have an authorized representative pick up the ballot at the office of the designated election official and deliver it to the eligible elector, the designated election official shall deliver a mail-in ballot to the eligible elector by electronic transfer in accordance with the rules of the secretary of state. If the mail-in ballot is delivered to the eligible elector by electronic transfer, the eligible elector may return the ballot by electronic transfer as set forth in subsection (5) of this section.

(2) Any eligible elector, including any election official, who is unable to go to the polls because of conditions arising after the closing date for mail-in ballot applications that will result in the elector's absence from the precinct on election day may apply at the office of the designated election official for an emergency mail-in ballot. Upon receipt of an affidavit signed by the elector on a form provided by the designated election official attesting to the fact that the elector will be absent from the precinct on election day because of conditions arising after the last day to apply for a mail-in ballot, the designated election official shall provide the elector with a mail-in ballot with the word "EMERGENCY" stamped on the stubs. The request for the ballot shall be made, and the ballot shall be voted at the designated election official's office or outside of the office and returned, by 7 p.m. on the day of the election.

(3) Except as otherwise provided in subsection (5) of this section, after marking the ballot, the eligible elector shall place it in a return envelope provided by the designated election official. The elector shall then fill out and sign the self-affirmation on the envelope, as provided in section 1-8-114, on or before election day and return it to the office of the designated election official. Upon receipt of the envelope, the designated election official shall verify the elector's name on the return envelope and shall deposit the envelope in the office in a ballot box that is locked and secured with a numbered seal.

(4) If, following the procedure set forth in this section, the designated election official is unable to provide a mail-in ballot to an elector, the designated election official shall seek authority from the secretary of state to provide a mail-in ballot to the elector by electronic transfer in accordance with the election rules of the secretary of state. If the mail-in ballot is delivered to the eligible elector by electronic transfer, the eligible elector may return the ballot by electronic transfer as set forth in subsection (5) of this section.

(5) (a) If a mail-in ballot is delivered to an eligible elector by electronic transfer pursuant to paragraph (c) of subsection (1) of this section or subsection (4) of this section, the eligible elector may return the voted ballot to the designated election official by electronic transfer. In order to be counted, the returned ballot shall be received in the office of the designated election official by 7 p.m. on election day. Once the ballot is received by the designated election official, a bipartisan team of judges shall duplicate the ballot, and the ballot shall be counted as all other mail-in ballots. Duplicating judges shall not reveal how the elector has cast his or her ballot.

(b) Any elector who receives a mail-in ballot by electronic transfer pursuant to paragraph (c) of subsection (1) of this section or subsection (4) of this section shall be informed in the instructions for

completing the ballot that, if the ballot is returned by electronic transfer, the ballot will not be a confidential ballot.

(c) In handling a returned ballot pursuant to this subsection (5), all reasonable means shall be taken to ensure that only the receiving judge is aware of information connecting the elector to the returned ballot.

(d) The secretary of state may prescribe by rule any procedures or requirements as may be necessary to implement the provisions of this subsection (5). Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

Source: L. 96: Entire article amended with relocations, p. 1754, § 46, effective July 1. **L. 97:** (2) and (3) amended, p. 188, § 13, effective August 6. **L. 2005:** (1)(a) amended and (1)(c) and (4) added, pp. 1412, 1413, §§ 34, 35, effective June 6; (1)(a) amended and (1)(c) and (4) added, p. 1448, §§ 34, 35, effective June 6. **L. 2006:** (1)(c), (3), and (4) amended and (5) added, p. 15, § 3, effective July 1. **L. 2007:** (1), (2), (4), (5)(a), and (5)(b) amended, p. 1787, § 35, effective June 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-8-118 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-7-123 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) This section was formerly numbered as 1-8-118.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339.

C.J.S. See 29 C.J.S., Elections, §§ 332, 333.

1-8-116. Special write-in blank mail-in ballots. (1) A citizen who resides or is traveling outside the United States, who is a registered elector in this state prior to his or her departure, and who qualifies pursuant to this section may apply to the county clerk and recorder for a special write-in blank mail-in ballot to vote at a primary, general, coordinated, or congressional vacancy election, regardless of whether the elector has previously submitted an absentee ballot application for the election. An application for a special write-in blank mail-in voter ballot shall contain a statement by the registered elector that due to military or other contingencies that preclude normal mail delivery, as specified by the elector, the elector believes that he or she cannot vote a mail-in ballot during the normal period provided by this part 1. An application made pursuant to this section that is received by the designated election official prior to the fifty-seventh day before the election shall be kept and processed on or after the fifty-seventh day before the election.

(2) If the applicant is qualified, the designated election official shall immediately send the elector a ballot and a list of all candidates who have qualified for the ballot by the fifty-seventh day before the election and a list of all measures that are to be submitted to the voters and upon which the elector is qualified to vote.

(3) On the special write-in blank mail-in ballot, the registered elector may designate his or her candidate by writing in the name of the candidate or by writing in the name of a political party or political organization, in which case the ballot shall be counted for the candidate of that political party or political organization. Any abbreviation, misspelling, or other minor variation in the form of the name of the candidate, political party, or political organization shall be disregarded in determining the validity of the ballot as long as the intention of the registered elector can be ascertained.

(4) (a) If both a federal write-in blank absentee ballot pursuant to section 1-8-117 and a special write-in blank mail-in ballot pursuant to this section are returned by the voter, the federal write-in absentee ballot shall be deemed void, and votes shall be counted from the special write-in blank mail-in ballot only.

(b) If both a mail-in ballot and a special write-in blank mail-in ballot are returned, the special write-in blank mail-in ballot shall be deemed void, and votes shall be counted from the mail-in ballot only.

(5) Special write-in blank mail-in ballots shall be counted in accordance with section 1-8-302.

Source: L. 96: Entire article amended with relocations, p. 1755, § 46, effective July 1. **L. 2005:** (1) and (2) amended, p. 1413, § 36, effective June 6; (1) and (2) amended, p. 1448, § 36, effective June 6. **L. 2007:** (1), (3), (4), and (5) amended, p. 1788, § 36, effective June 1.

Editor's note: This section was formerly numbered as 1-8-118.5.

1-8-117. Federal write-in absentee ballots pursuant to the "Uniformed and Overseas Citizens Absentee Voting Act". (1) An absent uniformed services elector, nonresident overseas elector, or resident overseas elector, as defined in section 1-2-208 (2.5), who is an eligible elector in this state prior to the elector's departure or pursuant to section 1-2-208 is entitled to vote for federal officers by a federal write-in absentee ballot at any primary, general, or congressional vacancy election.

(2) and (3) (Deleted by amendment, L. 2007, p. 1043, § 5, effective August 3, 2007.)

(4) (a) In accordance with the "Uniformed and Overseas Citizens Absentee Voting Act", Pub.L. 99-410, an absent uniformed services elector, nonresident overseas elector, or resident overseas elector, as defined in section 1-2-208 (2.5), may vote by federal write-in absentee ballot if the elector made a timely application for a state mail-in ballot but believes that he or she will be unable to vote and return the ballot by normal mail delivery within the time provided for the Colorado mail-in ballot.

(b) The eligible elector may designate the federal candidate by writing in the name of the candidate or by writing in the name of a political party or political organization, in which case the ballot shall be counted for the candidate of that political party or political organization. Any abbreviation, misspelling, or other minor variation in the form of the name of the candidate, political party, or political organization shall be disregarded in determining the validity of the ballot as long as the intention of the elector can be ascertained.

(5) (Deleted by amendment, L. 2007, p. 1043, § 5, effective August 3, 2007.)

(6) Except as otherwise provided by subsection (7) of this section, a federal write-in absentee ballot shall be counted in accordance with part 3 of this article.

(7) A federal write-in absentee ballot shall not be counted if:

(a) The ballot was submitted by a nonresident overseas elector or a resident overseas elector from a location in the United States;

(b) The ballot was submitted by an elector whose application for a state absentee ballot was received after the close of business on the Friday immediately preceding the election; or

(c) The designated election official received a state absentee ballot from the elector by 7 p.m. on the day of the election.

Source: L. 96: Entire article amended with relocations, p. 1756, § 46, effective July 1. **L. 2003:** (2) and (3) amended, p. 1335, § 5, effective August 6. **L. 2005:** (1), (2), and (3) amended, p. 1414, § 37, effective June 6; (1), (2), and (3) amended, p. 1449, § 37, effective June 6. **L. 2007:** (3), (4)(a), and (5) amended, p. 1789, § 37, effective June 1; (2), (3), (4)(a), (5), and (6) amended and (7) added, p. 1043, § 5, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-8-118.5 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article.

(2) This section was formerly numbered as § 1-8-119.

(3) Amendments to subsection (4)(a) by Senate Bill 07-234 and House Bill 07-1149 were harmonized.

(4) Subsections (3) and (5) were amended by Senate Bill 07-234. Those amendments were superseded by the amendments to subsections (3) and (5) in House Bill 07-1149.

Cross references: For the "Uniformed and Overseas Citizens Absentee Voting Act", see 42 U.S.C. sec. 1973ff et seq.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339.

1-8-118. Opt-out from mail-in ballot requirements. (1) In the case of any general election in which registered electors who live in specified precincts in a particular county are required to cast their ballots by mail in the form of mail-in ballots in accordance with the requirements of this part 1, the clerk and recorder of the county shall notify such electors that they may opt-out from casting their ballots in such manner. In such cases, the clerk and recorder shall further direct such electors to cast their ballots by any of the following means:

(a) Early voting prior to election day in accordance with the requirements of part 2 of this article;

(b) At the office of the clerk and recorder on election day; or

(c) At such other locations as the clerk and recorder may designate.

Source: L. 2003: Entire section added, p. 1038, § 1, effective August 6. **L. 2007:** IP(1) amended, p. 1789 § 38, effective June 1.

Editor's note: This section was originally numbered as 1-8-121 in House Bill 03-1153, but has been renumbered on revision for ease of location.

PART 2

EARLY VOTING

1-8-201. Ballots and supplies for early voting. (1) Early voters' ballots, applications, affidavits, certificates, instruction cards, and other necessary supplies shall be provided by the designated election official in the same manner as other election supplies are provided for in all elections and shall be furnished without cost to any eligible elector wishing to vote pursuant to this part 2. Early voters' ballots shall be ready for delivery to electors on the first day for early voting.

(2) The ballots shall be in the same form as other official ballots for the same election.

Source: L. 96: Entire article amended with relocations, p. 1757, § 46, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 2001, are similar to those contained in 1-8-201 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-303 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-8-202. When eligible electors may vote by early ballot. Early voting shall be made available to any eligible elector in the manner provided in this part 2 during regular business hours for ten days before a primary election and a special legislative election and for fifteen days before a general election or other November election conducted by the county clerk and recorder. The board of county commissioners may by resolution increase the hours that the early voters' polling place may be open. Eligible electors who appear in person at the early voters' polling place during this time may cast their ballots in the same manner as any ballot would be cast in a precinct polling place on election day.

Source: L. 96: Entire article amended with relocations, p. 1757, § 46, effective July 1. **L. 97:** Entire section amended, p. 188, § 14, effective August 6. **L. 99:** Entire section amended, p. 943, § 4, effective May 28; entire section amended, p. 1390, § 10, effective June 4. **L. 2003:** Entire section amended, p. 495, § 3, effective March 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of

this section, as it existed in 2001, are similar to those contained in 1-8-202 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-304 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Amendments to this section by Senate Bill 99-001 and House Bill 99-1097 were harmonized.

Cross references: For delivery of mail-in ballot, see § 1-8-111.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 299-304, 331-339.

1-8-203. Effect of "Uniformed and Overseas Citizens Absentee Voting Act" - emergency authority of secretary of state. (1) In the event of any conflict between this part 2 and any provisions of the federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff et seq., the provisions of the federal act shall control, and all designated election officials who are charged with the performance of duties under this code shall perform the duties and discharge the obligations placed upon them by the federal act.

(2) If a national or local emergency arises which makes substantial compliance with the provisions of this part 2 impossible or unreasonable, such as when congress has declared a national emergency or the president has ordered into active military service of the United States any units and members of the National Guard of this state, the secretary of state may prescribe, by emergency orders or rules, such special procedures or requirements as may be necessary to facilitate early voting by those members of the military or military support personnel directly affected by the emergency.

Source: L. 96: Entire article amended with relocations, p. 1757, § 46, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 2001, are similar to those contained in 1-8-203 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-305 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-8-204. Early voters' polling place. Each county clerk and recorder shall provide one or more early voters' polling places, each of which shall be accessible to persons with disabilities and which shall be provided with on-line computer accessibility to the county clerk and recorder, suitable quarters, ballot boxes or voting equipment, and other necessary supplies as provided by law in the case of precinct polling places. In the event the county clerk and recorder determines that the number of early voters' polling places is insufficient due to the number of eligible electors who are voting by early ballot, the county clerk and recorder may establish additional early voters' polling places for the convenience of eligible electors wishing to vote at such polling places. The county clerk and recorder shall give adequate notice to eligible electors of such additional early voters' polling places.

Source: L. 96: Entire article amended with relocations, p. 1758, § 46, effective July 1. **L. 97:** Entire section amended, p. 189, § 15, effective August 6. **L. 2004:** Entire section amended, p. 1359, § 24, effective May 28.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-306 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) This section was formerly numbered as 1-8-112.

Cross references: (1) For establishment of precinct polling places, see §§ 1-5-101 and 1-5-102.

(2) For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-8-205. Procedures and personnel for early voters' polling place. (1) (a) Except as provided in paragraph (b) of this subsection (1), the early voters' polling place shall be open during the time for early voting as provided in section 1-8-202.

(b) Each county clerk and recorder shall provide one or more early voters' polling places during the hours of voting on election day for the purpose of receiving mail-in ballots that are personally delivered by an elector pursuant to section 1-8-113.

(2) For partisan elections, the county clerk and recorder shall appoint at least three receiving judges who meet the affiliation requirements contained in section 1-6-109. Regular employees of the county clerk and recorder may serve as receiving judges as long as they meet the party affiliation requirements of section 1-6-109.

Source: L. 96: Entire article amended with relocations, p. 1758, § 46, effective July 1. **L. 99:** (2) amended, p. 162, § 19, effective August 4. **L. 2007:** (1) amended, p. 1789, § 39, effective June 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-307 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) This section was formerly numbered as 1-8-113.

1-8-206. Watchers at early voters' polling places. Any political party, candidate, or proponents or opponents of a ballot issue entitled to have watchers at polling places shall each have the right to maintain one watcher at the early voters' polling place during the casting and counting of early voters' ballots.

Source: L. 96: Entire article amended with relocations, p. 1758, § 46, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 2001, are similar to those contained in 1-8-206 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-308 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-8-207. Challenges. The right to vote of any person voting by early voters' ballot may be challenged in the same manner and for the same causes as other persons are challenged.

Source: L. 96: Entire article amended with relocations, p. 1758, § 46, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 2001, are similar to those contained in 1-8-116 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-7-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For provisions for mail-in voters, see § 1-8-111 and part 2 of article 9 of this title.

1-8-208. Manner of early voting. (1) An eligible elector who receives an early voters' ballot may cast the ballot in the early voters' polling place, as provided in this part 2. Ballot boxes for early voting shall be locked and sealed each night with a numbered seal under the supervision of the election judges or watchers, and the keys shall remain in the possession of the designated election official until transferred to the supply judge for the mail-in and early voters' counting place for preparation for counting and tabulating pursuant to section 1-8-303. When a seal is broken, the designated election official and a person who shall not be of the same political party as the designated election official shall record the number of the seal and maintain the seal along with an explanation of the reasons for breaking the seal.

(2) Repealed.

(3) Early voting shall not be permitted after the close of the business day on the Friday immediately preceding the election.

Source: L. 96: Entire article amended with relocations, p. 1758, § 46, effective July 1. **L. 97:** (2)(a) amended, p. 477, § 20, effective July 1. **L. 2007:** (1) amended, p. 1790, § 40, effective June 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-310 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) (a) This section was formerly numbered as 1-8-114 (3), (3.5), and (4).

(b) Subsection (2)(b) provided for the repeal of subsection (2), effective January 1, 1999. (See L. 96, p. 1758.)

1-8-209. Securing early voters' ballot. (1) Except as provided in subsection (2) of this section, the voting machines, electronic voting machines, or ballot boxes used for the casting of early ballots shall remain locked and secured with a numbered seal, and the tabulation of the votes cast shall remain unknown until the time prescribed in section 1-8-302 for counting mail-in and early voters' ballots. Alternatively, for any electronic voting equipment, the ballot boxes shall be opened each night, and the voted ballots shall be placed in a transfer case that is locked and secured with a numbered seal. A record shall be maintained consisting of the date, number of ballots, and seal number of each ballot box and transfer case until each ballot box and transfer case is transferred to the supply judge for the mail-in voters' polling place for preparation for counting and tabulating pursuant to section 1-8-303. When a seal is broken, the designated election official and a person who shall not be of the same political party as the designated election official shall record the number of the seal and maintain the seal along with an explanation of the reasons for breaking the seal. During the time the early voters' polling place is not open, the designated election official shall have the custody and keys of any voting machine or electronic voting equipment being used for the casting of early ballots, except for those direct record early voting electronic voting machines being reused at the polling place on election day as provided in subsection (2) of this section. The voting machines or electronic voting machines used for the casting of early ballots shall not be used for the further counting of mail-in ballots, as provided in sections 1-8-305 and 1-8-306.

(2) (a) Direct record electronic voting machines utilized for casting of early ballots may be reused for the casting of votes at the polling place on election day. The designated election official shall place in a locked and secured location all direct record electronic voting machine cartridges that record early votes cast on such voting machines that are to be reused at the polling place on election day. The tabulation of early votes cast and recorded on such cartridges shall remain unknown until the time prescribed in section 1-8-302 for counting mail-in and early voters' ballots.

(b) Before any direct record electronic voting machine may be reused for the casting of votes at the polling place on election day, the designated election official shall store or record all early votes previously tabulated and recorded from such voting machine on an external device such as a diskette, tape, or compact disc.

Source: L. 96: Entire article amended with relocations, p. 1759, § 46, effective July 1. **L. 2000:** Entire section amended, p. 1726, § 1, effective July 1. **L. 2007:** (1) and (2)(a) amended, p. 1790, § 41, effective June 1. **L. 2008:** (1) amended, p. 1878, § 2, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-7-110 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) This section was formerly numbered as § 1-8-116.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 298-309.

C.J.S. See 29 C.J.S., Elections, § 336.

PART 3

COUNTING MAIL-IN AND EARLY VOTERS' BALLOTS

1-8-301. Appointment of election judges for counting mail-in and early ballots. (1) If, in any political subdivision, the designated election official has mailed or delivered mail-in ballots to five hundred or more electors, the designated election official shall appoint, in addition to the receiving judges appointed as provided in section 1-8-205, at least three counting judges, not more than two of whom shall be from any one political party and whose powers and duties shall be the same as provided in section 1-7-305 for counting judges in precinct polling places. For each additional five hundred mail-in ballots so mailed or delivered, the designated election official may appoint additional counting judges as needed.

(2) In all political subdivisions in which electronic or electromechanical voting systems are used, the designated election official, for each five hundred mail-in ballots mailed or delivered, may appoint, in addition to the receiving judges appointed as provided in section 1-8-205, five counting judges, not more than three of whom shall be from any one political party in a partisan election.

(3) In political subdivisions to which this section applies, the designated election official shall make the appointments so that one major political party is represented by a majority of election judges on the mail-in receiving board and the other major political party is represented by a majority of election judges on the mail-in counting board of the county. The designated election official shall appoint those electors certified by the county party chairpersons of the major political parties to the designated election official as mail-in receiving judges and mail-in counting judges. If an elector certified by a major political party is not willing or able to serve, then the major political party that certified the elector may certify a replacement judge to the designated election official. If the major political parties do not certify a sufficient number of mail-in receiving and counting judges to the designated election official, the designated election official may appoint a sufficient number of qualified electors to serve as mail-in receiving and counting judges.

(4) In all political subdivisions to which this section applies, where the designated election official has appointed one or more student election judges pursuant to article 6 of this title, the student election judge shall be appointed to serve as a judge for the purpose of counting mail-in and early ballots pursuant to this section; except that the student election judge need not satisfy any party affiliation required of election judges by this section.

Source: L. 96: Entire article amended with relocations, p. 1760, § 46, effective July 1. **L. 2000:** (4) added, p. 1336, § 5, effective July 1. **L. 2001:** (3) amended, p. 1004, § 13, effective August 8. **L. 2004:** (2) amended, p. 1360, § 25, effective May 28. **L. 2007:** Entire section amended, p. 1791, § 42, effective June 1.

Editor's note: This section was formerly numbered as 1-8-120.

Cross references: For the legislative declaration contained in the 2004 act amending subsection (2), see section 1 of chapter 334, Session Laws of Colorado 2004.

1-8-302. Hours mail-in and early voters' counting place open for receiving and counting ballots.

(1) (Deleted by amendment, L. 99, p. 777, § 61, effective May 20, 1999.)

(2) (a) The election officials at the mail-in and early voters' counting place may receive, cast, and

prepare for tabulation mail-in and early voters' ballots delivered and turned over to them by the designated election official.

(b) Counting of the mail-in ballots may begin fifteen days prior to the election and shall continue until counting is completed.

(c) Counting of the early voters' ballots may begin ten days prior to the election and shall continue until counting is completed.

(d) The election officials in charge of the mail-in and early voters' ballot counting place shall take all precautions necessary to ensure the secrecy of the counting procedures, and no information concerning the count shall be released by the election officials or watchers until after 7 p.m. on election day.

Source: L. 96: Entire article amended with relocations, p. 1760, § 46, effective July 1. **L. 99:** Entire section amended, p. 777, § 61, effective May 20. **L. 2007:** (2) amended, p. 1791, § 43, effective June 1. **L. 2009:** (2) amended, (HB 09-1337), ch. 262, p. 1203, § 5, effective August 5.

Editor's note: (1) This section was formerly numbered as 1-8-117.

(2) Section 7 of chapter 262, Session Laws of Colorado 2009, provides that the amendments to subsection (2) are effective upon the effective date of House Bill 09-1337 or the effective date of House Bill 09-1015, whichever is later, only if House Bill 09-1015 is enacted and becomes law. Both House Bill 09-1015 and House Bill 09-1337 were signed by the governor on May 15, 2009, and became effective August 5, 2009.

(3) Subsection (2) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

Cross references: For hours of voting generally, see § 1-7-101.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 298-304, 331-339.

1-8-303. Delivery of mail-in and early voters' ballots to supply judge. At any time during the ten days prior to and including the election day, the designated election official shall deliver to the judges of the mail-in and early voters' ballot counting place all the mail-in envelopes received up to that time in packages or in ballot boxes that are locked and secured with a numbered seal together with the signed applications for the mail-in ballots, the count and the list of mail-in and early electors, and the record of mail-in ballots as provided for in section 1-8-108 for which a receipt will be given. The designated election official shall continue to deliver any envelopes containing mail-in ballots that may be received thereafter up to and including 7 p.m. on election day. On the sealed packages and boxes of mail-in envelopes shall be printed or written "This package (or box) contains ..... (number) mail-in envelopes." With the envelopes, the designated election official shall deliver to the supply judge written instructions, which shall be followed by the election judges in casting and counting the ballots, and all the lists, records, and supplies needed for tabulating, recording, and certifying the mail-in and early voters' ballots.

Source: L. 96: Entire article amended with relocations, p. 1761, § 46, effective July 1. **L. 99:** Entire section amended, p. 778, § 62, effective May 20. **L. 2007:** Entire section amended, p. 1792, § 44, effective June 1.

Editor's note: This section was formerly numbered as 1-8-121.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 298-304, 331-339.

1-8-304. Preparing to count mail-in ballots - rejections. (1) (a) Before opening any mail-in ballot, one of the receiving judges, in the presence of a majority of the receiving judges, shall inspect the self-affirmation on the return envelope.

(b) The self-affirmation is valid if:

(I) The self-affirmation was completed by the elector or a person acting in the elector's behalf;

(II) The self-affirmation was signed by the elector or, if the elector is unable to sign, marked by the elector with or without assistance and witnessed by another person; and

(III) In an election coordinated by the county clerk and recorder, the signature on the self-affirmation matches the signature on file with the county clerk and recorder or in the statewide voter registration system, or the eligible elector's marks on the application and the self-affirmation were witnessed by other persons.

(c) If the self-affirmation is valid, the receiving judge shall tear open the envelope without defacing the self-affirmation or mutilating the enclosed ballot. One of the election judges shall enter or verify the name of the mail-in voter in the pollbook, and another election judge shall deposit the ballot in the ballot box.

(d) For purposes of subparagraph (III) of paragraph (b) of this subsection (1), the signatures on an eligible elector's self-affirmation and on file with the county clerk and recorder or in the statewide voter registration system shall be compared in the manner prescribed by section 1-8-114.5.

(2) If the self-affirmation on the return envelope is invalid, the election judges shall mark the envelope "rejected" and shall write on the envelope the reason for the rejection. The envelope shall be set aside without being opened, and the ballot shall not be counted.

(3) If it appears to the election judges, by sufficient proof, that a mail-in ballot sent to an elector who died after requesting the ballot contains a forged affidavit, the envelope containing the ballot of the deceased mail-in voter shall not be opened, and the election judges shall make notation of the death and fraudulent signature on the back of the envelope. The ballot shall be forwarded to the district attorney for investigation of a violation of section 1-13-106. If a mail-in envelope contains more than one marked ballot of any one kind, none of the ballots shall be counted, and the election judges shall write the reason for rejection on the back of the ballots.

(4) Repealed.

Source: L. 96: Entire article amended with relocations, p. 1761, § 46, effective July 1. **L. 97:** (1) amended, p. 189, § 16, effective August 6. **L. 2002:** (1) and (2) amended, p. 1635, § 20, effective June 7. **L. 2005:** (3) amended, p. 1414, § 38, effective June 6; (3) amended, p. 1449, § 38, effective June 6. **L. 2006:** (4) repealed, p. 2036, § 26, effective June 6. **L. 2007:** (1)(a), (1)(c), and (3) amended, p. 1792, § 45, effective June 1. **L. 2008:** (1)(a), (1)(b)(III), and (1)(d) amended, p. 360, § 7, effective April 10.

Editor's note: This section was formerly numbered as § 1-8-122.

1-8-305. Counting mail-in and early voters' ballots - partisan elections. (1) Mail-in and early voters' ballots shall be counted after delivery of the ballots as provided in section 1-8-303 and after preparation of the ballots as provided in section 1-8-304.

(2) Mail-in and early voters' ballots shall be counted in one of the following ways:

(a) In counties that use paper ballots, the mail-in and early voters' ballots may be counted in the manner provided in section 1-7-307 for counting paper ballots.

(b) (Deleted by amendment, L. 2004, p. 1360, § 26, effective May 28, 2004.)

(c) Any county may use electronic vote-tabulating equipment for the counting of mail-in ballots in the same manner provided for the counting of precinct ballots in part 6 of article 5 and parts 4 and 5 of article 7 of this title.

(d) Early voters' ballots that are cast directly on electronic or electromechanical vote-tabulating equipment shall be counted in the same manner as provided for the counting of precinct ballots in part 6

of article 5 and parts 4 and 5 of article 7 of this title.

(3) Votes for or against any ballot issue or measure shall be cast in the same manner as provided in section 1-8-202.

Source: L. 96: Entire article amended with relocations, p. 1762, § 46, effective July 1. **L. 2004:** (2)(b) and (2)(d) amended, p. 1360, § 26, effective May 28. **L. 2007:** (1), (2)(a), and (2)(c) amended, p. 1792, § 46, effective June 1. **L. 2008:** (3) amended, p. 1878, § 3, effective August 5.

Editor's note: This section was formerly numbered as § 1-8-123.

Cross references: For the legislative declaration contained in the 2004 act amending subsections (2)(b) and (2)(d), see section 1 of chapter 334, Session Laws of Colorado 2004.

1-8-306. Counting mail-in and early voters' ballots - nonpartisan elections. (1) After delivery of the ballots as provided in section 1-8-303 and after preparation of the ballots as provided in section 1-8-304, the mail-in and early voters' ballots shall be counted in one of the following ways:

(a) In political subdivisions that use paper ballots, the mail-in and early voters' ballots may be counted in the manner provided in section 1-7-307 for counting paper ballots.

(b) Repealed.

(c) Any political subdivision may use electronic vote-tabulating equipment for the counting of mail-in ballots in the same manner provided for the counting of precinct ballots in part 6 of article 5 and parts 4 and 5 of article 7 of this title.

(d) Early voters' ballots which are cast directly on voting machines or on electronic vote-tabulating equipment shall be counted in the same manner as provided for the counting of precinct ballots in part 6 of article 5 and parts 4 and 5 of article 7 of this title.

(2) Votes for or against any measure appearing on the ballot shall be cast in the same manner as provided in section 1-8-202.

Source: L. 96: Entire article amended with relocations, p. 1762, § 46, effective July 1. **L. 2002:** (1)(b) repealed, p. 1642, § 39, effective June 7. **L. 2007:** IP(1), (1)(a), and (1)(c) amended, p. 1793, § 47, effective June 1. **L. 2008:** (2) amended, p. 1878, § 4, effective August 5.

Editor's note: This section was formerly numbered as § 1-8-124.

1-8-307. Casting and counting - electronic system. In political subdivisions using a ballot card electronic voting system, mail-in and early voters' ballots may be cast on paper ballots and counted as provided in section 1-7-307 or may be cast on ballot cards and counted by electronic voting equipment as provided in part 6 of article 5 and parts 4 and 5 of article 7 of this title, or both methods may be used.

Source: L. 96: Entire article amended with relocations, p. 1763, § 46, effective July 1. **L. 2007:** Entire section amended, p. 1793, § 48, effective June 1.

Editor's note: This section was formerly numbered as 1-8-125.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 336-338.

1-8-307.5. Voter verification - mail-in ballot information. Each county clerk and recorder shall maintain the capability for providing electors, upon request, with information on whether the mail-in

ballot cast by the elector was received by the clerk, including, but not limited to, an on-line mail-in ballot tracking system or response by other electronic or telephonic means.

Source: L. 2007: Entire section added, p. 1793, § 49, effective June 1.

1-8-308. Certificate of mail-in and early voters' ballots cast - survey of returns. (1) Upon the completion of the count of mail-in and early voters' ballots, the election judges shall make the certificate and perform all the official acts required by sections 1-7-601 and 1-7-602.

(2) Upon the survey of the returns of the political subdivision by the board of canvassers formed pursuant to section 1-10-101 or 1-10-201, the board shall include in its abstract of votes the votes cast in the early voters' polling place and counted at the mail-in and early voters' counting place in the manner provided for abstracting votes cast and counted at precinct polling places, as provided in article 10 of this title.

(3) (a) Beginning with the 2008 general election, and for all elections thereafter, the returns certified by the judges and the abstract of votes cast certified by the canvass board shall indicate the number of votes cast by early voters' or mail-in ballot in each precinct for each candidate and for and against each ballot issue and ballot question and the number of ballots rejected, except as otherwise provided in paragraph (b) of this subsection (3).

(b) If the total number of votes cast and counted in any precinct by early voters' and mail-in ballot is less than ten, the returns for all such precincts in the political subdivision shall be reported together.

Source: L. 96: Entire article amended with relocations, p. 1763, § 46, effective July 1. **L. 2006:** (3) added, p. 2035, § 21, effective June 6. **L. 2007:** Entire section amended, p. 1794, § 50, effective June 1.

Editor's note: This section was formerly numbered as 1-8-126.

Cross references: For judges' certificate and statement, see § 1-7-601; for surveying of returns, see article 10 of this title.

1-8-309. Return of mail-in and early voters' registration list. The mail-in and early voters' registration list shall be returned to the designated election official with the certificate required to be filed by section 1-8-308.

Source: L. 96: Entire article amended with relocations, p. 1763, § 46, effective July 1. **L. 2007:** Entire section amended, p. 1794, § 51, effective June 1.

Editor's note: This section was formerly numbered as 1-8-127.

1-8-310. Preservation of rejected mail-in and early voters' ballots. All mail-in identification envelopes, ballot stubs, and mail-in and early voters' ballots rejected by the election judges in accordance with the provisions of section 1-8-304 shall be returned to the designated election official. All mail-in ballots received by the designated election official after 7 p.m. on the day of the election, together with the rejected mail-in and early voters' ballots returned by the election judges as provided in this section, shall remain in the sealed identification envelopes and shall be destroyed later as provided in section 1-7-802.

Source: L. 96: Entire article amended with relocations, p. 1763, § 46, effective July 1. **L. 2007:** Entire section amended, p. 1794, § 52, effective June 1.

Editor's note: This section was formerly numbered as 1-8-128.

Cross references: For challenges of mail ballots, see § 1-9-207.

1-8-311. Maintenance of records of mail-in and early voting - transmittal of such lists to secretary of state. The designated election official shall maintain a record identifying the name and voting address of each elector who casts a ballot by mail-in or early voting at any election.

Source: L. 2000: Entire section added, p. 1758, § 1, effective January 1, 2001. **L. 2007:** Entire section amended, p. 1794, § 53, effective June 1.

ARTICLE 8.5

Provisional Ballots

1-8.5-101. Provisional ballot - entitlement to vote.
1-8.5-101.5. Electronic voting device - use for casting provisional ballot.
1-8.5-102. Form of provisional ballot.
1-8.5-103. Provisional ballot affidavit.
1-8.5-104. Voting procedure - provisional ballot.
1-8.5-105. Verification of provisional ballot information - counting procedure.
1-8.5-106. Counting of provisional ballots.
1-8.5-107. Electors who move before close of registration - effect of provisional ballot.
1-8.5-108. Electors who move after close of registration - effect of provisional ballot.
1-8.5-109. Electors who vote outside precinct of residence - effect of provisional ballot.
1-8.5-110. Handling of provisional ballots - reporting of results.
1-8.5-111. Information system.
1-8.5-112. Rules.

1-8.5-101. Provisional ballot - entitlement to vote. (1) At any 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 cast a provisional ballot in accordance with this article.

(2) An elector who desires to vote but does not show identification in accordance with section 1-7-110 (2) may cast a provisional ballot.

(3) Notwithstanding the provisions of subsection (5) of this section, if an elector applies for and has been issued a mail-in ballot but spoils it or otherwise does not cast it, the elector may cast a provisional ballot at the polling place or vote center if the elector affirms under oath that the elector has not and will not cast the mail-in ballot. The provisional ballot shall be counted if the designated election official verifies that the elector is registered to vote and did not cast the mail-in ballot and if the elector's eligibility to vote in the county is verified pursuant to section 1-8.5-105.

(4) No elector shall be denied the right to cast a provisional ballot in any election held pursuant to this title.

(5) Any unaffiliated elector at a primary election may cast a regular party ballot upon openly declaring to the election judge the name of the political party with which the elector wishes to affiliate pursuant to section 1-2-218.5 or 1-7-201.

Source: L. 2005: Entire article added, p. 1415, § 39, effective June 6; entire article added, p. 1450, § 39, effective June 6. **L. 2007:** (3) amended, p. 1794, § 54, effective June 1. **L. 2009:** (3) amended and (5) added, (HB 09-1216), ch. 165, p. 730, § 7, effective August 5.

Editor's note: Subsection (3) was amended and subsection (5) was added in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-8.5-101.5. Electronic voting device - use for casting provisional ballot. (1) An electronic voting device may be used to cast a provisional ballot if the device is certified by the secretary of state for that purpose.

(2) If an electronic voting device that is certified for use with provisional ballots is used in an election, the designated election official shall determine whether electors casting provisional ballots shall use the electronic voting device or paper provisional ballots.

Source: L. 2006: Entire section added, p. 2033, § 15, effective June 6.

1-8.5-102. Form of provisional ballot. (1) A provisional ballot shall contain text clearly identifying it as a provisional ballot.

(2) An elector casting a provisional ballot shall complete an affidavit and receive information and instructions on the voting and handling of provisional ballots. The secretary of state shall prescribe by rules promulgated in accordance with article 4 of title 24, C.R.S., the language of the affidavit, information, and instructions.

(3) Each polling place using paper provisional ballots shall have on hand a sufficient number of provisional ballots in all ballot styles applicable to that polling place and a sufficient number of provisional ballot envelopes.

Source: L. 2005: Entire article added, p. 1415, § 39, effective June 6; entire article added, p. 1450, § 39, effective June 6. **L. 2006:** (2) and (3) amended, p. 2033, § 16, effective June 6.

1-8.5-103. Provisional ballot affidavit. (1) The provisional ballot affidavit shall contain language prescribed by the secretary of state by rule and shall include an attestation, a notice of perjury, a warning of the penalty for falsifying the affidavit, and information sufficient to verify the elector's eligibility to vote and to register the elector to vote or transfer the elector's registration.

(2) (a) The provisional ballot affidavit shall constitute a voter registration application for the voter for future elections. Any previous voter registration for the voter shall be cancelled pursuant to section 1-2-603 (1).

(b) This subsection (2) shall not apply to an elector who casts a provisional ballot pursuant to section 1-8.5-101 (2) or (3).

Source: L. 2005: Entire article added, p. 1415, § 39, effective June 6; entire article added, p. 1450, § 39, effective June 6.

1-8.5-104. Voting procedure - provisional ballot. (1) An elector casting a provisional ballot shall complete and sign the provisional ballot affidavit and cast the ballot.

(2) The fact that an elector casts a provisional ballot shall be indicated on the signature card or pollbook next to the elector's name.

(3) The election judge shall examine the provisional ballot affidavit. If the election judge notices that the elector did not sign the affidavit, the election judge shall inform the elector that the provisional ballot will not be counted if the affidavit is not signed.

(4) If an elector who is casting a provisional ballot does not show identification as required by section 1-7-110 (2), the election official shall indicate on a space provided on the provisional ballot envelope that the elector did not show identification.

(5) If paper provisional ballots and envelopes are used in an election, the provisional ballot envelope containing the marked provisional ballot shall be deposited in a ballot container. All paper provisional ballots cast shall remain sealed in their envelopes for return to the county clerk and recorder or designated election official.

(6) After an elector casts a provisional ballot, the election official shall give the elector a written notice that an elector who casts a provisional ballot has the right to know whether the vote was counted and the reason if the provisional ballot was not counted. The notice shall specify the toll-free telephone number, internet web site, or other free access system established by the secretary of state or the

designated election official by means of which the elector may receive this information about the elector's provisional ballot.

Source: L. 2005: Entire article added, p. 1416, § 39, effective June 6; entire article added, p. 1451, § 39, effective June 6. **L. 2006:** (1) and (5) amended, p. 2033, § 17, effective June 6.

1-8.5-105. Verification of provisional ballot information - counting procedure. (1) In accordance with this section and using the procedures and databases prescribed by the secretary of state by rules promulgated in accordance with article 4 of title 24, C.R.S., the designated election official shall attempt to verify that an elector who cast a provisional ballot is eligible to vote. The designated election official or designee shall complete the preliminary verification of the elector's eligibility to vote before the ballot is counted in accordance with subsection (4) of this section.

(2) If the elector signs but does not fill in all the information requested on the provisional ballot affidavit, the ballot shall be counted only if the designated election official is able to determine that the elector was eligible to vote in the precinct and county.

(3) (a) If a provisional ballot affidavit is not signed, the designated election official shall send a letter to the elector within three days after the signature deficiency has been confirmed, but in no event later than two days after the election, informing the elector that the affidavit was not signed and that the provisional ballot cannot be counted unless the affidavit is signed. The letter shall state that the elector may come to the office of the county clerk and recorder to sign the provisional ballot affidavit no later than eight days after the election.

(b) If the elector does not sign the provisional ballot affidavit after receiving notice pursuant to paragraph (a) of this subsection (3), the provisional ballot shall not be counted.

(c) The designated election official shall retain a copy of the letter sent pursuant to paragraph (a) of this subsection (3).

(4) The designated election official shall determine the time for the verification and counting of provisional ballots to begin in accordance with rules promulgated by the secretary of state. A board appointed by the designated election official shall count all verified provisional ballots in accordance with the procedure prescribed by the designated election official in accordance with this title and the election rules of the secretary of state.

(5) The designated election official shall complete the verification and counting of all provisional ballots within ten days after a primary election and within fourteen days after a general, odd-year, or coordinated election. The designated election official shall count all mail-in ballots cast in an election before counting any provisional ballots cast by electors who requested mail-in ballots for the election.

Source: L. 2005: Entire article added, p. 1416, § 39, effective June 6; entire article added, p. 1451, § 39, effective June 6. **L. 2006:** (1) and (4) amended, p. 2034, § 18, effective June 6. **L. 2007:** (5) amended, p. 1795, § 55, effective June 1. **L. 2009:** (3)(a) amended, (HB 09-1337), ch. 262, p. 1203, § 6, effective August 5.

Editor's note: (1) Section 7 of chapter 262, Session Laws of Colorado 2009, provides that the amendments to subsection (3)(a) are effective upon the effective date of House Bill 09-1337 or the effective date of House Bill 09-1015, whichever is later, only if House Bill 09-1015 is enacted and becomes law. House Bill 09-1015 and House Bill 09-1337 were signed by the governor on May 15, 2009, and became effective August 5, 2009.

(2) Subsection (3)(a) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-8.5-106. Counting of provisional ballots. If the designated election official verifies that an elector who cast a provisional ballot in accordance with this article is eligible to vote, the provisional ballot shall be counted. If the elector's registration cannot be verified, the ballot shall not be counted.

Source: L. 2005: Entire article added, p. 1417, § 39, effective June 6; entire article added, p. 1452, § 39, effective June 6.

1-8.5-107. Electors who move before close of registration - effect of provisional ballot. (1) A person who moves to Colorado from another state no later than the thirtieth day before an election but fails to register to vote before the close of registration may cast a provisional ballot, but the ballot shall not be counted. The provisional ballot affidavit shall serve as the person's voter registration application for future elections.

(2) (a) A registered elector who moves from the county in which the elector is registered to another county in the state no less than thirty days before an election but fails to register to vote in the new county of residence before the close of registration may complete an emergency registration form at the office of the county clerk and recorder pursuant to section 1-2-217.5 or may cast a provisional ballot at a polling place, vote center, or early voter's polling place.

(b) If the elector completes an emergency registration form on an election day and the county clerk and recorder is unable to verify the elector's qualification to vote, the elector may cast a provisional ballot.

(c) If the elector casts a provisional ballot, the ballot shall be counted if the elector's eligibility to vote in the county is verified pursuant to section 1-8.5-105. The provisional ballot affidavit shall serve as the elector's voter registration application for future elections.

(3) If a registered elector moves from the precinct in which the elector is registered to another precinct within the same county before the close of registration but fails to register at the new address or complete a change of address form pursuant to section 1-2-216 (4) (a), the elector may cast a provisional ballot, which shall be counted if the county clerk and recorder or designated election official verifies that the elector is eligible to vote in the elector's new precinct of residence.

Source: L. 2005: Entire article added, p. 1417, § 39, effective June 6; entire article added, p. 1452, § 39, effective June 6.

1-8.5-108. Electors who move after close of registration - effect of provisional ballot. (1) A person who moves to Colorado from another state in the twenty-nine days before an election may cast a provisional ballot, but the ballot shall not be counted. The provisional ballot affidavit shall serve as the person's voter registration application for future elections.

(2) If an elector who moves from the county in which the elector is registered to another county during the twenty-nine days before an election does not vote in the county where registered pursuant to section 1-2-217 (1) and instead casts a provisional ballot in the new county of residence, the elector's votes for federal and statewide offices for which the elector is eligible to vote and statewide ballot issues and ballot questions shall be counted. The provisional ballot affidavit shall serve as the elector's voter registration application for future elections.

(3) If an elector who moves from the precinct in which the elector is registered to another precinct in the same county during the twenty-nine days before an election does not vote in the precinct where registered pursuant to section 1-2-217 (2) and instead casts a provisional ballot in the new precinct of residence, the elector's votes for federal and statewide offices for which the elector is eligible to vote and statewide ballot issues and ballot questions shall be counted. The provisional ballot affidavit shall serve as the elector's voter registration application for future elections.

Source: L. 2005: Entire article added, p. 1418, § 39, effective June 6; entire article added, p. 1453, § 39, effective June 6.
L. 2006: (2) and (3) amended, p. 2034, § 19, effective June 6.

1-8.5-109. Electors who vote outside precinct of residence - effect of provisional ballot. If an elector casts a provisional ballot at a polling place in a precinct other than the precinct in which the elector is registered but within the elector's county of residence, the elector's votes for federal offices for

which the elector is eligible to vote and the elector's votes for statewide offices and statewide ballot issues and ballot questions shall be counted. Except for ballots cast in accordance with section 1-8.5-107 (2) or 1-8.5-108 (2) by electors who moved from one county to another county, a provisional ballot cast by an elector in a county other than the elector's county of residence shall not be counted.

Source: L. 2005: Entire article added, p. 1418, § 39, effective June 6; entire article added, p. 1453, § 39, effective June 6. **L. 2006:** Entire section amended, p. 2035, § 20, effective June 6; entire section amended, p. 280, § 1, effective August 7.

Editor's note: Amendments to this section by House Bill 06-1198 and Senate Bill 06-170 were harmonized.

1-8.5-110. Handling of provisional ballots - reporting of results. (1) Provisional ballots shall be kept separate from all other ballots and counted separately.

(2) If twenty-five or more provisional ballots are cast and counted in a county, the designated election official shall report the results of voting by provisional ballot as a separate total. If fewer than twenty-five provisional ballots are cast and counted, the results of voting by provisional ballot shall be included in the results of voting by mail-in ballot.

(3) Votes cast by provisional ballot shall not be included in any unofficial results reported and shall be reported only as part of the official canvass.

(4) The designated election official shall keep a log of each provisional ballot cast, each provisional ballot counted, and each provisional ballot rejected. The code for the acceptance or rejection of the provisional ballot as prescribed by the secretary of state shall be marked on the log. The designated election official shall keep all rejected provisional ballots in their unopened envelopes for no less than twenty-five months.

Source: L. 2005: Entire article added, p. 1418, § 39, effective June 6; entire article added, p. 1453, § 39, effective June 6. **L. 2007:** (2) amended, p. 1795, § 56, effective June 1.

1-8.5-111. Information system. For any election held on or after January 1, 2004, in which a provisional ballot is cast, the county clerk and recorder or designated election official shall establish a system allowing an elector 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 web site, or other suitable medium, in accordance with the federal "Help America Vote Act of 2002", Pub.L. 107-252. Information about a provisional ballot shall be disclosed only to the voter who cast the ballot.

Source: L. 2005: Entire article added, p. 1419, § 39, effective June 6; entire article added, p. 1454, § 39, effective June 6.

1-8.5-112. Rules. The secretary of state shall promulgate all appropriate rules in accordance with article 4 of title 24, C.R.S., for the purpose of ensuring the uniform application of this article.

Source: L. 2005: Entire article added, p. 1419, § 39, effective June 6; entire article added, p. 1454, § 39, effective June 6.

ARTICLE 9

Challenges

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980. This article was numbered as article 16 of chapter 49, C.R.S. 1963. For additional historical information concerning the repeal and reenactment of articles 1 to 13 of this title in 1980, see the editor's note immediately following the title heading for this title.

PART 1
CHALLENGES TO REGISTRATION

1-9-101. Challenge of illegal or fraudulent registration.

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CHALLENGES TO VOTING

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PART 3
PROVISIONAL BALLOTS

1-9-301 to
1-9-306. (Repealed)

PART 1

CHALLENGES TO REGISTRATION

1-9-101. Challenge of illegal or fraudulent registration. (1) (a) Any registered elector may, by written challenge, protest against the registration of any person whose name appears in a county registration record. The written challenge shall state the precinct number, the name of the challenged registrant, the basis for such challenge, the facts supporting the challenge, and some documentary evidence to support the basis for the challenge, and shall bear the signature and address of the challenger. The written challenge and supporting evidence shall be filed with the county clerk and recorder no later than sixty days before any election. The county clerk and recorder shall notify the registrant of the challenge and shall set a time and place for a hearing to be held not later than thirty days after the filing of the challenge, at which hearing the challenged registrant shall have the opportunity to appear. The person challenging the registration shall appear and shall bear the burden of proof of the allegations in the challenge. The county clerk and recorder shall conduct the hearing and receive testimony and evidence, shall render a decision in accordance with paragraph (b) of this subsection (1) no later than five days thereafter, and shall notify both parties of the decision.

(b) In rendering a decision, the county clerk and recorder shall have the following options:

(I) If the county clerk and recorder finds sufficient evidence to support the allegations in the challenge, the registered elector's name shall be canceled from the registration book;

(II) If the county clerk and recorder finds some evidence but not sufficient evidence to support the allegations in the challenge, the registration record of the elector may be marked with the word

"Inactive", and the procedures of section 1-2-605 in regard to registered electors who fail to vote in a general election shall apply; or

(III) If the county clerk and recorder finds no evidence to support the allegations in the challenge, the challenge to cancel the registered elector's name from the registration book shall be denied.

(2) All appeals from the decision of the county clerk and recorder shall be to the district court within three days after the decision is issued. The appellant shall file in the district court a verified petition setting forth the facts presented at the hearing, the decision of the county clerk and recorder, and the basis for the appeal. Within twenty-four hours, the clerk of the district court shall mail to the other party a notice of the appeal and the time set for hearing, which shall be not less than three days nor more than five days after the date of filing.

(3) The court shall hear the testimony and other evidence and investigate summarily and, within forty-eight hours after the close of the evidence, determine whether or not the charges are sustained. Only competent legal evidence shall be received at the hearing or considered by the court, and no name registered in accordance with law shall be canceled from the registration book unless it is proven that the challenged person does not reside at the address provided by the person at the time of registration. No presumption shall be made against any person whose registration is challenged merely because of the failure of that person to attend the hearing. The court shall have the power to subpoena any person as a witness at the hearing and make any necessary investigation to ascertain the truth of any of the charges in the petition if the method of the investigation does not cause unnecessary delay or interfere with the final disposition of the cause within the time provided for in this section. The hearing on any petition shall be summary and final and shall not be subject to delay. At the close of the hearing, the court shall announce the names in the petition as to which the charges have been sustained and shall direct the clerk of the court to certify forthwith to the county clerk and recorder the lists of names of those persons, with their addresses, arranged alphabetically and according to precinct. The county clerk and recorder, upon receipt of the list from the court, shall forthwith cancel those names from the registration book for the proper precinct with the notation that the names were canceled pursuant to court order, giving the date of the order. The decision of the court is final, and no appeal shall lie to any other court; except that the supreme court, in the exercise of its discretion, may review any such proceedings in a summary way.

Source: L. 80: Entire article R&RE, p. 380, § 1, effective January 1, 1981. **L. 87:** (1) and (3) amended, p. 295, § 29, effective June 26. **L. 89:** (3) amended, p. 309, § 20, effective May 9. **L. 91:** (1)(b)(II) amended, p. 637, § 76, effective May 1. **L. 92:** Entire article amended, p. 771, § 12, effective January 1, 1993. **L. 93:** (1)(b)(II) amended, p. 1769, § 16, effective June 6. **L. 97:** (1)(b)(II) amended, p. 477, § 21, effective July 1. **L. 99:** (1)(a) amended, p. 778, § 63, effective May 20. **L. 2000:** (1)(a) amended, p. 301, § 1, effective August 2.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-12-101 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 308.

C.J.S. See 29 C.J.S., Elections, § 47.

PART 2

CHALLENGES TO VOTING

1-9-201. Right to vote may be challenged. (1) (a) A person's right to vote at a polling place or in an election may be challenged.

(b) If a person whose right to vote is challenged refuses to answer the questions asked or sign the challenge form in accordance with section 1-9-203 or take the oath pursuant to section 1-9-204, the

person shall be offered a provisional ballot. If the person casts a provisional ballot, the election judge shall attach the challenge form to the provisional ballot envelope and indicate "Challenge" on the provisional ballot envelope.

(2) An election judge shall challenge any person intending to vote who the judge believes is not an eligible elector. In addition, challenges may be made by watchers or any eligible elector of the precinct.

(3) A challenge at a polling place shall be made in the presence of the person whose right to vote is challenged.

Source: L. 80: Entire article R&RE, p. 381, § 1, effective January 1, 1981. **L. 92:** Entire article amended, p. 772, § 12, effective January 1, 1993. **L. 2005:** Entire section amended, p. 1419, § 40, effective June 6; entire section amended, p. 1454, § 40, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-8-102 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 308. **C.J.S.** See 29 C.J.S., Elections, § 329.

1-9-202. Challenge to be made by written oath. Each challenge shall be made by written oath, shall set forth the name of the person challenged and the specific factual basis for the challenge of the person's right to vote, and shall be signed by the challenger under penalty of perjury in the second degree, as specified in section 1-13-104. The election judges shall forthwith deliver all challenges to the designated election official. No oral challenge shall be permitted.

Source: L. 80: Entire article R&RE, p. 381, § 1, effective January 1, 1981. **L. 92:** Entire article amended, p. 773, § 12, effective January 1, 1993. **L. 2005:** Entire section amended, p. 1420, § 41, effective June 6; entire section amended, p. 1455, § 41, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-8-103 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For oaths and affirmations generally, see article 12 of title 24.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 329.

1-9-203. Challenge questions asked person intending to vote.

(1) (Deleted by amendment, L. 2005, pp. 1420, 1455, §§ 42, 42, effective June 6, 2005.)

(2) If the person is challenged as not eligible because the person is not a citizen, an election judge shall ask the following question:

(a) Are you a citizen of the United States?

(b) (Deleted by amendment, L. 93, p. 1432, § 109, effective July 1, 1993.)

(3) If the person is challenged as not eligible because the person has not resided in this state and precinct for thirty days immediately preceding the election, an election judge shall ask the following questions:

(a) Have you resided in this state and precinct for the thirty days immediately preceding this election?

(b) Have you been absent from this state during the thirty days immediately preceding this election, and during that time have you maintained a home or domicile elsewhere?

(c) If so, when you left, was it for a temporary purpose with the intent of returning, or did you intend to remain away?

(d) Did you, while absent, look upon and regard this state as your home?

(e) Did you, while absent, vote in any other state or any territory of the United States?

(4) If the person is challenged as not eligible because the person is not eighteen years of age or older, an election judge shall ask the following question: To the best of your knowledge and belief, are you eighteen years of age or older?

(5) If the person is challenged as not eligible because the person is not a property owner or the spouse of a property owner, an election judge shall ask the following questions:

(a) Are you a property owner or the spouse of a property owner in this political subdivision and therefore eligible to vote?

(b) What is the address or, for special district elections where an address is not available, the location of the property which entitles you to vote in this election?

(6) An election judge shall put all other questions to the person challenged as may be necessary to test the person's qualifications as an eligible elector at the election.

(7) If the person challenged answers satisfactorily the questions asked in accordance with this section and signs the oath pursuant to section 1-9-204, the election judge shall offer the person challenged a regular ballot, and the challenger may withdraw the challenge. The election judge shall indicate in the proper place on the challenge form whether the challenge was withdrawn or whether the challenged elector refused to answer the questions and left the polling place without voting a provisional ballot.

Source: L. 80: Entire article R&RE, p. 382, § 1, effective January 1, 1981. **L. 91:** (3) amended, p. 637, § 77, effective May 1. **L. 92:** Entire article amended, p. 773, § 12, effective January 1, 1993. **L. 93:** (2) and (5)(b) amended, p. 1432, § 109, effective July 1. **L. 94:** IP(3), (3)(a), and (3)(b) amended, p. 1771, § 32, effective January 1, 1995. **L. 95:** (3)(b) amended, p. 843, § 66, effective July 1. **L. 2005:** (1) and (7) amended, p. 1420, § 42, effective June 6; (1) and (7) amended, p. 1455, § 42, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-8-104 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For oaths and affirmations generally, see article 12 of title 24.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 329.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

A voter can be challenged only for failure to meet the qualification of elector requirements. Sheldon v. Moffat Tunnel Comm'n, 335 F. Supp. 251 (D. Colo. 1971).

Thus a voter cannot be disenfranchised because he has not paid a property or other ad valorem tax on real estate. Sheldon v. Moffat Tunnel Comm'n, 335 F. Supp. 251 (D. Colo. 1971).

There is no method for verification or challenge of social security number submitted by a registrant. Meyer v. Putnam, 186 Colo. 132, 526 P.2d 139 (1974).

1-9-204. Oath of challenged elector. (1) An election judge shall tender an oath substantially in the following form: "I do solemnly swear or affirm that I have fully and truthfully answered all questions that have been put to me concerning my place of residence and my qualifications as an eligible elector at this election. I further swear or affirm that I am a citizen of the United States of the age of eighteen years or older; that I have been a resident of this state and precinct for thirty days immediately preceding this election and have not maintained a home or domicile elsewhere; that I am a registered elector in this precinct; that I am eligible to vote at this election; and that I have not previously voted at this election."

(2) After the person has taken the oath or affirmation, a regular ballot shall be given to the person and an election judge shall write "sworn" on the pollbooks at the end of the person's name.

Source: L. 80: Entire article R&RE, p. 383, § 1, effective January 1, 1981. **L. 91:** (1) amended, p. 638, § 78, effective May 1. **L. 92:** Entire article amended, p. 774, § 12, effective January 1, 1993. **L. 94:** (1) amended, p. 1771, § 33, effective January 1, 1995. **L. 96:** (1) amended, p. 1763, § 47, effective July 1. **L. 99:** (1) amended, p. 778, § 64, effective May 20. **L. 2005:** Entire section amended, p. 1420, § 43, effective June 6; entire section amended, p. 1455, § 43, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-8-105 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For oaths and affirmations generally, see article 12 of title 24.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 308.

C.J.S. See 29 C.J.S., Elections, § 329.

1-9-205. Refusal to answer questions or take oath. (Repealed)

Source: L. 80: Entire article R&RE, p. 383, § 1, effective January 1, 1981. **L. 92:** Entire article amended, p. 774, § 12, effective January 1, 1993. **L. 2005:** Entire section repealed, p. 1425, § 56, effective June 6; entire section repealed, p. 1461, § 56, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are the same as contained in 1-8-106 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-9-206. Challenges of absentee ballots. (Repealed)

Source: L. 80: Entire article R&RE, p. 383, § 1, effective January 1, 1981. **L. 92:** Entire article amended, p. 775, § 12, effective January 1, 1993. **L. 93:** Entire section amended, p. 1432, § 110, effective July 1. **L. 2002:** Entire section amended, p. 1636, § 21, effective June 7. **L. 2005:** Entire section amended, p. 1420, § 44, effective June 6; entire section amended, p. 1456, § 44, effective June 6. **L. 2007:** Entire section repealed, p. 1795, § 57, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-7-114 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 338, 339.

C.J.S. See 29 C.J.S., Elections, §§ 329, 330.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

A controversy arising from the canvass of absentee ballots alleged to be illegal should be settled by contest proceedings. People ex rel. Griffith v. Bundy, 107 Colo. 102, 109 P.2d 261 (1940).

And alleged error in including invalid absentee ballots or excluding valid ones cannot be reviewed by mandamus. People ex rel. Griffith v. Bundy, 107 Colo. 102, 109 P.2d 261 (1940).

1-9-207. Challenges of ballots cast by mail. The ballot of any elector that has been cast by mail may be challenged using a challenge form signed by the challenger under penalty of perjury setting forth the name of the person challenged and the basis for the challenge. Challenged ballots, except those rejected for an incomplete or incorrect affidavit by an elector on the returned mail ballot envelope, forgery of a deceased person's signature on a mail ballot affidavit, or submission of multiple ballots, shall be counted. The election judges shall forthwith deliver all challenges, together with the affidavits of the persons challenged, to the county clerk and recorder or designated election official, as applicable.

Source: L. 94: Entire section added, p. 1169, § 46, effective July 1. **L. 2002:** Entire section amended, p. 1636, § 22, effective June 7. **L. 2005:** Entire section amended, p. 1421, § 45, effective June 6; entire section amended, p. 1456, § 45, effective June 6. **L. 2007:** Entire section amended, p. 1795, § 58, effective June 1.

1-9-208. Challenges of provisional ballots. The ballot of any provisional voter may be challenged using a challenge form signed by the challenger under penalty of perjury setting forth the name of the person challenged and the basis for the challenge. Challenged provisional ballots, except those rejected for an incomplete, incorrect, or unverifiable provisional ballot affidavit, forgery of a deceased person's signature on a mail-in ballot affidavit, or submission of multiple ballots, shall be counted if the other requirements for counting provisional ballots are satisfied. The election judges shall deliver all challenges, together with the affidavits of the persons challenged, to the county clerk and recorder or the designated election official.

Source: L. 2002: Entire section added, p. 1636, § 23, effective June 7. **L. 2005:** Entire section amended, p. 1421, § 46, effective June 6; entire section amended, p. 1456, § 46, effective June 6. **L. 2007:** Entire section amended, p. 1796, § 59, effective June 1.

1-9-209. Challenges delivered to district attorney. The county clerk and recorder or designated election official shall forthwith deliver a challenge that is not withdrawn, along with the affidavit of the elector on the mail-in, provisional ballot, or mail ballot return envelope, to the district attorney for investigation and action. When practicable, the district attorney shall complete the investigation within ten days after receiving the challenge.

Source: L. 2005: Entire section added, p. 1421, § 47, effective June 6; entire section added, p. 1457, § 47, effective June 6. **L. 2007:** Entire section amended, p. 1796, § 60, effective June 1.

1-9-210. Copy of challenge delivered to elector. When a challenge is made to a person who cast a mail-in ballot, mail ballot, or provisional ballot and the person was not present at the time of the challenge, the county clerk and recorder or designated election official shall notify and mail a copy of the challenge to the person challenged in accordance with the rules of the secretary of state.

Source: L. 2005: Entire section added, p. 1422, § 47, effective June 6; entire section added, p. 1457, § 47, effective June 6. **L. 2007:** Entire section amended, p. 1796, § 61, effective June 1.

PART 3

PROVISIONAL BALLOTS

1-9-301 to 1-9-306. (Repealed)

Source: L. 2005: Entire part repealed, p. 1425, § 56, effective June 6; entire part repealed, p. 1461, § 56, effective June 6.

Editor's note: This part 3 was added in 2002. For amendments to this part 3 prior to its repeal in 2005, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

ARTICLE 10

Survey of Returns

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this article was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of this article for 1980 and 1992, see the comparative tables located in the back of the index.

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1-10-101.5. Duties of the canvass board.
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PART 2
SURVEY OF RETURNS - NONPARTISAN ELECTIONS

1-10-201. Canvass of nonpartisan elections.
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PART 3
RECOUNTS

1-10-301 to
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PART 1

SURVEY OF RETURNS - PARTISAN ELECTIONS

1-10-101. Canvass board for partisan elections - appointment, fees, oaths. (1) (a) At least fifteen days before any primary, general, congressional vacancy, or special legislative election, the county chairpersons of each of the two major political parties in each county shall certify to the county clerk and recorder, in the manner prescribed by such clerk and recorder, the appointment of one or more registered electors to serve as a member of the county canvass board. The appointees, together with the county clerk and recorder, constitute the county canvass board. Each minor political party whose candidate is on the ballot and each unaffiliated candidate whose name is on the ballot in such election may designate, in the manner prescribed by such clerk and recorder, one watcher to observe the work of the county canvass board.

(b) If for any reason an appointee to the county canvass board refuses, fails, or is unable to serve, the appointee shall notify the county clerk and recorder. The county clerk and recorder, by the speediest and most convenient method, shall notify the county chairperson of the political party to which the appointee belongs. The county chairperson shall forthwith appoint another person to the county canvass board. If the political party has no county chairperson or vice-chairperson or if a vacancy in the appointment occurs on the date of the meeting of the county canvass board so that there can be no specific compliance

with the provisions of this section, the county clerk and recorder shall make the appointment or shall fill the vacancy as nearly in compliance with the intention of this section as possible.

(2) Each canvass board appointee shall receive a minimum fee of fifteen dollars for each day of service. The fee shall be set by the county clerk and recorder and shall be paid by the county for which the service is performed.

(3) Prior to assuming their duties, the members of the canvass board shall swear or affirm the following: "I, ..., do solemnly swear (or affirm) that I am a registered elector in precinct ...., in the county of .....; that I am a registered member of the ..... party as shown on the registration books of the county clerk and recorder; and that I will faithfully perform the duties required of a member of the county canvass board."

Source: L. 92: Entire article R&RE, p. 775, § 13, effective January 1, 1993. **L. 99:** (1)(a) amended, p. 1390, § 11, effective June 4; entire section amended, p. 478, § 2, effective July 1. **L. 2002:** (1)(a) amended, p. 1638, § 25, effective June 7.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Amendments to subsection (1)(a) by House Bill 99-1160 and House Bill 99-1097 were harmonized.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 365.

C.J.S. See 29 C.J.S., Elections, §§ 375-379.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Canvassing in charter convention elections for home rule cities. Pursuant to art. XX, Colo. Const., governing home rule cities and providing for the election of members of a charter convention, it is the duty of the clerk of said city and county, to canvass the returns of an election for members of such charter convention and to issue certificates of election to the members elected. McMurray v. Wright, 19 Colo. App. 17, 73 P. 257 (1903).

1-10-101.5. Duties of the canvass board. (1) The canvass board shall:

(a) Reconcile the ballots cast in an election to confirm that the number of ballots counted in that election does not exceed the number of ballots cast in that election;

(b) Reconcile the ballots cast in each precinct in the county to confirm that the number of ballots cast does not exceed the number of registered electors in the precinct; and

(c) Certify the abstract of votes cast in any election and transmit the certification to the secretary of state. A majority of canvass board members' signatures shall be sufficient to certify the abstract of votes cast in any election. When unable to certify the abstract of votes by the majority of the board for any reason, the canvass board shall transmit the noncertified abstract of votes to the secretary of state along with a written report detailing the reason for noncertification.

Source: L. 99: Entire section added, p. 478, § 3, effective July 1. **L. 2009:** Entire section amended, (HB 09-1336), ch. 261, p. 1199, § 9, effective August 5.

Editor's note: This section was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-10-102. Official abstract of votes cast - certification. (1) No later than the thirteenth day after a primary election and no later than the seventeenth day after any other election coordinated by the county clerk and recorder, the canvass board shall complete its duties.

(2) (Deleted by amendment, L. 99, p. 479, § 4, effective July 1, 1999.)

(3) If a recount is held and the vote result changes, the county canvass board shall prepare and

certify an amended official abstract of votes cast. If the vote result does not change after the recount, the county canvass board shall include a statement to that effect in the official abstract of votes cast.

Source: L. 92: Entire article R&RE, p. 776, § 13, effective January 1, 1993. **L. 94:** (1) and (3) amended, p. 1169, § 47, effective July 1. **L. 99:** Entire section amended, p. 479, § 4, effective July 1. **L. 2002:** (1) amended, p. 1638, § 26, effective June 7. **L. 2005:** (1) amended, p. 1422, § 48, effective June 6; (1) amended, p. 1457, § 48, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 362-368.

1-10-103. Transmitting returns to the secretary of state - total of results. (1) Immediately after the official abstract of votes cast has been certified and no later than the thirteenth day after a primary election and the eighteenth day after a general election, the county clerk and recorder shall transmit to the secretary of state the portion of the abstract of votes cast that contains the statewide abstract of votes cast.

(2) No later than the twentieth day after a primary election and no later than the twenty-fourth day after any other election, the secretary of state shall compile and total the returns received from all counties for all candidates, ballot issues, and ballot questions certified by the secretary of state, determine if a recount of any office, ballot issue, or ballot question is necessary, and order the appropriate recounts, if any.

(3) Each county clerk and recorder shall transmit a list of the names of those candidates elected to county offices to the secretary of state no later than the sixteenth day after the election.

Source: L. 92: Entire article R&RE, p. 777, § 13, effective January 1, 1993. **L. 94:** (1) amended, p. 1169, § 48, effective July 1. **L. 99:** Entire section amended, p. 479, § 5, effective July 1. **L. 2002:** Entire section amended, p. 1638, § 27, effective June 7. **L. 2005:** (1) and (2) amended, p. 1422, § 49, effective June 6; (1) and (2) amended, p. 1457, § 49, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-104 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 369, 370.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The duty of canvassing is imposed on the state board of canvassers [now secretary of state] as an executive entity, not individually. Orman v. People ex rel. Cooper, 18 Colo. App. 302, 71 P. 430 (1903).

And is political and governmental in character. Orman v. People ex rel. Cooper, 18 Colo. App. 302, 71 P. 430 (1903).

Courts have no jurisdiction to control the state board of canvassers' [now secretary of state's] canvassing returns by mandamus. Greenwood Cem. Land Co. v. Routt, 17 Colo. 156, 28 P. 1125 (1892); Orman v. People ex rel. Cooper, 18 Colo. App. 302, 71 P. 430 (1903).

And even if the courts had jurisdiction the writ would lie only to command the board [now secretary] to act, and not to control his discretion by commanding him how to act. Orman v. People ex rel. Cooper, 18 Colo. App. 302, 71 P. 430 (1903).

1-10-104. Imperfect returns - corrections. (1) If, in the course of their duties, the canvass board or the secretary of state finds that the method of making or certifying returns from any precinct, county, or district does not conform to the requirements of law, the returns shall nevertheless be canvassed if they are sufficiently explicit in showing how many votes were cast for each candidate, ballot question, or ballot issue.

(2) If the canvass board or the secretary of state finds a clerical error or omission in the returns, the county clerk and recorder, after consultation with the election judges, shall make any correction required by the facts of the case. The election judges shall sign and submit to the canvass board any documentation required for any explanation or verification of the additions or corrections. The canvass board may adjourn from day to day for the purpose of obtaining the additions or corrections.

Source: L. 92: Entire article R&RE, p. 777, § 13, effective January 1, 1993. **L. 99:** Entire section amended, p. 480, § 6, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-105 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-113 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 363.

C.J.S. See 29 C.J.S., Elections, § 389.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Certificate mistakes cannot be corrected by reference to tally lists. Mistakes in filling out the certificates of the judges of elections cannot be corrected by the canvassers or precinct election officials by reference to the tally lists, inasmuch as errors of this kind do not come within the provisions for correcting imperfect returns. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

But election judges may correct where clerical mistake in certificate. Where the number of votes in precinct, as shown by the tallies and figures in the pollbook do not correspond to number certified, but there is a clear case of a clerical mistake in the certificate, the judges of election, when they are notified of the error, have a right to correct, and should correct, such error. People ex rel. Harper v. Ingles, 106 Colo. 213, 103 P.2d 475 (1940).

1-10-104.5. Rules. The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., for the purpose of establishing equitable uniformity in the appointment and operation of canvass boards.

Source: L. 2009: Entire section added, (HB 09-1336), ch. 261, p. 1199, § 10, effective August 5.

Editor's note: This section was added in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

1-10-105. Official abstract of votes cast - certification by secretary of state. (1) After receiving the final abstracts of votes cast for all elections from the counties, including any recounts, the secretary of state shall prepare and certify an official statewide abstract of votes cast for all candidates, ballot issues, and ballot questions that the secretary of state certified for the ballot. For each contest, the statewide abstract of votes cast shall show the total number of votes received, with subtotals for each county in which the candidate was on the ballot, and the ballot wording for each ballot issue and ballot question.

(2) In the event of tie votes, the secretary of state shall include the method of resolving votes and the final result in the statewide abstract of votes cast.

(3) (Deleted by amendment, L. 99, p. 480, § 7, effective July 1, 1999.)

(4) In the event that an accurate and verifiable determination of the count cannot be made and therefore the secretary of state is unable to certify the election of any candidate, the secretary shall issue a report indicating the nature of the irregularity rather than issue a certification.

(5) The secretary of state shall publish on a biennial basis an official abstract of votes cast for all statewide elections held in the year of the general election and include the odd-number year immediately preceding that general election. The abstract shall contain the following information:

(a) All information included in the statewide abstract of votes cast, as provided in subsection (1) of this section;

(b) The names of candidates elected to county offices and the offices for which they were elected, as furnished by the county clerk and recorders;

(c) The reconciled total number of active, registered voters in each county on election day;

(d) Based on the total number of active, registered voters, the percent of voter turnout in each county; and

(e) Any other information that the secretary of state determines would be interesting or useful to the electorate or other elected officials.

(6) No later than June of the odd-numbered year immediately following the general election, the secretary of state shall furnish each county clerk and recorder a copy of the complete official biennial statewide abstract of votes cast at no charge.

Source: L. 92: Entire article R&RE, p. 777, § 13, effective January 1, 1993. **L. 94:** (1) amended, p. 1169, § 49, effective July 1. **L. 99:** Entire section amended, p. 480, § 7, effective July 1. **L. 2009:** (5)(c) amended, (HB 09-1018), ch. 158, p. 685, § 7, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-104 (2) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-109 (2) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (5)(c) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 369, 370.

C.J.S. See 29 C.J.S., Elections, § 392.

Annotator's note. For a relevant case construing the provisions of this section, see the annotations under former § 1-10-104 in the 1980 replacement volume.

Certificate mistakes cannot be corrected by reference to tally lists. Mistakes in filling out the certificates of the judges of elections cannot be corrected by the canvassers or precinct election officials by reference to the tally lists, inasmuch as errors of this kind do not come within the provisions for correcting imperfect returns. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231, 117 Am. St. R. 198, 6 L.R.A. (n.s.) 822 (1905) (decided under former law).

But election judges may correct where clerical mistake in certificate. here the number of votes in precinct, as shown by the tallies and figures in the pollbook do not correspond to number certified, but there is a clear case of a clerical mistake in the certificate, the judges of election, when they are notified of the error, have a right to correct, and should correct, such error. People ex rel. Harper v. Ingles, 106 Colo. 213, 103 P.2d 475 (1940) (decided under former law).

1-10-106. Summary of election results - statewide elections - early voting. (1) (a) Within sixty days after a statewide election, the designated election official shall prepare and make available to the public a statement of the total number of votes cast in the election for each candidate and for and against each ballot issue and ballot question on the ballot certified by the designated election official pursuant to section 1-5-203.

(b) In a county that uses only direct record electronic voting machines for early voting, the statement prepared pursuant to paragraph (a) of this subsection (1) shall give the results of early voting for each precinct.

(c) In a county that uses vote centers in accordance with section 1-5-102.7, on and after January 1, 2008, the statement prepared pursuant to paragraph (a) of this subsection (1) shall give the election results for each precinct, excluding votes cast by early voting or mail-in ballot.

(2) The designated election official may charge a fee for a copy of the statement prepared pursuant to this section in an amount not to exceed the actual cost of making the copy.

(3) The designated election official shall retain all materials used to compile the statement required by this section for a period of at least twenty-five months.

Source: L. 2005: Entire section added, p. 1422, § 50, effective June 6; entire section added, p. 1457, § 50, effective June 6. **L. 2006:** (1)(c) amended, p. 2035, § 22, effective June 6. **L. 2007:** (1)(c) amended, p. 1796, § 62, effective June 1.

PART 2

SURVEY OF RETURNS - NONPARTISAN ELECTIONS

1-10-201. Canvass of nonpartisan elections. (1) Except as provided for special districts in subsection (1.5) of this section, at least fifteen days before any nonpartisan election that is not coordinated by the county clerk and recorder, the governing body or bodies that called the election shall appoint two registered electors of the political subdivision to serve as members of the canvass board. One of the two persons appointed may be a member of the governing body. The persons so appointed and the designated election official constitute the canvass board for the election. If the election is coordinated between two or more governing bodies, the canvass board shall be appointed in accordance with the intergovernmental agreement between the governing bodies.

(1.5) Unless otherwise directed by the board of directors of a special district, at least fifteen days before any regular special district election, the designated election official shall appoint at least one member of the board of such district and at least one eligible elector of the special district who is not a member of such board to assist the designated election official in the survey of returns. The persons so appointed and the designated election official constitute the board of canvassers for the election.

(2) To the fullest extent possible, no member of the canvass board nor the member's spouse shall have a direct interest in the election.

(3) If for any reason any person appointed as a member of the canvass board refuses, fails, or is unable to serve, that appointed person shall notify the designated election official, who shall appoint another person with the same qualifications, if available, to the canvass board.

(4) Each canvass board member who is not a member of the governing body shall receive a minimum fee of fifteen dollars for each day of service. The fee shall be set by the designated election official and shall be paid by the political subdivision for which the service is performed.

(5) Prior to assuming their duties, the members of the canvass board shall swear or affirm the following: "I, _____, do solemnly swear (or affirm) that I am a registered elector in the county of _____ and of the state of Colorado and that I will faithfully perform the duties required of a member of the canvass board."

Source: L. 92: Entire article R&RE, p. 778, § 13, effective January 1, 1993. **L. 94:** Entire section amended, p. 1170, § 50, effective July 1. **L. 99:** Entire section amended, p. 481, § 8, effective July 1; (1) amended and (1.5) added, p. 451, § 8, effective August 4.

Editor's note: Amendments to subsection (1) by House Bill 99-1268 and House Bill 99-1160 were harmonized.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 364-366.

C.J.S. See 29 C.J.S., Elections, § 375.

1-10-202. Canvass of votes in coordinated elections. For any election coordinated by the county clerk and recorder, the canvass board shall be appointed in accordance with the intergovernmental agreement between the governing bodies holding the election.

Source: L. 92: Entire article R&RE, p. 778, § 13, effective January 1, 1993. **L. 93:** Entire section amended, p. 1433, § 111, effective July 1. **L. 99:** Entire section amended, p. 482, § 9, effective July 1.

1-10-203. Official abstract of votes cast - nonpartisan elections. (1) No later than seven days after an election, the canvass board shall certify to the designated election official the official abstract of votes cast for all candidates, ballot issues, and ballot questions in that election.

(2) If the election is canceled pursuant to section 1-5-208, the designated election official shall note the cancellation and the declared winner on the certified statement of results and the abstract of votes cast, if one is prepared.

(3) If a recount is held and the result of the election changes after the recount, the canvass board shall prepare and certify an amended official abstract of votes cast. If the result of an election subject to a recount does not change after such recount, the canvass board shall include a statement of that fact in the abstract of votes cast.

Source: L. 92: Entire article R&RE, p. 778, § 13, effective January 1, 1993. **L. 93:** (1) amended, p. 1433, § 112, effective July 1. **L. 94:** Entire section amended, p. 1170, § 51, effective July 1. **L. 95:** Entire section amended, p. 843, § 67, effective July 1. **L. 99:** Entire section amended, p. 482, § 10, effective July 1.

1-10-204. Imperfect returns. If the canvass board finds that the method of making or certifying returns from any precinct does not conform to the requirements of law, the returns of the votes cast in that precinct shall nevertheless be canvassed if the returns are sufficiently explicit to enable the canvass board to determine how many votes were cast for each candidate, ballot question, or ballot issue.

Source: L. 92: Entire article R&RE, p. 779, § 13, effective January 1, 1993. **L. 94:** Entire section amended, p. 1171, § 52, effective July 1. **L. 99:** Entire section amended, p. 483, § 11, effective July 1.

1-10-205. Corrections. If the canvass board finds a clerical error or omission in the returns, the board shall consult with the election judges from whom the returns were received to resolve the discrepancies. The election judges shall submit to the canvass board any documentation for verification of the additions and corrections, and the canvass board shall make any additions and corrections required by the facts of the case. The canvass board may adjourn from day to day for the purpose of obtaining the corrections and additions.

Source: L. 92: Entire article R&RE, p. 779, § 13, effective January 1, 1993. **L. 99:** Entire section amended, p. 483, § 12, effective July 1.

PART 3

RECOUNTS

1-10-301 to 1-10-309. (Repealed)

Source: L. 99: Entire part repealed, p. 492, § 24, effective July 1.

Editor's note: (1) Articles 1 to 13 were repealed and reenacted in 1980, and this article was subsequently repealed and reenacted in 1992 prior to this part 3 being repealed in 1999. For amendments to this part 3 prior to its repeal in 1999, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's notes following the article heading for this article and the title heading for this title.

(2) Sections 1-10-301 to 1-10-307 were relocated to article 10.5 of this title.

ARTICLE 10.5

Recounts

Editor's note: This article was added with relocations in 1999. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

1-10.5-101. Recounts required - expenses.
1-10.5-102. Recounts for congressional, state, and district offices, state ballot questions, and state ballot issues.
1-10.5-103. Recount for other offices, ballot issues, and ballot questions in an election coordinated by the county clerk and recorder.
1-10.5-104. Recount for nonpartisan elections not coordinated by the county clerk and recorder.
1-10.5-105. Notice of recount.
1-10.5-106. Request for recount by interested party - definitions.
1-10.5-107. Canvass board to conduct recount.
1-10.5-108. Method of recount. (Repealed)
1-10.5-109. Challenge of recount.
1-10.5-110. Procedures for recount on direct recording electronic voting equipment. (Repealed)

1-10.5-101. Recounts required - expenses.

(1) (a) (Deleted by amendment, L. 2001, p. 1265, § 1, effective June 5, 2001.)

(b) A recount of any election contest shall be held if the difference between the highest number of votes cast in that election contest and the next highest number of votes cast in that election contest is less than or equal to one-half of one percent of the highest vote cast in that election contest. If there is more than one person to be elected in an election contest, a recount shall be held if the difference between the votes cast for the candidate who won the election with the least votes and the candidate who lost the election with the most votes is less than or equal to one-half of one percent of the votes cast for the candidate who won the election with the least votes. A recount shall occur only after the canvass board certifies the original vote count.

(2) Except as provided in section 1-10.5-106, any expenses incurred in conducting a recount in any political subdivision shall be paid by the entity that certified the candidate, ballot question, or ballot issue for the ballot. Members of the canvass board who assist in any recount shall receive the same fees authorized for counting judges in section 1-6-115.

Source: L. 99: Entire article added with relocations, p. 483, § 13, effective July 1. **L. 2001:** (1) amended, p. 1265, § 1, effective June 5. **L. 2006:** (1)(b) amended, p. 277, § 1, effective August 7.

1-10.5-102. Recounts for congressional, state, and district offices, state ballot questions, and state ballot issues. (1) If the secretary of state determines that a recount is required for the office of United States senator, representative in congress, any state office or district office of state concern, any state ballot question, or any state ballot issue certified for the ballot by the secretary of state, the secretary of state shall order a complete recount of all the votes cast for that office, state ballot question, or state ballot issue no later than the twenty-fifth day after the election.

(2) The secretary of state shall notify the county clerk and recorder of each county involved by registered mail and facsimile transmission of a public recount to be conducted in the county at a place prescribed by the secretary of state. The recount shall be completed no later than the thirtieth day after any election. The secretary of state shall promulgate and provide each county clerk and recorder with the necessary rules and regulations to conduct the recount in a fair, impartial, and uniform manner, including provisions for watchers during the recount. Any rule or regulation concerning the conduct of a recount

shall take into account the type of voting system and equipment used by the county in which the recount is to be conducted.

(3) (a) Prior to any recount, the canvass board shall choose at random and test voting devices used in the candidate race, ballot issue, or ballot question that is the subject of the recount. The board shall use the voting devices it has selected to conduct a comparison of the machine count of the ballots counted on each such voting device for the candidate race, ballot issue, or ballot question to the corresponding manual count of:

(I) In the case of an election taking place in a county prior to the date the county has satisfied the requirements of section 1-5-802, the ballots; or

(II) For an election taking place in a county on or after the date the county has satisfied the requirements of section 1-5-802, the voter-verified paper records.

(b) If the results of the comparison of the machine count and the manual count in accordance with the requirements of subparagraph (I) or (II) of paragraph (a) of this subsection (3) are identical, or if any discrepancy is able to be accounted for by voter error, then the recount may be conducted in the same manner as the original ballot count. If the results of the comparison of the machine count and the manual count in accordance with the requirements of subparagraph (I) or (II) of paragraph (a) of this subsection (3) are not identical, or if any discrepancy is not able to be accounted for by voter error, a presumption shall be created that the voter-verified paper records will be used for a final determination unless evidence exists that the integrity of the voter-verified paper records has been irrevocably compromised. The secretary of state shall decide which method of recount is used in each case, based on the secretary's determination of which method will ensure the most accurate count, subject to judicial review for abuse of discretion. Nothing in this subsection (3) shall be construed to limit any person from pursuing any applicable legal remedy otherwise provided by law.

(c) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to administer and enforce any requirement of this section, including any rules necessary to provide guidance to the counties in conducting the test of voting devices for the recount required by paragraph (a) of this subsection (3). The rules shall account for:

(I) The number of ballots cast in the candidate race, ballot issue, or ballot question that is the subject of the recount;

(II) An audit of each type of voting device utilized by the county in the candidate race, ballot issue, or ballot question that is the subject of the recount; and

(III) The confidentiality of the ballots cast by the electors in the candidate race, ballot issue, or ballot question that is the subject of the recount.

Source: L. 99: Entire article added with relocations, p. 484, § 13, effective July 1. **L. 2001:** (2) amended, p. 300, § 1, effective August 8. **L. 2002:** (1) and (2) amended, p. 1638, § 28, effective June 7. **L. 2005:** (2) and (3) amended, p. 1423, § 51, effective June 6; (2) and (3) amended, p. 1458, § 51, effective June 6.

Editor's note: This section was formerly numbered as 1-10-301.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 359-361.

1-10.5-103. Recount for other offices, ballot issues, and ballot questions in an election coordinated by the county clerk and recorder. In any election coordinated by the county clerk and recorder, if it appears, as evidenced by the official abstract of votes cast, that a recount is required for any office, ballot question, or ballot issue not included in section 1-10.5-102, the county clerk and recorder shall order a recount of the votes cast for the office, ballot question, or ballot issue. Any recount of the

votes shall be completed no later than the thirtieth day after the election. A political subdivision that referred a ballot issue or ballot question to the electors may waive the automatic recount provisions of this section if the ballot issue or ballot question fails by giving written notice to the county clerk and recorder within fourteen days after the primary election or eighteen days after any other election.

Source: L. 99: Entire article added with relocations, p. 485, § 13, effective July 1. **L. 2001:** Entire section amended, p. 300, § 2, effective August 8. **L. 2002:** Entire section amended, p. 1639, § 29, effective June 7. **L. 2005:** Entire section amended, p. 1424, § 52, effective June 6; entire section amended, p. 1459, § 52, effective June 6.

Editor's note: This section was formerly numbered as 1-10-302.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 359-361.

C.J.S. See 29 C.J.S., Elections, § 385.

Annotator's note. The following annotations include a case decided under former provisions similar to this section.

Determination by lot does not prevent election contest. The determination by lot by the canvassing board of which candidate shall have the certificate of election where two candidates having the highest number of votes have an equal number is not such settlement of the matter as will prevent the defeated party from contesting the election on the ground that legal votes for him were not counted or that illegal votes were counted for his opponent. Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900).

1-10.5-104. Recount for nonpartisan elections not coordinated by the county clerk and recorder. If it appears, as evidenced by the abstract of votes cast that a recount is required for any office, ballot question, or ballot issue, the designated election official shall order a recount of the votes cast for the office, the ballot issue, or ballot question no later than the twenty-fifth day after the election. Any recount under this section shall be completed no later than the fortieth day after the election.

Source: L. 99: Entire article added with relocations, p. 485, § 13, effective July 1. **L. 2001:** Entire section amended, p. 301, § 3, effective August 8. **L. 2002:** Entire section amended, p. 1639, § 30, effective June 7.

Editor's note: This section was formerly numbered as 1-10-303.

1-10.5-105. Notice of recount. Notice prior to the recount shall be given to all candidates and, in the case of a ballot issue or ballot question, any petition representative identified pursuant to section 1-40-113, any governing body, or any agent of an issue committee, if such committee is required to report contributions to the secretary of state pursuant to the "Fair Campaign Practices Act", article 45 of this title, that are affected by the result of the election. Notice shall be given by certified mail and by telephone, facsimile transmission, or personal service.

Source: L. 99: Entire article added with relocations, p. 485, § 13, effective July 1.

1-10.5-106. Request for recount by interested party - definitions. (1) As used in this section, "interested party" means the candidate who lost the election, the political party or political organization of such candidate, any petition representative identified pursuant to section 1-40-113 for a ballot issue or ballot question that did not pass at the election, the governing body that referred a ballot question or ballot issue to the electorate if such ballot question or ballot issue did not pass at the election, or the agent of an issue committee that is required to report contributions pursuant to the "Fair Campaign Practices Act", article 45 of this title, that either supported a ballot question or ballot issue that did not pass at the election or opposed a ballot question or ballot issue that passed at the election.

(2) Whenever a recount is not required, an interested party may submit a notarized written request for a recount at the expense of the interested party making the request. This request shall be filed with

the secretary of state, the county clerk and recorder, the designated election official, or other governing body that originally certified the candidate, ballot question, or ballot issue for the ballot within twenty days after a primary election and within twenty-four days after any other election. Such election official shall notify the political subdivision within which the election was held no later than the day following receipt of the request. Before conducting the recount, the election official who will conduct the recount shall determine the cost of the recount within one day of receiving the request to recount, notify the interested party that requested the recount of the cost, and collect the costs of conducting the recount. If the request is filed with the secretary of state, the secretary of state shall determine the cost of the recount by adding the individual amounts determined by the political subdivisions conducting the recount. The interested party that requested the recount shall pay the cost of the recount by certified funds to the election official with whom the request for a recount was filed within one day of receiving the election official's cost determination. The funds shall be placed in escrow for payment of all expenses incurred in the recount. If after the recount the result of the election is reversed in favor of the interested party that requested the recount or if the amended election count is such that a recount otherwise would have been required, the payment for expenses shall be refunded to the interested party that requested the recount. Any escrow amounts not refunded to the interested party that requested the recount shall be paid to the election officials who conducted the recount. Any recount of votes pursuant to this section shall be completed no later than the thirtieth day after the election.

Source: L. 99: Entire article added with relocations, p. 486, § 13, effective July 1. **L. 2002:** (2) amended, p. 1639, § 31, effective June 7. **L. 2005:** (2) amended, p. 1424, § 53, effective June 6; (2) amended, p. 1460, § 53, effective June 6.

Editor's note: This section was formerly numbered as 1-10-304 and 1-10-304.5.

1-10.5-107. Canvass board to conduct recount. (1) Any county clerk and recorder or governing body required to conduct a recount shall arrange to have the recount made by the canvass board who officiated in certifying the official abstract of votes cast. If any member of the canvass board cannot participate in the recount, another person shall be appointed in the manner provided by law for appointment of the members of the original board.

(2) Any canvass board making a recount under the provisions of this section may employ assistants and clerks as necessary for the conduct of the recount.

(3) The canvass board may require the production of any documentary evidence regarding any vote cast or counted and may correct the abstract of votes cast in accordance with its findings based on the evidence presented.

(4) At the conclusion of the recount, the canvass board shall make the returns of all partisan, nonpartisan, ballot issue, and ballot question elections to the designated election official and provide a copy to the persons or groups requesting the recount or notified of the recount pursuant to sections 1-10.5-105 and 1-10.5-106. The canvass board shall meet and issue an amended abstract of votes cast for the office, ballot issue, or ballot question that is the subject of the recount and deliver it to the designated election official.

(5) The designated election official shall notify the governing body of the results of the recount.

Source: L. 99: Entire article added with relocations, p. 487, § 13, effective July 1.

Editor's note: This section was formerly numbered as 1-10-305.

1-10.5-108. Method of recount. (Repealed)

Source: L. 99: Entire article added with relocations, p. 487, § 13, effective July 1. **L. 2001:** Entire section amended, p. 301, § 4, effective August 8. **L. 2005:** Entire section repealed, p. 1425, § 56, effective June 6; entire section repealed, p. 1461, § 56, effective June 6.

Editor's note: This section was formerly numbered as 1-10-306.

1-10.5-109. Challenge of recount. (1) (a) Any interested party that requested a recount of a county, state, national, or district office of state concern or any party to such recount that has reasonable grounds to believe that the recount is not being conducted in a fair, impartial, and uniform manner may apply to the district court of the city and county of Denver for an order requiring the county clerk and recorder to stop the recount and to give the secretary of state access to all pertinent election records used in conducting the recount, and requiring the secretary of state to conduct the recount. The county clerk and recorder shall be an official observer during any recount conducted by the secretary of state.

(b) Any interested party that requested a recount of any other local office, ballot question, or ballot issue or any party to such recount that has reasonable grounds to believe that the designated election official is not conducting the recount in a fair, impartial, and uniform manner may apply to the district court for the political subdivision for an order requiring the designated election official to stop the recount and to give the appropriate official who will take over conducting the recount access to all pertinent election records, and requiring the appropriate official to conduct the recount. If the county clerk and recorder is not the designated election official, then the county clerk and recorder is the appropriate official to conduct the recount. If the county clerk and recorder is the designated election official, then the secretary of state is the appropriate official to conduct the recount. The designated election official shall be an official observer during any recount conducted pursuant to this subsection (1).

(2) All expenses incurred by the secretary of state in conducting a recount pursuant to subsection (1) of this section shall be paid from the state general fund. Expenses incurred prior to a court order requiring the secretary of state to conduct the recount shall be paid by the county or political subdivision conducting the recount.

Source: L. 99: Entire article added with relocations, p. 488, § 13, effective July 1.

Editor's note: This section was formerly numbered as 1-10-307.

1-10.5-110. Procedures for recount on direct recording electronic voting equipment. (Repealed)

Source: L. 2000: Entire section added, p. 1727, § 2, effective July 1. **L. 2004:** (1)(b), (3), and (4) amended, p. 1360, § 27, effective May 28. **L. 2005:** Entire section repealed, p. 1425, § 56, effective June 6; entire section repealed, p. 1461, § 56, effective June 6.

ARTICLE 11

Certificates of Election and Election Contests

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this article was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of this article for 1980 and 1992, see the comparative tables located in the back of the index.

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PART 1

TIE VOTES AND CERTIFICATES OF ELECTION

1-11-101. Tie votes at partisan elections. (1) If at any general or congressional vacancy election, after all recounts have been completed, any two or more pairs of joint candidates for the offices of governor and lieutenant governor or if two or more candidates for the offices of secretary of state, state treasurer, or attorney general tie for the highest number of votes for the same office, one of the pairs or one of the individual candidates shall be chosen by the two houses of the general assembly on a joint ballot.

(2) If at any general or congressional vacancy election, after all recounts have been completed, any two or more persons tie for the highest number of votes for presidential electors, for United States senator, for representative in congress, for regent of the university of Colorado, for member of the state board of education, for state senator or state representative, or for district attorney, the secretary of state shall proceed to determine by lot which of the candidates shall be declared elected. Reasonable notice shall be given to the candidates of the time when the election will be determined.

(3) If at any primary election, after all recounts have been completed, any two or more candidates for an office other than a county office of the same political party tie for the highest number of votes for the same office, the tie shall be resolved in a manner agreed upon by the tying candidates. In case the candidates fail to agree on the method of resolution within five days after the canvass is complete, the tie shall be resolved by lot to be cast as the secretary of state may determine.

(4) If at any primary election involving a county office, after all recounts have been completed, two or more candidates of the same political party tie for the highest number of votes for the same office, the canvass board shall determine by lot the person who shall be elected. The canvass board shall provide the candidates affected by the tie vote reasonable notice of the time when the election will be determined.

Source: L. 92: Entire article R&RE, p. 783, § 14, effective January 1, 1993. **L. 99:** Entire section amended, p. 488, § 14, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-104 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

Cross references: For appointment of the original county board of canvassers, see § 1-10-101 (1)(a).

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 380.

1-11-102. Tie votes in nonpartisan elections. If any two or more candidates tie for the highest number of votes for the same office and if there are not enough offices remaining for all the candidates, the board of canvassers shall determine by lot the person who shall be elected. Reasonable notice shall be given to the candidates who are involved of the time when the election will be determined.

Source: L. 92: Entire article R&RE, p. 784, § 14, effective January 1, 1993.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 380.

C.J.S. See 29 C.J.S., Elections, § 400.

Determination by lot does not prevent election contest. The determination by lot by the canvassing board of which candidate shall have the certificate of election where two candidates having the highest number of votes have an equal number is not such settlement of the matter as will prevent the defeated party from contesting the election on the ground that legal votes for him were not counted or that illegal votes were counted for his opponent. Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900) (decided under former law).

1-11-102.5. Ballot issue and ballot question - majority required. If any ballot issue or ballot question is approved by less than a majority of the votes cast, the issue or question shall be considered to have failed.

Source: L. 95: Entire section added, p. 845, § 71, effective July 1.

1-11-103. Certificates of election for nonpartisan, ballot issue, or ballot question elections. (1) Except in the case of offices for which a recount is required, immediately after the final abstract of votes cast for each office has been prepared and certified, the designated election official shall notify the candidates of their election to office. After any required bond and oath is filed, the designated election official shall make a formal certificate of election for each person who was elected and shall deliver the formal certificate to that person.

(2) Except in the case of ballot issues or ballot questions for which a recount is required, immediately after the abstract of votes cast for each ballot issue or ballot question has been prepared and certified, the designated election official shall notify the governing body of the political subdivision conducting the election and the petition representatives of a ballot issue or ballot question of the election result and shall make a certificate of the votes cast for and against each ballot issue and for and against each ballot question available for public inspection in the office of the designated election official for no less than ten days following the completion of the abstract of votes cast by the canvass board.

(3) The results of a special district election shall be certified to the division of local government within thirty days after the election as provided in section 32-1-104 (1), C.R.S. If an election is cancelled, the notice and a copy of the resolution of cancellation shall be filed with the division of local government.

Source: L. 92: Entire article R&RE, p. 784, § 14, effective January 1, 1993. **L. 93:** Entire section amended, p. 1435, § 118, effective July 1. **L. 94:** Entire section amended, p. 1174, § 59, effective July 1. **L. 99:** (1) and (2) amended, p. 489, § 15, effective July 1; (3) amended, p. 452, § 10, effective August 4.

1-11-104. Certificates of election for county and precinct officers. Except in the case of offices for which a recount is required, immediately after the final abstract of votes cast for county and precinct officers has been prepared and certified, the county clerk and recorder shall make a certificate of election, or a certificate of nomination in the case of a primary election, for each person declared to be elected or nominated to each office and shall deliver the certificates to that person.

Source: L. 92: Entire article R&RE, p. 784, § 14, effective January 1, 1993. **L. 99:** Entire section amended, p. 489, § 16, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-10-201 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-9-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-11-105. Certificates of election for national, state, and district officers. Immediately after the final statewide abstract of votes cast has been prepared, the secretary of state shall make and transmit a certificate of election, certified under the secretary of state's seal of office, to each of the persons declared to be elected to national, state, and district offices of state concern and shall record in a book to be kept for that purpose each such certification. If the secretary of state is unable to certify the candidate elected to a state or district office of state concern, no such certification of election shall be transmitted by the secretary of state until the candidate elected has been determined.

Source: L. 92: Entire article R&RE, p. 784, § 14, effective January 1, 1993. **L. 94:** Entire section amended, p. 1175, § 60, effective July 1. **L. 99:** Entire section amended, p. 490, § 17, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-202 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-11-106. Delivery of certified list of results. Upon the organization of the house of representatives, the secretary of state shall deliver to the speaker of the house a certified list of candidates elected to each state office and of each member elected to the general assembly showing the member's district. If the secretary of state is unable to certify the candidate elected to state office or the member elected to the general assembly from a particular district, the secretary of state shall also deliver a list of the state offices or districts for which no certification may be made. The speaker, upon receipt of the certified list and, if delivered, the list of offices and districts for which no certification may be made and before proceeding to other business, shall open and announce the results in the presence of a majority of the members of both houses of the general assembly, who shall assemble for that purpose in the chamber of the house of representatives. The person having the highest number of votes for any of the offices shall be declared duly elected by the presiding officer of the joint assembly. The two houses on joint ballot shall then resolve any tie votes which are on the certified list of results.

Source: L. 92: Entire article R&RE, p. 784, § 14, effective January 1, 1993. **L. 99:** Entire section amended, p. 490, § 18, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-103 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-11-107. Lists of presidential electors. The secretary of state shall prepare a certificate of election for each presidential elector who is elected at any general election. The governor shall sign and affix the seal of the state to the certificates and deliver one certificate to each elector on or before the thirty-fifth day after the general election.

Source: L. 92: Entire article R&RE, p. 785, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-204 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-112 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-11-108. Official abstract. (Repealed)

Source: L. 92: Entire article R&RE, p. 785, § 14, effective January 1, 1993. **L. 94:** (1)(a) amended, p. 1175, § 61, effective

July 1. **L. 99:** Entire section repealed, p. 492, § 24, effective July 1.

PART 2

ELECTION CONTESTS

1-11-201. Causes of contest. (1) The election of any candidate to any office may be contested on any of the following grounds:

(a) That the candidate elected is not eligible to hold the office for which elected;

(b) That illegal votes were received or legal votes rejected at the polls in sufficient numbers to change the result of the election;

(c) That an election judge or canvass board has made an error in counting or declaring the result of an election that changed the result of the election;

(d) That an election judge, canvass board, or member of a canvass board has committed malconduct, fraud, or corruption that changed the result of the election; or

(e) That, for any reason, another candidate was legally elected to the office.

(2) For the purpose of this part 2, if the election or nomination of either the governor or lieutenant governor is found to be invalid for any reason, the finding shall not in any way be construed to invalidate the election or nomination of the other joint candidate.

(3) The result of any election to determine a ballot issue or ballot question may be contested on any of the following grounds:

(a) That illegal votes were received or legal votes were rejected at the polls in sufficient numbers to change the result of the election;

(b) That an election judge or canvass board has made an error in counting or declaring the result of an election that changed the result of the election; or

(c) That an election judge, canvass board, or member of a canvass board has committed misconduct, fraud, or corruption that changed the result of the election.

(4) In addition to the grounds set forth in subsection (3) of this section, the result of any election to determine a ballot issue that includes approval of the creation of any debt or other financial obligation may be contested if the notice required by section 1-7-908 is not provided in accordance with that section or contains any material misstatement of the information required to be set forth in the notice.

Source: L. 92: Entire article R&RE, p. 785, § 14, effective January 1, 1993. **L. 94:** (3) added, p. 1175, § 62, effective July 1. **L. 99:** (1)(c), (1)(d), (3)(b), and (3)(c) amended, p. 490, § 19, effective July 1. **L. 2003:** (4) added, p. 749, § 2, effective August 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-201 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For contests for county and nonpartisan officers, ballot issues, and ballot questions, see § 1-11-212; for contested elections, see C.R.C.P. 100.

ANNOTATION

I. General Consideration.
II. Causes of Contest.
A. In General.
B. Causes.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

C.J.S. See 29 C.J.S., Elections, § 410.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Pursuant to the constitutional mandate of Colo. Const., art. VII, § 12, the procedure to be followed in election contests was enacted. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

II. CAUSES OF CONTEST.

A. In General.

In an election contest, the statement of contest must bring the case within one of the enumerated causes constituting grounds for contest. Lewis v. Boynton, 25 Colo. 486, 55 P. 732 (1898).

For, in an election contest, the contestor should be able to show some good reason for the contest. Todd v. Stewart, 14 Colo. 286, 23 P. 426 (1890); Smith v. Harris, 18 Colo. 274, 32 P. 616 (1893); Boger v. Smith, 77 Colo. 475, 238 P. 57 (1925).

And in the absence of some definite and specific assertion, a court will assume that there are none to be made. Todd v. Stewart, 14 Colo. 286, 23 P. 426 (1890); Smith v. Harris, 18 Colo. 274, 32 P. 616 (1893); Boger v. Smith, 77 Colo. 475, 238 P. 57 (1925).

Moreover, a statement of contest not vulnerable to demurrer (now dismissal for failure to state a claim) may be assailable on other grounds, e.g., that it is ambiguous, unintelligible, and uncertain. Collins v. Heath, 76 Colo. 600, 233 P. 838 (1925); Boger v. Smith, 77 Colo. 475, 238 P. 57 (1925).

And contestors are without right to amend their statement of contest by supplying the very thing which was essential in the first instance to state a ground of contest and give the court jurisdiction. Town of Sugar City v. Bd. of Comm'rs, 57 Colo. 432, 140 P. 809 (1914).

Causes of contest incorporated by reference. The causes of contest are, insofar as applicable, incorporated by reference into provisions requiring a contestor of the election of county officers to file a written statement setting forth, among other things, the causes of the contest, and hence also into provisions relating to contests in special district elections. Jardon v. Meadowbrook-Fairview Metro. Dist., 190 Colo. 528, 549 P.2d 762 (1976).

B. Causes.

Eligibility is to be determined at the date of qualifying. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

And the word "eligible" has reference to the capacity not of being elected to office, but of holding office. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

Thus it is wholly immaterial whether contestee is qualified at the time of election when at the time of taking office his eligibility exists. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

For the eligibility of a candidate to office is to be ascertained as of the time of his entering upon the duties of the office. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

An election will not be set aside for irregularities unless they affect the result of the election. People v. Keeling, 4 Colo. 129 (1878); Kellogg v. Hickman, 12 Colo. 256, 21 P. 325 (1888); Todd v. Stewart, 14 Colo. 286, 23 P. 426 (1890); Allen v. Glynn, 17 Colo. 338, 29 P. 670 (1892); Smith v. Harris, 18 Colo. 274, 32 P. 616 (1893); People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908); Littlejohn v. People ex rel. Desch, 52 Colo. 217, 121 P. 159 (1911); City of Loveland v. Western Light & Power Co., 65 Colo. 55, 173 P. 717 (1918); Suttle v. Sullivan, 131 Colo. 519, 283 P.2d 636 (1955).

The causes for contest make no provision for a contest of an election upon the removal of a county seat, for the only election contests authorized are those of officers. Accordingly, it is also clear that there is no remedy by quo warranto, for that remedy is only employed to test the right of an officer or franchise. People v. Bd. of County Comm'rs, 6 Colo. 202 (1882).

Similarly, failure of election officials to issue absentee ballots upon oral application, although they had previously promised to do so, amounts to nothing as a ground of contest. Graham v. Swift, 123 Colo. 309, 228 P.2d 969 (1951).

And an allegation that the name of the contestee was unlawfully printed upon the official ballot under the name and emblem of a political party of which he was not the nominee, that the filing of the certificate of nomination of contestee as the nominee of such political party was the result of a fraudulent conspiracy between contestee and the county clerk, and that by reason of having his name so printed under the name and emblem of the said political party he had counted for him a large number of votes to which he was not entitled, sufficient to reduce the number of his votes below the number cast for contestor, does not state a cause for contest under this section. Rather, it was contestor's duty to make his objection to the printing of contestee's name on the official ballot under the name and emblem to which he was not entitled in seasonable time and in the manner provided by the election law, and failing to do so, he cannot be heard after election to urge such objections when to uphold them would be to overthrow the expressed will of a majority of the legal voters of the county. Lewis v. Boynton, 25 Colo. 486, 55 P. 732 (1898).

1-11-202. Who may contest election. The election of any candidate or the results of an election on any ballot issue or ballot question may be contested by any eligible elector of the political subdivision.

Source: L. 92: Entire article R&RE, p. 786, § 14, effective January 1, 1993. **L. 94:** Entire section amended, p. 1175, § 63, effective July 1.

Cross references: For causes of contest, see § 1-11-201; for contested elections, see C.R.C.P. 100.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

C.J.S. See 29 C.J.S., Elections, §§ 435-441.

1-11-203. Contests arising out of primary elections. (1) All election contests arising out of a primary election, except contests for national or state offices, shall be summarily adjudicated by the district court sitting for the political subdivision within which a contest arises. The court which first acquires jurisdiction of any contest shall have original jurisdiction, subject to appellate review as provided by law and the Colorado appellate rules. In all cases involving contests for state offices, the supreme court shall take original jurisdiction for the purpose of summarily adjudicating any contest.

(2) Every contest shall be instituted by verified petition to the proper court, setting forth the grounds for the contest. The petition shall be filed and a copy served on the contestee within five days after the occurrence of the grounds of the contest. The contestee shall answer under oath within five days after service. If the petition cannot be personally served within the state on the contestee, service may be made by leaving a copy of the petition with the clerk of the court having original jurisdiction of the controversy or contest who shall search for the contestee so that an answer may be filed. Upon the expiration of the time for the answer, the court having jurisdiction of the contest shall forthwith set the matter for trial on the merits and shall summarily adjudicate it.

Source: L. 92: Entire article R&RE, p. 786, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-214 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-114 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

I. General Consideration.
II. Jurisdiction.
III. Petition.
A. Sufficiency.
B. Service.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision relating to contests arising subsequent to a primary election is not applicable to controversies over the right to appear on the ballot as a designee of a political party for nomination of that party to a particular office. Anderson v. Kilmer, 134 Colo. 270, 302 P.2d 185 (1956).

Summary adjudication of election contests. Election contests shall be "summarily adjudicated" by the court, and strict adherence to procedural requirements is not the rule; as long as due process is afforded and a fair hearing is provided the contestants, the statutory requirements are deemed satisfied. Ray v. Mickelson, 196 Colo. 325, 584 P.2d 1215 (1978).

II. JURISDICTION.

Provision conflicts with U.S. Constitution as to jurisdiction over elections for U.S. Senate and House. The provision which purports to vest the Colorado supreme court with jurisdiction to try election contests arising out of a primary election for nomination to the United States Senate and House of Representatives conflicts with article I, section 5(1), of the United States Constitution, allowing each house to "be the judge of the elections, returns, and qualifications of its own member", and in such situation the United States Constitution must prevail: Inasmuch as the authority given Congress by article I, section 4(1), of the United States Constitution to regulate elections for senators and representatives includes the authority to regulate primary elections where, under the law of the state, they are an integral part of the procedure for the choice of representatives in Congress, and it logically follows as a corollary thereof that the provisions of section 5(1) also apply to primary elections for the U.S. Senate and House of Representatives. Rogers v. Barnes, 172 Colo. 550, 474 P.2d 610 (1970).

III. PETITION.

A. Sufficiency.

A nominee is under no duty to prove that he has been nominated. People ex rel. Flebbe v. Mitchell, 88 Colo. 102, 292 P. 228 (1930).

But on the contrary, the contesting party must allege sufficient specific facts so that the contestee may be advised with reasonable definiteness and certainty the character of the charges to be met and be thus afforded an opportunity to properly present a defense thereto. People ex rel. Flebbe v. Mitchell, 88 Colo. 102, 292 P. 228 (1930).

For, in election contest proceedings, courts cannot properly embark on a mere fishing expedition by opening ballot boxes when there is an utter lack of specific allegations as to the distribution of votes and no charge of fraud or irregularity. Cruse v. Richards, 95 Colo. 485, 37 P.2d 382 (1934).

And it is always necessary to allege facts which will enable the court to determine that a different result would follow in the vote by reason of such alleged facts. Cruse v. Richards, 95 Colo. 485, 37 P.2d 382 (1934).

Hence, petition which does set out facts is insufficient. A petition in a primary election contest which merely charges a mistake in the counting of votes, and that a recount would result in the nomination of petitioner, without setting out the facts, is insufficient. People ex rel. Flebbe v. Mitchell, 88 Colo. 102, 292 P. 228 (1930).

B. Service.

One proposing to contest a nomination made by petition must follow the provision for contests arising out of primary elections. McCall v. Pearce, 53 Colo. 409, 127 P. 956 (1912).

Or else petitioner's rights may be foreclosed by laches. McCall v. Pearce, 53 Colo. 409, 127 P. 956 (1912).

Furthermore, service of summons in a primary election contest one day later than the time specified will not give the court jurisdiction, notwithstanding the last day upon which service could be made within the statutory time falls on Sunday. Cruse v. Richards, 95 Colo. 485, 37 P.2d 382 (1934).

And a contestee does not waive any objection to defective service of summons by filing a demurrer (now motion to dismiss for failure to state a claim) simultaneously with his motion to dismiss for want of service of process. Cruse v. Richards, 95 Colo. 485, 37 P.2d 382 (1934).

1-11-203.5. Contests concerning ballot order or ballot title - ballot issue or ballot question elections. (1) Except for petitions for rehearing pursuant to section 1-40-107, all election contests arising out of a ballot issue or ballot question election concerning the order on the ballot or the form or content of any ballot title shall be summarily adjudicated by the district court sitting for the political subdivision within which the contest arises prior to the election. Except as otherwise provided in this section, the style and form of process, the manner of service of process and papers, the fees of officers, and judgment for costs shall be according to the rules and practice of the district court. The court that first acquires jurisdiction of any contest shall have exclusive jurisdiction. Before the district court is required to take jurisdiction of the contest, the contestor shall file with the clerk of the court a bond, with sureties, running to the contestee and conditioned to pay all costs, including attorneys fees, in case of failure to maintain the contest. The judge shall determine the sufficiency of the bond and, if sufficient, approve it.

(2) Every such contest shall be commenced by verified petition filed by the contestor to the proper court, setting forth the grounds for the contest and a proposed alternative order for the ballot or alternative form or content for the contested ballot title. The contestee shall be the state in the case of a statewide ballot issue or statewide ballot question or the political subdivision that proposed to place the contested ballot issue or ballot question on the ballot, as applicable, and the petition representative of an initiated measure. The petition shall be filed and a copy served on the contestee within five days after the title of the ballot issue or ballot question is set by the state or political subdivision and for contests concerning the order of a ballot, within five days after the ballot order is set by the county clerk and recorder and not thereafter. The designated election official or other authorized official, on behalf of the contestee and the proponent of an initiated measure, shall answer under oath within five days after service. Upon the expiration of the time for the answer, and following at least twenty-four hours advance notice of the date, time, and place of the adjudication given by the clerk of the court by letter, telephone, or fax to the contestor and contestee, the court having jurisdiction of the contest shall immediately set the matter for trial on the merits and shall adjudicate it within ten days of the date of filing of the answer by the contestee or expiration of the time for the answer.

(3) If the court finds that the order of the ballot or the form or content of the ballot title does not conform to the requirements of the state constitution and statutes, the court shall provide in its order the text of the corrected ballot title or the corrected order of the measures to be placed upon the ballot and shall award costs and reasonable attorneys fees to the contestor. If the court finds that the order of the ballot and the form and content of the ballot title conform to the requirements of the state constitution and statutes and further finds that the suit was frivolous as provided in article 17 of title 13, C.R.S., the court shall provide in its order an award of costs and reasonable attorneys fees to the contestee state or political subdivision and to the proponent of an initiated measure.

(4) Following entry of the order of the district court pursuant to this section, the ballot title shall be certified by the state or political subdivision to the county clerk and recorder, to be voted upon at the election as so certified unless the election on the ballot issue or ballot question is canceled in the manner provided by law. Notwithstanding any other provision of law, any appeal from an order of the district court entered pursuant to this section shall be taken directly to the supreme court, which shall decide the appeal as expeditiously as practicable.

(5) The procedure provided in this section shall be the exclusive procedure to contest or otherwise challenge the order of the ballot or the form or content of the ballot title.

(6) This section shall not apply to a ballot title for a statewide ballot issue or statewide ballot question that is set by a title setting board or court as provided by law.

Source: L. 94: Entire section added, p. 1175, § 64, effective July 1.

ANNOTATION

This section is constitutional and permissibly limits challenges based on the form and content of a ballot title but it cannot and does not time-bar constitutional challenges to the substance of a ballot issue or ballot question. This section does not conflict with art. X, § 20, of the Colorado Constitution because the requirements of that section that relate to ballot titles address only the form and content of ballot titles and not what that section substantively permits voters to approve. Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).

A challenge to a ballot title involves the substance of a ballot issue if it relates to the language in the ballot title itself and it would be legally impossible for the court hearing the challenge to reform or reword the ballot title to any constitutionally or statutorily acceptable level so that regardless of any contest filed before the election, the ballot issue as approved cannot be upheld under the laws or constitution of the state. Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).

A claim that a ballot issue proposed a "phased-in" tax increase and that a ballot title that disclosed only the first rather than the final full fiscal year dollar increase was, therefore, improper involved only the form and content of the ballot title, could be resolved by the type of summary adjudication contemplated by this section, and was time-barred by this section because it was not made within five days of the setting of the ballot title. Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).

This section does not apply to a notice required by art. X, § 20, of the Colorado Constitution that accompanied a ballot title and, therefore, did not bar claims that such a notice contained inaccurate financial data and had a misleading purpose. Section 1-11-213 (4), however, did bar the claims. Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).

The final action of a local government legislative body to settle or decide the wording of a ballot title constitutes the setting or fixing of the ballot title under § 31-11-111. Under subsection (2), a person must, therefore, contest the form or content of a ballot title within five days of the legislative body's final action concerning the ballot title. Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).

The five-day time limit imposed by subsection (2) is constitutional because it is not "manifestly so limited as to amount to a denial of justice". Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).

Claim that a ballot issue was invalid because it contained multiple purposes is a challenge to the form or content of the ballot title. Consequently, the claim was time-barred because it was not filed within five days after the title of the ballot issue was set. Busse v. City of Golden, 73 P.3d 660 (Colo. 2003).

1-11-204. Contests for presidential elector. The supreme court has original jurisdiction for the adjudication of contests concerning presidential electors and shall prescribe rules for practice and proceedings for such contests. No justice of the court who is a contestor in the election contest shall be permitted to hear and determine the matter.

Source: L. 92: Entire article R&RE, p. 786, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-202 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For contested elections, see C.R.C.P. 100.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 397-400, 404.

C.J.S. See 29 C.J.S., Elections, § 401.

1-11-205. Contests for state officers. (1) Proceedings to contest the election of any person declared elected governor, lieutenant governor, secretary of state, state treasurer, attorney general, member of the state board of education, or regent of the university of Colorado may be commenced by filing with the secretary of the senate, between the sixth and tenth legislative days of the first session of the general assembly after the day of the election, a notice of intention to contest the election, specifying the particular grounds on which the contestor means to rely. The contestor shall file with the secretary of the senate a bond, with sureties, running to the contestee and conditioned to pay all costs in case of failure to maintain the contest. The secretary of the senate shall determine the sufficiency of the bond, and, if it is sufficient, approve it.

(2) Upon the notice of intention being filed, and the bond being approved by the secretary of the senate, the general assembly shall determine by resolution on what day they will meet in joint session to take action in the contest.

(3) A certified copy of the notice filed by any contestor shall be served upon the contestee, together with a notice that the contestee is required to attend the joint session on the day fixed to answer the contest.

Source: L. 92: Entire article R&RE, p. 786, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-203 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 401.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Resolution that no person was elected may not be adopted. In a contest before the general assembly, the general assembly has no legal authority to adopt a resolution declaring that no person was elected and that a vacancy exists in the office. In re Senate Resolution No. 10, 33 Colo. 307, 79 P. 1009 (1905).

The provision for contesting the election of state officers does not contemplate giving any authority to the general assembly to decide anything more than the issues between the contestor and contestee and render judgment accordingly. In re Senate Resolution No. 10, 33 Colo. 307, 79 P. 1009 (1905).

1-11-206. Evidence in contests for state officers. On the hearing of any election contest for any of the offices named in section 1-11-205, the parties to the contest may introduce written testimony, taken in a manner prescribed by the joint session. No depositions shall be read in the hearing unless the opposite party had reasonable notice of the time and place of the taking of the deposition.

Source: L. 92: Entire article R&RE, p. 787, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-11-204 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-10-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 418-422.

C.J.S. See 29 C.J.S., Elections, § 466.

1-11-207. Rules for conducting contests for state officers. (1) In conducting any election contest for any of the offices named in section 1-11-205, the following rules apply:

(a) On the appointed day and hour, the general assembly, with its proper officers, shall convene in joint session.

(b) The president of the senate shall preside; but, when the president is the contestee, the president pro tempore of the senate shall preside.

(c) The parties to the contest shall then be called by the secretary of the senate. If they answer, their appearance shall be recorded.

(d) The testimony of the contestor shall be introduced first, followed by the testimony of the contestee. After the testimony has been presented on both sides, the contestor or contestor's counsel may open the argument, and the contestee or counsel may then proceed to make a defense, and the contestor may be heard in reply.

(e) After the arguments by the parties are completed, any member of the joint session may offer the reasons for the member's intended vote. The session may limit the time for argument and debate.

(f) The secretary of the senate shall keep a regular journal of the proceedings. The decision shall be taken by a call of the members, and a majority of all the votes given shall prevail.

Source: L. 92: Entire article R&RE, p. 787, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-11-205 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-10-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 391-396.

1-11-208. Contests for state senator or representative. (1) The election of any person as a state senator or a member of the state house of representatives may be contested by any eligible elector of the district to be represented by the senator or representative. Each house of the general assembly shall hear and determine election contests of its own members. In furtherance of resolving such a contest, the house of the general assembly before which any contest is to be tried shall certify questions pursuant to section 1-11-208.5 to the office of administrative courts for referral to an administrative law judge.

(2) The contestor, within ten days after the completion of the official abstract of votes cast, shall file in the office of the secretary of state a verified statement of intention to contest the election, setting forth

the name of the contestor, that the contestor is an eligible elector of the district, the name of the contestee, the office being contested, the time of the election, and the particular grounds for the contest, and shall serve a copy upon the contestee. The contestor shall file with the secretary of state a bond, with sureties, running to the contestee and conditioned to pay all costs in case of failure to maintain the contest. The secretary of state shall determine the sufficiency of the bond, and, if it is sufficient, approve it.

(3) The contestee, within ten days after personal service of the statement, shall file in the office of the secretary of state an answer, duly verified, admitting or specifically denying each allegation and containing any new matter or counterstatement which the contestee believes may entitle him or her to retain the seat in the general assembly to which elected. The contestee shall serve a copy upon the contestor.

(4) When the answer of the contestee contains new matter constituting a counterstatement, the contestor, within ten days after the service of the answer, shall file in the office of the secretary of state a reply admitting or specifically denying under oath each allegation contained in the counterstatement, and shall serve a copy upon the contestee.

Source: L. 92: Entire article R&RE, p. 788, § 14, effective January 1, 1993. **L. 99:** (1) amended, p. 1384, § 2, effective June 4; (2) amended, p. 491, § 20, effective July 1. **L. 2005:** (1) amended, p. 852, § 5, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-206 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

C.J.S. See 29 C.J.S., Elections, § 401.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Authority of courts to determine election controversies when no candidate declared duly elected. State constitutional provisions and statutes permitting general assembly to judge election of members does not limit subject matter jurisdiction of district court to hear controversies related to elections where no candidate is yet declared duly elected by secretary of state. Meyer v. Lamm, 846 P.2d 862 (Colo. 1993).

1-11-208.5. Certification of questions to administrative law judge. (1) The house of the general assembly in which any contest for senator or representative, as applicable, is to be tried shall certify questions to the office of administrative courts for referral to an administrative law judge. The questions shall relate exclusively to the election returns in the district and the number of votes cast for each of the candidates for the contested seat. No question may be certified regarding the eligibility or qualification of any person for the contested office.

(2) Upon certification pursuant to subsection (1) of this section, the house of the general assembly in which the contest is to be tried shall transmit to the administrative law judge any papers submitted by the secretary of state pursuant to section 1-11-210 or any other documents submitted to that house in connection with the election contest.

(3) The administrative law judge shall have jurisdiction to make findings of fact on the questions certified by a house of the general assembly pursuant to subsection (1) of this section. Further evidence upon the points specified in such questions may be submitted by the contestor, the contestee, or both, in such contest. The administrative law judge may take and consider such additional evidence but shall limit its findings of fact to the questions certified.

(4) Any issues of law or findings of fact decided in a prior judicial proceeding that affect a party that contests an election for state senator or representative pursuant to section 1-11-208 shall not be

conclusive upon an administrative law judge conducting fact finding or making recommendations pursuant to this section.

(5) The administrative law judge shall hold a hearing within twenty days after the date that questions were certified to the administrative law judge pursuant to subsection (1) of this section. The administrative law judge's findings of fact and recommendations shall be completed not more than ten days after the date of the hearing. Such findings of fact and recommendations shall take precedence over all other business of the administrative law judge.

(6) (a) If the administrative law judge finds that, based on a preponderance of the evidence, an accurate and verifiable vote count can be determined in the contested district showing that a person had the highest number of votes cast in the district for the contested state senate or state house of representatives seat, the administrative law judge shall make recommendations to the house that certified the questions, including, but not limited to, that such person be seated as the senator or representative from the contested district.

(b) If the administrative law judge finds that, based on a preponderance of the evidence, irregularities in the votes cast or counted in the district for the contested state senate or state house of representatives seat both prevented an accurate and verifiable vote count and may have directly affected the outcome of the election, the administrative law judge shall make recommendations to the house that certified the questions, including, but not limited to, that such house further resolve the election contest or call a special legislative election pursuant to section 1-11-303.

(7) The administrative law judge shall transmit all the files and records of the proceedings to the presiding officer of the house in which the contest for senator or representative was filed.

(8) The administrative law judge's findings of fact and recommendations shall be final and not be subject to review by any other court.

(9) Upon receipt of such findings of fact and recommendations, the house in which the contest for senator or representative arose may take appropriate action, including, but not limited to:

(a) A trial of the election contest;

(b) Declaration of the duly elected member in the contested district in accordance with the findings of the administrative law judge; or

(c) Adoption of a resolution pursuant to section 1-11-302 calling for a special legislative election.

Source: L. 99: Entire section added, p. 1385, § 3, effective June 4. **L. 2005:** (1) amended, p. 853, § 6, effective June 1.

1-11-209. Depositions in contests for state senator or representative. (1) Either party, at the time the statement or answer is served, may serve upon the adverse party reasonable notice of taking depositions to be used at trial of the contest for state senator or state representative. Immediately after joining issue of fact, both parties shall proceed with all reasonable diligence to take any depositions they may desire to use at trial. Nothing in this subsection (1) shall abridge the right of either party to take depositions upon reasonable notice prior to the joining of issue in relation to any of the matters in controversy; but a failure to take depositions before the joining of issue shall not be held as laches against either party to the contest.

(2) If, upon the completion of taking any depositions, the adverse party has any witnesses present before the officer taking the depositions whose testimony the adverse party may wish to use in rebuttal of the depositions, the adverse party may proceed immediately to take the deposition of the rebutting witness before the officer, upon giving written notice to the other party or the other party's attorney. The officer shall attach to the depositions a copy of the notice with proof of service and shall return the rebuttal depositions in the same manner provided for returning depositions in chief. The party taking a deposition shall pay all costs of taking the deposition and its return.

(3) The time for taking depositions to be used at trial of the contest shall expire three days prior to the meeting of the next general assembly. Both parties may take depositions at the same time, but neither

party shall take depositions at more than one place at the same time. Nothing in this subsection (3) shall be construed to abridge the right of either house of the general assembly, upon good cause shown, to extend the time to take depositions, or to send for and examine any witness, or to take any testimony it may desire to use on trial of the contest, or to order a recount of the ballots if there has been an error in surveying the returns in any county or precinct.

(4) Any county or district judge of or for a county in the judicial district where a contested election case arises may issue subpoenas, compel the attendance of witnesses, take depositions, and certify depositions according to the rules of the district court.

(5) The officer before whom the depositions are taken, upon the completion thereof, shall certify the depositions immediately, shall enclose the depositions, and the notices for taking the depositions, and the proofs of service of the notices in an envelope, and shall seal and transmit the envelope by mail or in person by a sworn officer, to the secretary of state, with an endorsement showing the nature of the papers, the names of the contesting parties, and the house of the general assembly before which the contest is to be tried.

Source: L. 92: Entire article R&RE, p. 789, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-11-207 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-10-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For depositions, see C.R.C.P. 26 to 37; for causes of contest, see § 1-11-201; for venue, see C.R.C.P. 98 and Crim. P. 18; for contested elections, see C.R.C.P. 100.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 409-427.

C.J.S. See 29 C.J.S., Elections, § 401.

1-11-210. Secretary of state to transmit papers in contests for state senator or representative. The secretary of state shall deliver the sealed envelope containing depositions, notices, and proofs of service, together with the statement of contestor, answer of contestee, and reply, to the presiding officer of the body in which the contest for senator or representative is to be tried, immediately upon the organization of the body or as soon thereafter as documents are received. The presiding officer, immediately upon receiving the documents, shall give notice to the body that the papers are in the officer's possession.

Source: L. 92: Entire article R&RE, p. 790, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-11-208 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-10-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-11-211. Contests for district attorneys. The district court of the judicial district in which the contest for the office of district attorney arises has jurisdiction for the adjudication of contests for the office of district attorney. No district judge who is a contestor in any election contest shall be permitted to hear and determine the matter. In that case, the supreme court shall appoint a district judge to hear and decide the contest.

Source: L. 92: Entire article R&RE, p. 790, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-209 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For venue, see C.R.C.P. 98 and Crim. P. 18; for contested elections, see C.R.C.P. 100.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390. **C.J.S.** See 29 C.J.S., Elections, § 401.

1-11-212. Contests for county and nonpartisan officers - ballot issues and ballot questions. Contested election cases of county and nonpartisan officers and ballot issues and ballot questions shall be tried and decided by the district court for the county in which the contest arises. If a political subdivision is located in more than one county, the district court of either county may take jurisdiction.

Source: L. 92: Entire article R&RE, p. 790, § 14, effective January 1, 1993. **L. 94:** Entire section amended, p. 1177, § 65, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-210(1) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-110(1) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For contested elections, see C.R.C.P. 100.

ANNOTATION

I. General Consideration.
II. Election May be Contested.
III. Bond Required.
IV. Statement of Contest.
A. Filing.
B. Requisites of Statement.
V. Answer.
VI. Reception of Illegal Votes or Rejection of Legal Votes.
VII. Reply to Counterstatement.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

C.J.S. See 29 C.J.S., Elections, § 401.

Law reviews. For comment on Porter v. Johnson appearing below, see 2 Rocky Mt. L. Rev. 1311 (1930).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision for contesting the election of county officers is not only special in character, but furnishes a complete system of procedure within itself. Schwarz v. County Court, 14 Colo. 44, 23 P. 84 (1890); Kindel v. Le Bert, 23 Colo. 385, 48 P. 641 (1897); Gray v. Huntley, 77 Colo. 478, 238 P. 53 (1925).

The provision for contesting the election of county officers lists the pleadings and time within which they are to be filed. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

And such system is exclusive. Lewis v. Boynton, 25 Colo. 486, 55 P. 732 (1898).

II. ELECTION MAY BE CONTESTED.

Scope of contest. Contests of the election of any person declared duly elected to any county office, except the office of county judge, are governed by this section. Schwarz v. County Court, 14 Colo. 44, 23 P. 84 (1890); Kindel v. Le Bert, 23 Colo. 385, 48 P. 641 (1897); Gray v. Huntley, 77 Colo. 478, 238 P. 53 (1925).

And election contest over the office of county judge comes under Rule 100, C.R.C.P. Boger v. Smith, 77 Colo. 475, 238 P. 57 (1925).

The judge sitting in term time in his regular capacity as the court for the county is invested with jurisdiction to try and determine contested election cases of county officers. Vailes v. Brown, 16 Colo. 462, 27 P. 495 (1891); Gunson v. Baldauf, 88 Colo. 436, 297 P. 516 (1931).

But whether a judge sitting in vacation may exercise such jurisdiction not determined. Vailes v. Brown, 16 Colo. 462, 27 P. 945 (1891).

A contest proceeding is initiated by the filing of a bond and a statement of contest. Gunson v. Baldauf, 88 Colo. 436, 297 P. 516 (1931).

III. BOND REQUIRED.

The bond for costs is for the benefit of the contestee. Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900).

And whether it be given or not in the first instance does not affect the jurisdiction of the court. Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900).

So contestee must object. If no bond for costs be given when the action is commenced, or if the one accepted be insufficient, it is incumbent upon the contestee, to object at the earliest opportunity. Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900).

Otherwise, he will waive his rights in this respect. Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900).

The cost bond should not be in any specified penalty, but should be conditioned for the payment of all costs. Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900).

But the contestee cannot object to the bond because a penalty is specified, in the absence of a showing that the penalty fixed is insufficient to cover the probable costs which he may incur in the case. Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900).

Attorney fees are not included in "all costs". Amaya v. Dist. Court, 197 Colo. 129, 590 P.2d 506 (1979).

IV. STATEMENT OF CONTEST.

A. Filing.

The contest must be filed within 10 days after the date when the votes are canvassed. Vigil v. Garcia, 36 Colo. 430, 87 P. 543 (1906).

And this means all the votes. Vigil v. Garcia, 36 Colo. 430, 87 P. 543 (1906).

However, it does not mean a sufficient number to show that one or the other of the parties was elected. Vigil v. Garcia, 36 Colo. 430, 87 P. 543 (1906).

But it means the votes of the entire county. Vigil v. Garcia, 36 Colo. 430, 87 P. 543 (1906).

And if for any reason one or more precincts are not canvassed at the time of the first sitting of the board, the statute will not commence to run until those precincts are canvassed, even though the returns from those precincts, when counted, will not affect the result as between candidates for any single office. Vigil v. Garcia, 36 Colo. 430, 87 P. 543 (1906).

Moreover, the contest provision is to be construed as a statute of limitations upon a summary proceeding. Vailes v. Brown, 16 Colo. 462, 27 P. 945, 14 L.R.A. 120 (1891).

Whose time limit may not be enlarged. A statutory provision requiring notice of contest to be given within a given time from either the date of the official count, the declaration of the result, or the issuing of the certificate of election, etc., is peremptory, and the time cannot be enlarged. Vailes v. Brown, 16 Colo. 462, 27 P. 945 (1891).

And there is the strongest reason for enforcing this rule most rigidly in cases of contested elections, because promptness in commencing and prosecuting the proceedings is of the utmost importance to the end that a decision may be reached before the term has wholly, or in great part, expired. Vailes v. Brown, 16 Colo. 462, 27 P. 945 (1891).

Furthermore, time cannot be extended on ground that last day falls on Sunday. When the statutory period for filing the statement of an election contest for county officers under this section has fully elapsed, excluding the day when the votes are canvassed, the time cannot be extended merely on the ground that the last day happens to fall on Sunday. This is the reasonable as well as the natural and literal interpretation of the section. Vailes v. Brown, 16 Colo. 462, 27 P. 945 (1891).

Although it is clear that the first day must be excluded, for the contestor is given 10 days after the day when the votes are canvassed to file his statement. Vailes v. Brown, 16 Colo. 462, 27 P. 945 (1891).

B. Requisites of Statement.

There must be reasonable definiteness in statements of election contests. Suttle v. Sullivan, 131 Colo. 519, 283 P.2d 636 (1955).

A statement of contest which contains the averments and matters required by statute is sufficient to state a cause of action and sufficiently alleges the qualifications of the contestor to hold the office. Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900).

Hence, statement must include the particular cause of the contest. A contest proceeding is initiated by the filing of a statement of contest, the contents of which must conform to this section, and include the particular cause or causes of the contest. Gunson v. Baldauf, 88 Colo. 436, 297 P. 516 (1931).

Causes of contest incorporated by reference. The causes of contest are, insofar as applicable, incorporated by reference into the provision requiring a contestor of the election of county officers to file a written statement setting forth, among other things, the causes of the contest, and hence also into the provision relating to contests in special district elections. Jardon v. Meadowbrook-Fairview Metro. Dist., 190 Colo. 528, 549 P.2d 762 (1976).

Where the statement does not allege facts showing that the irregularities complained of changed the result of the election, the statement does not state a cause of action. Suttle v. Sullivan, 131 Colo. 519, 283 P.2d 636 (1955).

Statement of contestor that he is "an elector of the county" is a material averment and must be proved if denied by the answer or the contest as such must fail. Clanton v. Ryan, 14 Colo. 419, 24 P. 258 (1890).

Nor is the contestor excused from producing evidence in support of such averment on the ground that other competent evidence is refused. Clanton v. Ryan, 14 Colo. 419, 24 P. 258 (1890).

Statement may be amended as to proper name of contestee. Where there was an admitted mistake in naming the contestee in an election contest, a trial court errs in denying contestor's motion to amend the statement of

contest. Graham v. Swift, 123 Colo. 309, 228 P.2d 969 (1951).

V. ANSWER.

If contestee desires to controvert the truth of the matters averred in the statement of contest, he must do so by filing an answer in the time prescribed. Lewis v. Boynton, 25 Colo. 486, 55 P. 732 (1898).

And contestee cannot avail himself of a demurrer (now motion to dismiss for failure to state a claim) for the purpose for which it is ordinarily used. Lewis v. Boynton, 25 Colo. 486, 55 P. 732 (1898).

But if he elects to interpose such a demurrer (now motion to dismiss), it must be regarded as the equivalent of an answer admitting the truth of the matters averred, in which case it is unnecessary to introduce evidence in support of the allegations of the statement of contest. Lewis v. Boynton, 25 Colo. 486, 55 P. 732 (1898).

VI. RECEPTION OF ILLEGAL VOTES OR REJECTION OF LEGAL VOTES.

Although a slight ambiguity exists, the evident purpose of including the list of disputed votes is to require each party to give the other notice of the names of such persons as he claims illegally voted for his competitor and of those whose votes for himself were illegally rejected. Schwarz v. County Court, 14 Colo. 44, 23 P. 84 (1890).

This provision is mandatory. The provision that, where the reception of illegal votes is the ground of contest, a list of the persons alleged to have voted illegally must be set forth in the statement of contest is mandatory. Town of Sugar City v. Bd. of Comm'rs, 57 Colo. 432, 140 P. 809 (1914); Israel v. Wood, 98 Colo. 495, 56 P.2d 1324 (1936); Graham v. Swift, 123 Colo. 309, 228 P.2d 969 (1951).

And it must be strictly construed. Town of Sugar City v. Bd. of Comm'rs, 57 Colo. 432, 140 P. 809 (1914).

Moreover, the provisions of the rules of civil procedure have no application. Town of Sugar City v. Bd. of Comm'rs, 57 Colo. 432, 140 P. 809 (1914).

Consequently, in order to give the court jurisdiction, the contest statement must contain the required list. Schwarz v. County Court, 14 Colo. 44, 23 P. 84 (1890); Town of Sugar City v. Bd. of Comm'rs, 57 Colo. 432, 140 P. 809 (1914).

And an amendment to the statement to include the name of the voters is not permissible. Town of Sugar City v. Bd. of Comm'rs, 57 Colo. 432, 140 P. 809 (1914); Kay v. Strobeck, 81 Colo. 144, 254 P. 150 (1927).

Also, the omission to furnish the required list of names cannot be justified by subsequently alleging that the information necessary to prepare the same was in the hands of contestee by whose fraud and violence contestor was prevented from obtaining it when no effort was made in the first instance to either comply with the section or to excuse the failure. Schwarz v. County Court, 14 Colo. 44, 23 P. 84 (1890).

Hence, there is no error in the refusal of the court to declare a vote illegal where the voter's name was not set forth in the statement of contest. Kay v. Strobeck, 81 Colo. 144, 254 P. 150 (1927).

List concerning absentee voters held not to meet requirements. Where exhibit incorporated into statement of contest contained a long list of names of persons applying for and voting absentee ballots, but there was nothing in the list to indicate how many persons therein named were not legally qualified residents of the county, or who were not qualified by reason of mental or physical incompetence, or who had subscribed to an oath before a person unauthorized to administer the same, the statement of contest failed to meet the requirements for supplying a list of disputed votes. Graham v. Swift, 123 Colo. 309, 228 P.2d 969 (1951).

However, list not required where no "rejection" or "reception" of votes. In an election contest where the contestor alleged that two legal ballots had been rejected after they had been placed in the box, the polls had closed, and the ballots had been counted and canvassed, the ground of contest was not the "rejection" of legal votes or the "reception" of illegal votes, and the contestor was not required to set forth in his statement of contest a list of the number of persons who "so voted" or "offered to vote". Waggoner v. Barela, 123 Colo. 436, 230 P.2d 586 (1951).

And a vote is rejected when an elector offers to vote and is not permitted to cast a ballot; the rejected vote is a vote that is not cast - one that did not reach the ballot box. Waggoner v. Barela, 123 Colo. 436, 230 P.2d 586 (1951).

But if an elector is permitted to cast a ballot and to deposit it in the ballot box, the vote is accepted and must be counted unless it is attacked upon the other ground named in the statute, to wit, "the reception of illegal" votes, in which event the contest provision requires a list of the names of the persons who "so voted", that is, who voted illegally, to be set out in the statement of contest. Waggoner v. Barela, 123 Colo. 436, 230 P.2d 586 (1951).

For the term "so voted" refers to alleged illegal votes in the ballot box. Waggoner v. Barela, 123 Colo. 436, 230 P.2d 586 (1951).

While the term "or offered to vote" refers to electors, the rejected votes of whom were not cast or placed in the ballot box. Waggoner v. Barela, 123 Colo. 436, 230 P.2d 586 (1951).

Notwithstanding, illegal votes, whether challenged or not, may be considered in an election contest. Russell v. Wheeler, 165 Colo. 296, 439 P.2d 43 (1968).

As there is no statutory requirement that contested votes must be votes which are challenged at the polling place. Russell v. Wheeler, 165 Colo. 296, 439 P.2d 43 (1968).

However, where contestor alleges that an ineligible voter's ballot was received and counted for contestee, the burden is on the contestor to prove this necessary allegation contained in his statement of contest. Porter v. Johnson, 85 Colo. 440, 276 P. 333 (1929).

VII. REPLY TO COUNTERSTATEMENT.

Contestor's assertion of counterstatement's failure to state a claim does not deprive contestee's right to proof. In view of the specific denial of the charges made in the statement of contest, the counterstatement of contest filed by contestee, and the requirement that judgment be pronounced, it would be unreasonable to hold that the contestor's demurrer (now motion to dismiss for failure to state a claim) under such circumstances would deprive the contestee of the right to demand proof of the charges made by the contestor and to introduce testimony in support of his counterstatement of contest, inasmuch as such a ruling would deny the contestee his day in court. Gunson v. Baldauf, 88 Colo. 436, 297 P. 516 (1931).

1-11-212.5. Contests concerning bond elections. Except as otherwise provided in this part 2, the result of an election on a ballot issue seeking approval to create any debt or other financial obligation may be contested based on the grounds set forth in section 1-11-201 (4) in the manner provided by this part 2 for contesting the result of any other election.

Source: L. 2003: Entire section added, p. 749, § 3, effective August 6.

1-11-213. Rules for conducting contests in district court. (1) The style and form of process, the manner of service of process and papers, the fees of officers, and judgment for costs and execution shall be according to the rules and practice of the district court.

(2) Change of venue may be taken from any district court for any cause in which changes of venue might be taken in civil or criminal actions. The decisions of any district court are subject to appellate review as provided by law and the Colorado appellate rules.

(3) Before the district court is required to take jurisdiction of the contest, the contestor shall file with the clerk of the court a bond, with sureties, running to the contestee and conditioned to pay all costs in case of failure to maintain the contest. The judge shall determine the sufficiency of the bond and, if it is sufficient, approve it.

(4) The contestor, within ten days after the official survey of returns has been filed with the designated election official, shall file in the office of the clerk of the district court a written statement of the intention to contest the election, setting forth the name of the contestor, that the contestor is an eligible elector of the political subdivision, the name of the contestee, the office or ballot issue or ballot question being contested, the time of the election, and the particular grounds for the contest. The statement shall be verified upon information and belief by the affidavit of the contestor or of an eligible elector of the political subdivision. If the contest is based upon a ballot issue or ballot question, the political subdivision or subdivisions for which the ballot issue or ballot question was decided shall be named as a contestee. If a written statement of intent to contest the election is filed more than ten days after the completion of the official survey of returns, no court shall have jurisdiction over the contest.

(5) The clerk of the district court shall then issue a summons in the ordinary form, in which the contestor shall be named as plaintiff and the contestee as defendant, stating the court to which the action is being brought, the political subdivision for which the contest is filed, and a brief statement of the grounds for contest as set forth in the contestor's statement. The summons shall be served upon the contestee and political subdivision in the same manner as other district court summonses are served in this state, within ten days after the statement of intention is filed.

(6) The contestee, within ten days after the service of the summons, shall file an answer with the clerk of court, which admits or specifically denies each allegation of the statement and asserts any counterstatement on which the contestee relies as entitling him or her to the office to which elected.

(7) If a contestor alleges the reception of illegal votes or the rejection of legal votes as the grounds for the contest, a list of the eligible electors who so voted or offered to vote shall be set forth in the statement of the contestor and likewise in the answer of contestee if the same grounds are alleged in the counterstatement.

(8) When the answer of the contestee contains a new matter constituting a counterstatement, within ten days after the answer is filed, the contestor shall file a reply with the clerk of court admitting or specifically denying, under oath, each allegation contained in the counterstatement.

Source: L. 92: Entire article R&RE, p. 790, § 14, effective January 1, 1993. **L. 94:** (4) and (5) amended, p. 1177, § 66, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-210 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Timing requirement for an election contest not met by a lawsuit for injunctive relief filed prior to the election. The phrase "within ten days after" imposes two sequential conditions on an election contest: (1) "[A]fter" certification of election results, and (2) "within" 10 days. Neither condition was met. Taxpayers Against Congestion v. Reg'l Transp. Dist., 140 P.3d 343 (Colo. App. 2006).

Subsection (4) barred claims that a notice required by art. X, § 20, of the Colorado Constitution that accompanied a ballot title contained inaccurate financial data and had a misleading purpose, because the claims did not involve the legality or constitutionality of the ballot issue's substance but instead concerned only the means by which election results were obtained. Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).

Subsection (6) mandates factual specificity. Where the cause of a contest in an action challenging a school bond issue is that illegal votes have been received, subsection (6) mandates factual specificity. Abts v. Bd. of Educ., 622 P.2d 518 (Colo. 1980).

1-11-214. Trial and appeals in contests for county and nonpartisan elections. (1) Immediately after the issue is joined, the district judge shall set the date for trial, which shall be not more than twenty days nor less than ten days after the issue was joined. The trial shall take precedence over all other business of the court. Any depositions to be used in the trial may be taken upon four days' notice before any officer authorized to take depositions. The testimony at trial may be made orally or by depositions. The district judge shall cause the testimony to be taken in full and filed in the cause. The trial shall be conducted according to district court rules and practice.

(2) An appeal from the judgment may be taken to the supreme court, in the same manner as other cases tried in the district court. The appeal shall be filed, the bill of exceptions settled, the bond for costs executed and filed, and the record transmitted to the clerk of the supreme court within twenty days from the date the judgment is entered. The supreme court shall advance the case to the head of the calendar and shall hear and determine the matter with all reasonable dispatch.

Source: L. 92: Entire article R&RE, p. 792, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-11-211 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-10-111 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For depositions, see C.R.C.P. 26 to 37; for trial of contested elections, see C.R.C.P. 100.

I. General Consideration.
II. Trial.
III. Appeal.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. TRIAL.

Purpose of fixing day for trial. This section requiring a judge, in an election contest case, to fix a day for trial not more than twenty days after the issue is joined is for the purpose of enabling a speedy trial and is for the benefit of both parties. Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900).

But this requirement may be waived by both parties consenting to fixing the date of trial at a later date. Nicholls v. Barrick, 27 Colo. 432, 62 P. 202 (1900).

However, there is no specific provision for a change of the place of trial. Nordloh v. Packard, 45 Colo. 515, 101 P. 787 (1909).

Nor is there a provision for an application for calling in another judge to try the case upon the ground of prejudice or partiality of the presiding judge. Nordloh v. Packard, 45 Colo. 515, 101 P. 787 (1909).

And so, in the absence of any such authority, the rules of civil procedure should be followed. Nordloh v. Packard, 45 Colo. 515, 101 P. 787 (1909).

Under the rules, a party has not the absolute right to have his cause tried by a judge other than the regularly elected and presiding judge of the court on the alleged ground of the latter's prejudice. The matter lies in the sound discretion of the judge to whom the application is made, and his decision is not reviewable unless an abuse of discretion is shown. Doll v. Stewart, 30 Colo. 320, 70 P. 326 (1902); People ex rel. Lindsley v. District Court, 30 Colo. 488, 71 P. 388 (1903); Nordloh v. Packard, 45 Colo. 515, 101 P. 787 (1909).

Furthermore, an election contest may be tried notwithstanding a change of judges after its commencement, though the successor must conduct the trial de novo. Clanton v. Ryan, 14 Colo. 419, 24 P. 258 (1890); Nordloh v. Packard, 45 Colo. 515, 101 P. 787 (1909).

And by the words "other cases" must be understood ordinary civil actions. Clanton v. Ryan, 14 Colo. 419, 24 P. 258 (1890).

But it is not "according to the rules and practice" in the trial of ordinary civil actions for one judge to hear the evidence, or a part thereof, orally, and then for another judge to render a finding and judgment upon such evidence, however perfectly the same may have been preserved. Clanton v. Ryan, 14 Colo. 419, 24 P. 258 (1890).

The object of requiring testimony to be preserved is for convenient reference afterwards, or for use on appeal, or as a deposition in case a second trial should be had when witnesses should have died or removed from the county. Clanton v. Ryan, 14 Colo. 419, 24 P. 258 (l890).

Where an election contest is dismissed by contestant, over the objection of the contestee, after answer and replication are filed, such dismissal is not a bar to another contest depending on the same facts. Freas v. Engelbrecht, 3 Colo. 377 (1877); Hallack v. Loft, 19 Colo. 74, 34 P. 568 (1893); Martin v. McCarthy, 3 Colo. App. 37, 32 P. 551 (1893); Denver & R. G. R. R. v. Iles, 25 Colo. 19, 53 P. 222 (1898); Bd. of Comm'rs v. Schradsky, 31 Colo. 178, 71 P. 1104 (1903); Vigil v. Garcia, 36 Colo. 430, 87 P. 543 (1906).

III. APPEAL.

Limitation upon appeals not repealed by provision for review. Provision that writs of error (now writs on appeal) to any inferior tribunal shall be the only method for review by the supreme court of any action or proceeding, and repealing all statutes providing any other method or procedure for review, did not repeal the 20-day limitation upon appeals of election contest decisions. Sitler v. Brians, 126 Colo. 370, 251 P.2d 319 (1952).

Hence, the attempted review of an action to contest election not docketed in the supreme court within 20 days from the date of judgment is not sought in apt time and a motion to dismiss should be granted. Sitler v. Brians, 126 Colo. 370, 251 P.2d 319 (1952).

Moreover, an application to advance a cause to the head of the calendar in the supreme court will not be considered until the abstract and all the briefs have been filed in accordance with the rule of court and the case is ready for submission. Dickinson v. Freed, 24 Colo. 483, 52 P. 209 (1898).

And objections of contestor not presented by the verified statement of contest cannot be considered on review. Israel v. Wood, 98 Colo. 495, 56 P.2d 1324 (1936).

When dismissal judgment must be affirmed. If the dismissal of an election contest is proper upon any ground, whether or not the trial court relied thereon, the judgment must be affirmed. Graham v. Swift, 123 Colo. 309, 228 P.2d 969 (1951).

And the reason assigned by the trial court may in itself be insufficient to warrant the judgment, but if upon other grounds the judgment is correct, it will not be reversed because of faulty reasoning. Graham v. Swift, 123 Colo. 309, 228 P.2d 969 (1951).

Thus if a statement of contest is insufficient to justify further proceedings, then the judgment of the court dismissing the action should be affirmed, notwithstanding the fact that no motion was presented in the trial court challenging the sufficiency of said statement and no

specification of points with relation thereto appears in the record. Graham v. Swift, 123 Colo. 309, 228 P.2d 969 (1951).

1-11-215. Recount in contests for county and nonpartisan elections. If, at trial of any election contest as provided in section 1-11-214 and this section, the statement or counterstatement alleges an error in the abstract of votes cast sufficient to change the result, the district judge has the power to order a recount of the ballots cast or the votes tabulated in the precincts in which the alleged error was made. The court may also require the production before it of witnesses, documents, records, and other evidence as may have or contain information regarding the legality of any vote cast or counted for either of the contesting candidates or a ballot issue or ballot question, or concerning the correct number of votes cast for a candidate or a ballot issue or ballot question. The court may order the returns corrected in accordance with the evidence presented and the court's findings.

Source: L. 92: Entire article R&RE, p. 792, § 14, effective January 1, 1993. **L. 94:** Entire section amended, p. 1178, § 67, effective July 1. **L. 99:** Entire section amended, p. 491, § 21, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-212 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-112 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Contestor has no absolute and unqualified right to have ballot boxes opened and a recount of ballots. Kindel v. Le Bert, 23 Colo. 385, 48 P. 641 (1897); Boger v. Smith, 77 Colo. 475, 238 P. 57 (1925); Gray v. Huntley, 77 Colo. 478, 238 P. 53 (1925).

Rather, before such an order can be properly made, there must be some preliminary evidence supporting the alleged charges. Kindel v. Le Bert, 23 Colo. 385, 48 P. 641 (1897); Gray v. Huntley, 77 Colo. 478, 238 P. 53 (1925).

And then the matter is within the sound legal discretion of the trial court. Kindel v. Le Bert, 23 Colo. 385, 48 P. 641, 58 Am. St. R. 234 (1897); Gray v. Huntley, 77 Colo. 478, 238 P. 53 (1925); Harper v. City of Pueblo, 109 Colo. 411, 126 P.2d 339 (1942).

In addition, the exercise of such discretion, when within the limits of the constitution and statutes, is final on review when wisely exercised. Gray v. Huntley, 77 Colo. 478, 238 P. 53 (1925); Winters v. Pacheco, 88 Colo. 105, 292 P. 1061 (1930).

Ballot boxes should not be ordered open until some positive proof is offered to show that the election returns are not justified by the ballots in the ballot boxes. Winters v. Pacheco, 88 Colo. 105, 292 P. 1061 (1930).

And definite allegations of fraud or allegations that a recount will change the result, and a prima facie showing thereof, are essential for a recount. Kindel v. Le Bert, 23 Colo. 385, 48 P. 641 (1897); Harper v. City of Pueblo, 109 Colo. 411, 126 P.2d 339 (1942).

For, in the absence of a definite and specific assertion, no recount is allowed. Harper v. City of Pueblo, 109 Colo. 411, 126 P.2d 339 (1942).

But when this preliminary proof is offered, it would be a gross abuse of discretion for a court to deny contestor the right to substantiate his cause by documentary evidence. Winters v. Pacheco, 88 Colo. 105, 292 P. 1061 (1930).

And since the ballot itself is the best evidence, with all other secondary, it is idle to require witnesses to testify as to the illegibility of a ballot which can be produced and thereby refute or confirm their statements with reference to it. Winters v. Pacheco, 88 Colo. 105, 292 P. 1061 (1930).

Thus, where two witnesses testified that they had seen a questioned ballot and that it was absolutely illegible, this was sufficient proof to justify an order of court for the opening of the ballot box and production of the ballot where the result of the election depended on such. Winters v. Pacheco, 88 Colo. 105, 292 P. 1061 (1930).

Also, comparison of ballots with the poll lists is allowed in connection with evidence. Upon the production of evidence tending to show error, mistake, fraud, malconduct, or corruption on the part of the election board, or any of its members, in the matter of receiving, numbering, depositing, or canvassing the ballots, or other illegal or irregular conduct in respect thereto, an inspection and comparison of the ballots with the poll lists should be allowed in connection with the oral evidence in reference thereto. Clanton v. Ryan, 14 Colo. 419, 24 P. 258 (1890).

Charge in answer sufficient to entitle contestor to recount as matter of course. Where the answer charged

that the boxes had been tampered with and had not been preserved by the county clerk in the manner provided by law, the contestor assumed the burden of proving that they had not been tampered with or molested, that they were in the same condition as when received by the clerk, and under the issues as made by the pleadings, the contestor was entitled to a recount of these ballots as a matter of course. Wiley v. McDowell, 55 Colo. 236, 133 P. 757 (1913).

1-11-216. Judgment in contests for county and nonpartisan elections. The district court shall pronounce judgment on whether the contestee or any other person was legally elected to the contested office or on whether the ballot issue or ballot question was enacted. The court's judgment declaring a person elected entitles that person to take office when the term of office begins, upon proper qualification. If the judgment is against a contestee who has received a certificate, the judgment annuls the certificate. If the court finds that no person was legally elected, the judgment shall set aside the election and declare a vacancy in the office contested.

Source: L. 92: Entire article R&RE, p. 792, § 14, effective January 1, 1993. **L. 94:** Entire section amended, p. 1178, § 68, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-213 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-113 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 432.

C.J.S. See 29 C.J.S., Elections, § 401.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Court cannot after lapse of term suspend execution of judgment. Nordloh v. Packard, 45 Colo. 515, 101 P. 787 (1909).

And even during the term at which an election contest is determined, the court has no power to suspend execution of a judgment which awards the office to the contestor. Nordloh v. Packard, 45 Colo. 515, 101 P. 787 (1909).

1-11-216.5. Judgment in election contests - creation of financial obligation. The district court shall pronounce judgment on whether the approval of a ballot issue to create any debt or other financial obligation should be set aside based on the grounds set forth in section 1-11-201 (4).

Source: L. 2003: Entire section added, p. 749, § 3, effective August 6.

1-11-217. Costs of election contest. (1) A judgment against the contestor pursuant to the provisions of sections 1-11-211 and 1-11-212, concerning election of a candidate or determination of a ballot question, shall provide that the contestor is liable for all fees incurred in the contested election by all contestees, including reasonable costs and attorney fees.

(2) A judgment against the contestor pursuant to the provisions of sections 1-11-211 and 1-11-212, concerning the determination of a ballot issue, or pursuant to section 1-11-212.5, concerning the determination of a ballot issue that includes approval of the creation of any debt or other financial obligation, shall provide that the contestor is liable for all fees incurred in the contested election by all contestees, including reasonable costs and attorneys fees, but a judgment for costs and fees shall be awarded in favor of the state or a political subdivision only if the suit is ruled frivolous, as provided in article 17 of title 13, C.R.S.

Source: L. 92: Entire article R&RE, p. 793, § 14, effective January 1, 1993. **L. 94:** Entire section amended, p. 1178, § 69, effective July 1. **L. 2003:** (2) amended, p. 750, § 4, effective August 6.

1-11-218. Violations by the governing body. (1) If the results of any county or nonpartisan election are disallowed as the result of a proceeding held pursuant to sections 1-11-211 and 1-11-212, the elector who instituted the proceedings may commence a civil action to recover costs and reasonable attorney fees from the governing body.

(2) If the result of any election approving the creation of any debt or other financial obligation is set aside as the result of a proceeding held pursuant to this part 2, the elector who instituted the proceeding may commence a civil action to recover costs and reasonable attorney fees from the governing body.

Source: L. 92: Entire article R&RE, p. 793, § 14, effective January 1, 1993. **L. 94:** Entire section amended, p. 1179, § 70, effective July 1. **L. 2003:** Entire section amended, p. 750, § 5, effective August 6.

PART 3

SPECIAL LEGISLATIVE ELECTION PROCEDURE - MEMBERS OF THE GENERAL ASSEMBLY

1-11-301. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Section 10 of article V of the Colorado constitution provides that each house of the general assembly shall judge the election and qualification of its members;

(b) Section 11 of article VII of the Colorado constitution authorizes the general assembly to pass laws to secure the purity of elections;

(c) In furtherance of these constitutional provisions and the plenary power of the general assembly, the general assembly may enact laws to enable a house of the general assembly to call a special legislative election in the event such house is unable to declare a person duly elected in a district as a member of the state senate or the state house of representatives because an accurate and verifiable vote count showing that the person has the highest number of votes cast in such district cannot be obtained from the general election returns.

Source: L. 99: Entire part added, p. 1386, § 4, effective June 4.

1-11-302. Causes of special legislative election. (1) The state senate or the state house of representatives, acting by resolution, may call a special legislative election for a state senate or house of representatives district following the 2000 general election and any general election thereafter pursuant to this part 3 if:

(a) The election of any person as a member of the state senate or the state house of representatives is contested pursuant to section 1-11-208; and

(b) A committee on credentials, a committee of reference, or an administrative law judge pursuant to section 1-11-208.5 recommends a special legislative election.

(2) Such resolution shall direct the secretary of state to give notice to the county clerk and recorder of each county in which such district is located to call a special legislative election for the entire district pursuant to section 1-11-303. Such resolution shall further specify that the candidates at such election shall, subject to the withdrawal of a candidate pursuant to section 1-11-306, be the same as the candidates on the ballot in such district for the state senate or the state house of representatives seat at the preceding general election from which the election contest arises.

Source: L. 99: Entire part added, p. 1387, § 4, effective June 4.

1-11-303. Call for special legislative election. (1) Within three days after receipt of a resolution calling for a special legislative election pursuant to section 1-11-302, the secretary of state shall make

and deliver or transmit to the county clerk and recorder of each county in which the district for the contested state senate or house of representatives seat is located a written notice calling a special legislative election in said district. The secretary of state shall further specify the name and party of each candidate and the district number of the contested state senate or house of representatives seat. Except as otherwise provided in section 1-11-306, candidates shall be the same as the candidates on the ballot in such district for the state senate or house of representatives at the preceding general election from which the contest was filed pursuant to section 1-11-208.

(2) A special legislative election called pursuant to this section shall be held in the entire district for the contested state senate or state house of representatives seat and no precinct or precincts in the district may be excluded from such election.

Source: L. 99: Entire part added, p. 1387, § 4, effective June 4.

1-11-304. Date of election. Within three days after receipt of the secretary of state's notice pursuant to section 1-11-303, the county clerk and recorder or coordinated election official shall set a date for the special legislative election that is not less than forty-five days nor more than sixty days from the date of such receipt.

Source: L. 99: Entire part added, p. 1387, § 4, effective June 4.

1-11-305. Notice of special legislative election. The county clerk and recorder shall give notice of the special legislative election pursuant to section 1-5-206.

Source: L. 99: Entire part added, p. 1388, § 4, effective June 4.

1-11-306. Withdrawal from special legislative election. A candidate on the ballot at the special legislative election may withdraw his or her candidacy at any time after the notice of special legislative election given under section 1-11-305. The special legislative election shall be called and held notwithstanding such withdrawal; except that, if, at the close of business on the tenth day before such election, there is not more than one candidate on the ballot by reason of such withdrawal, the designated election official shall cancel the election and declare the candidate elected. Notice of such cancellation shall be made as provided in section 1-5-208 (6).

Source: L. 99: Entire part added, p. 1388, § 4, effective June 4.

1-11-307. Conduct of special legislative election. The special legislative election shall be conducted according to the provisions of articles 1 to 13 of this title.

Source: L. 99: Entire part added, p. 1388, § 4, effective June 4.

1-11-308. Mail-in ballots. The appropriate designated election officials shall make available applications for mail-in ballots no later than twenty-four hours after the date for the special legislative election is set. Mail-in ballots shall be available no later than thirty days before the special legislative election. All other provisions of article 8 of this title shall apply to the mail-in ballot process.

Source: L. 99: Entire part added, p. 1388, § 4, effective June 4. **L. 2007:** Entire section amended, p. 1796, § 63, effective June 1.

1-11-309. Early voting. Early voting for a special legislative election shall be made available pursuant to section 1-8-202.

Source: L. 99: Entire part added, p. 1388, § 4, effective June 4.

1-11-310. Survey of returns. (1) The board of canvassers for a special legislative election shall be organized as provided in section 1-10-101.

(2) The county clerk and recorder shall contact the secretary of state on election night with the unofficial count.

(3) The board of canvassers for a special legislative election shall commence a survey of the returns on the day following such election.

(4) The certified survey of returns shall be sent by certified mail or hand delivered to the secretary of state no later than the close of business on the fifth day after the special legislative election.

(5) Upon receipt of the certified survey of returns, the secretary of state shall issue a certificate of election to the candidate who received the highest number of votes and shall transmit a copy of the certificate to the appropriate house of the general assembly.

Source: L. 99: Entire part added, p. 1388, § 4, effective June 4.

1-11-311. Special legislative elections subject to "Fair Campaign Practices Act". Special legislative elections conducted in accordance with this part 3 are subject to the appropriate sections of article 45 of this title.

Source: L. 99: Entire part added, p. 1389, § 4, effective June 4.

ARTICLE 12

Recall and Vacancies in Office

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980, and this article was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated in 1992. For a detailed comparison of this article for 1980 and 1992, see the comparative tables located in the back of the index.

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PART 1

RECALL FROM OFFICE

1-12-101. Elected officers subject to recall. Every elected officer of this state or any political subdivision thereof is subject to recall from office at any time by the eligible electors entitled to vote for a successor to the incumbent. The recall of any state officer shall be governed by the recall of state officers procedure set forth in this article.

Source: L. 92: Entire article R&RE, p. 793, § 15, effective January 1, 1993.

ANNOTATION

Am. Jur.2d. See 38 Am. Jur.2d, Governor, § 6; 63 Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 29 C.J.S., Elections, §§ 3, 132.

1-12-102. Limitations. (1) No recall petition shall be circulated or filed against any elected officer until the officer has actually held office for at least six months following the last election; except that a recall petition may be filed against any member of the general assembly at any time after the fifth day following the convening and organizing of the general assembly after the election.

(2) After one recall petition and election, no further petition may be filed against the same state or county officer during the term for which the officer was elected, unless the petitioners signing the petition equal fifty percent of the votes cast at the last preceding general election for all of the candidates for the office held by the officer.

(3) After one recall petition and election, no further petition shall be filed against the same nonpartisan officer during the term for which the officer was elected, unless the petitioners signing the petition equal one and one-half times the number of signatures required on the first petition filed against the same officer, until one year has elapsed from the date of the previous recall election.

(4) No recall petition shall be circulated or filed against any elected officer whose term of office will expire within six months.

Source: L. 92: Entire article R&RE, p. 793, § 15, effective January 1, 1993. **L. 97:** (4) added, p. 1061, § 1, effective May 27.

Cross references: For the power of the county central committee to fill vacancies, see § 1-3-104.

ANNOTATION

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 29 C.J.S., Elections, §§ 3, 132.

1-12-103. Petition for recall. Eligible electors of a political subdivision may initiate the recall of an elected official by signing a petition which demands the election of a successor to the officer named in the petition. The petition shall contain a general statement, consisting of two hundred words or less, stating the ground or grounds on which the recall is sought. The statement is for the information of the electors who shall be the sole and exclusive judges of the legality, reasonableness, and sufficiency of the ground or grounds assigned for the recall. The ground or grounds shall not be open to review.

Source: L. 92: Entire article R&RE, p. 794, § 15, effective January 1, 1993.

ANNOTATION

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 151-158.

1-12-104. Signatures required for state and county officers. (1) A petition to recall a state or county officer shall be signed by eligible electors equal in number to twenty-five percent of the entire vote cast at the last preceding general election for all candidates for the office which the incumbent sought to be recalled occupies.

(2) If more than one person is required by law to be elected to fill the office to which the person sought to be recalled is an incumbent, then the petition shall be signed by eligible electors entitled to vote for a successor to the incumbent sought to be recalled equal in number to twenty-five percent of the

entire vote cast at the last preceding general election for all candidates for the office to which the incumbent sought to be recalled was elected, the entire vote being divided by the number of all officers elected to the office at the last preceding general election.

Source: L. 92: Entire article R&RE, p. 794, § 15, effective January 1, 1993. **L. 97:** (1) amended, p. 1061, § 2, effective May 27.

ANNOTATION

Am. Jur.2d. See 38 Am. Jur.2d, Governor, § 6; 63 Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 151-158.

1-12-105. Signatures required for school district officers. A petition to recall a school district officer shall be signed by eligible electors of the school district equal in number to at least forty percent of those electors who voted in such district in the last preceding election at which the director to be recalled was elected as indicated by the pollbook or abstract for such election. If no such election was held, such petition shall be signed by eligible electors of the school district equal in number to at least ten percent of those electors residing within the school district on the date that the form of the petition is approved under section 1-12-108 (4). In no case shall the number required for recall be less than ten percent of eligible electors qualified to vote in the most recent biennial school election; except that no more than fifteen thousand signatures shall be required.

Source: L. 92: Entire article R&RE, p. 794, § 15, effective January 1, 1993. **L. 97:** Entire section amended, p. 1061, § 3, effective May 27.

Cross references: For the determination of existence of vacancy in county offices, see § 30-10-105.

ANNOTATION

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 151-158.

Where a county clerk-elect died before qualification, a vacancy in the office occurred on the expiration of the term of the then incumbent, to be filled by appointment of the county commissioners. Gibbs v. People ex rel. Watts, 66 Colo. 414, 182 P. 894 (1919) (decided under former law).

1-12-106. Signatures required for nonpartisan officers. A petition to recall any other nonpartisan officer shall be signed by three hundred eligible electors of the political subdivision who are entitled to vote for a successor to the incumbent sought to be recalled or forty percent of the eligible electors of the political subdivision at the time the form of the petition is approved under section 1-12-108 (4), whichever number is less.

Source: L. 92: Entire article R&RE, p. 794, § 15, effective January 1, 1993. **L. 97:** Entire section amended, p. 1062, § 4, effective May 27.

1-12-107. Designated election officials. (1) For state recall elections, the petition shall be filed with the secretary of state who shall certify the sufficiency of the petition to the governor who shall set the date for the election. The election shall be conducted by the appropriate county clerk and recorder in the manner provided in this article for state elections.

(2) For county recall elections, the petition shall be filed with the county clerk and recorder who shall certify the sufficiency of the petition and call and conduct the election.

(3) For school board recall elections, the petition shall be filed with the county clerk and recorder in which the school district's administrative offices are located. The clerk and recorder of the county shall

certify the sufficiency of the petition and call and conduct the election.

(4) For all other nonpartisan elections, the petition shall be filed with the district court in the county in which the political subdivision was organized. The court shall then appoint a designated election official to certify the sufficiency of the petition and call and conduct the election.

Source: L. 92: Entire article R&RE, p. 795, § 15, effective January 1, 1993.

ANNOTATION

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers and Employees, § 155.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 151-158.

1-12-108. Petition requirements. (1) The petition shall be prepared and circulated pursuant to this part 1. No signature shall be counted that was placed on a petition prior to approval of the petition by the designated election official or more than sixty days after the designated election official's approval of the petition.

(2) (a) The petition for the recall of an elected official may consist of one or more sheets, to be fastened together in the form of one petition section, but each sheet shall contain the same heading and each petition section shall contain one sworn affidavit of the circulator. No petition shall contain the name of more than one person proposed to be recalled from office.

(b) The petition for recall may be circulated and signed in sections, and each section shall contain a full and accurate copy of the title and text of the petition. Each petition shall designate, by name and address, three persons, referred to in this section as the "committee", that shall represent the signers in all matters affecting the petition.

(3) (a) The signatures to a recall petition need not all be appended to one paper, but no petition shall be legal that does not contain the requisite number of names of eligible electors whose names do not appear on any other petition previously filed for the recall of the same person under the provisions of this section.

(b) At the top of each page shall be printed, in bold-faced type, the following:

WARNING:
IT IS AGAINST THE LAW:

> **For anyone to sign this petition with any name other than one's own or to knowingly sign one's name more than once for the same measure or to knowingly sign the petition when not a registered elector.**
>
> **Do not sign this petition unless you are an eligible elector. To be an eligible elector you must be registered to vote and eligible to vote in (name of political subdivision) elections.**
>
> **Do not sign this petition unless you have read or have had read to you the proposed recall measure in its entirety and understand its meaning.**

(c) Directly following the warning in paragraph (b) of this subsection (3) shall be printed in bold-faced type the following:

> **Petition to recall (name of person sought to be recalled) from the office of (title of office).**

(4) No petition shall be circulated until it has been approved as meeting the requirements of this subsection (4) as to form. The official with whom the petitions are to be filed pursuant to section 1-12-107 shall approve or disapprove a petition as to form by the close of the second business day following submission of the proposed petition. The official shall mail written notice of the action taken to the person who submitted the petition and to the officer whom the petition seeks to recall on the day the action is taken.

(5) (a) Every petition shall be signed only by eligible electors.

(b) Unless physically unable, all electors shall sign their own signature and shall print their names, respective residence addresses, including the street number and name, the city or town, the county, and the date of signature. Each signature on a petition shall be made, to the extent possible, in black ink.

(c) Any person, except a circulator, may assist an elector who is physically unable to sign the petition in completing the information on the petition as required by law. On the petition immediately following the name of the disabled elector, the person providing assistance shall both sign and state that the assistance was given to the disabled elector.

(6) (a) No person shall circulate a recall petition unless the person is a resident of the state, a citizen of the United States, and at least eighteen years of age.

(b) To each petition section shall be attached a signed, notarized, and dated affidavit executed by the person who circulated the petition section, which shall include: The affiant's printed name, the address at which the affiant resides, including the street name and number, the city or town, the county, and the date of signature; a statement that the affiant was a resident of the state, a citizen of the United States, and at least eighteen years of age at the time the section of the petition was circulated and signed by the listed electors; a statement that the affiant circulated the section of the petition; a statement that each signature on the petition section is the signature of the person whose name it purports to be; a statement that to the best of the affiant's knowledge and belief each of the persons signing the petition section was, at the time of signing, an eligible elector; and a statement that the affiant has not paid or will not in the future pay and that the affiant believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing the signer to sign the petition.

(c) The designated election official shall not accept for filing any section of a petition that does not have attached to it the notarized affidavit required by this section. Any signature added to a section of a petition after the affidavit has been executed is invalid.

(7) (Deleted by amendment, L. 97, p. 1062, § 5, effective May 27, 1997.)

(7.5) The petition may be filed at any time during the sixty-day period after the designated election official's approval of the petition form as specified in subsection (1) of this section. The committee shall file all sections of a petition simultaneously, and any section of a petition submitted after the petition is filed shall be invalid and of no force and effect.

(8) (a) Upon filing, the designated election official for the political subdivision shall review all petition information and verify the information against the registration records, and, where applicable, the county assessor's records. The secretary of state shall establish guidelines for verifying petition entries.

(b) Any disassembly of a section of the petition prior to filing that has the effect of separating the affidavits from the signatures shall render that section of the petition invalid and of no force and effect.

(c) After review, and no later than ten working days after the initial filing of the petition, the designated election official shall notify the committee and the incumbent of the number of valid signatures and whether the petition appears to be sufficient or insufficient. Upon determining that the petition is sufficient and after the time for protest has passed, the designated election official shall certify the recall question to the ballot and, if the election is a coordinated election, notify the coordinated election official.

(9) (a) A recall petition that has been verified by the designated election official shall be held to be sufficient unless a protest in writing under oath is filed in the office of the designated election official by

an eligible elector within fifteen days after the designated election official has determined the sufficiency or insufficiency of the petition under paragraph (c) of subsection (8) of this section. The petition shall set forth specific grounds for the protest. Grounds include but are not limited to failure of any portion of a petition or circulator affidavit to meet the requirements of this article or any conduct on the part of petition circulators that substantially misleads persons signing the petition. The designated election official shall forthwith mail a copy of the protest to the committee named in the petition as representing the signers, together with a notice fixing a time for hearing the protest not less than five nor more than ten days after the notice is mailed. Every hearing shall be before the designated election official with whom the protest is filed or before a district judge sitting in that county if the designated election official is the subject of the recall. The testimony in every hearing shall be under oath. The hearing shall be summary and not subject to delay and shall be concluded within thirty days after the petition is filed, and the result shall be forthwith certified to the committee.

(b) The party filing a protest has the burden of sustaining the protest by a preponderance of the evidence. The decision upon matters of substance is open to review, if prompt application is made, as provided in section 1-1-113. The remedy in all cases shall be summary, and the decision of any court having jurisdiction shall be final and not subject to review by any other court; except that the supreme court, in the exercise of its discretion, may review any judicial proceeding in a summary way.

(c) A petition for recall may be amended once at any time within sixty days from the date the petition form was approved by the designated election official under subsection (4) of this section.

(d) (I) Any signer may request that his or her name be stricken from the petition at any time within the sixty-day period prior to the date the petition is deemed sufficient and the time for protest has passed by filing a written request that his or her signature be stricken with the designated election official and delivering a copy of such request to at least one member of the committee. If such request is delivered to the member of the committee or the election official through the United States mails, it shall be deemed delivered to the committee or the election official on the date shown by the cancellation mark on the envelope containing the request received by the member or the election official. If the request is delivered to the member of the committee or the election official in any other manner, it shall be deemed delivered to the committee or the election official on the date of delivery and stamped receipt by the election official.

(II) If the designated election official receives a written request filed in accordance with this paragraph (d) after the petition is filed but before the petition is deemed sufficient and the time for protest has passed, the election official shall strike the signature of the signer who filed the request. If the election official receives such a written request before the petition is filed, the election official shall strike the signature of the signer who filed the request promptly upon the filing of the petition.

(10) Any person who willfully destroys, defaces, mutilates, or suppresses a petition, or who willfully neglects to file or delays delivery of a petition, or who conceals or removes a petition from the possession of the person authorized by law to have custody of it, or who aids, counsels, procures, or assists any person in doing any of the above acts is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 92: Entire article R&RE, p. 795, § 15, effective January 1, 1993. **L. 93:** Entire section amended, p. 1435, § 119, effective July 1. **L. 95:** Entire section amended, p. 845, § 72, effective July 1. **L. 97:** (4), (7), (8)(c), (9)(a), and (9)(c) amended and (7.5) added, p. 1062, § 5, effective May 27. **L. 99:** (9)(c) amended and (9)(d) added, p. 95, § 1, effective September 1. **L. 2001:** (2)(a) amended, p. 1004, § 14, effective August 8. **L. 2002:** (7.5) amended, p. 1640, § 32, effective June 7. **L. 2007:** (6)(a) and (6)(b) amended, p. 1981, § 32, effective August 3.

ANNOTATION

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers and Employees, § 155.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 149, 151-158.

One appointed to fill the vacant and unexpired term of a public office holds precisely as his predecessor

would have done had the vacancy not occurred. People ex rel. Callaway v. De Guelle, 47 Colo. 13, 105 P. 1110 (1909) (decided under former law).

And one elected to a public office has a contingent or inchoate right which becomes absolute upon qualification. No one else can enter into the office during the term for which another is elected, until the officer elected is ousted, or his right terminated, which can never occur until the day appointed by law for the enforcement of his term. If at that date he has failed to qualify, the office is vacant. People ex rel. Callaway v. De Guelle, 47 Colo. 13, 105 P. 1110 (1909) (decided under former law).

1-12-109. Resignation. If an officer whose recall is sought offers a resignation it shall be accepted and the vacancy caused by the resignation shall be filled as provided by law. The person appointed to fill the vacancy caused by the resignation shall hold the office only until the person elected at the recall election is qualified.

Source: L. 92: Entire article R&RE, p. 795, § 15, effective January 1, 1993.

1-12-110. Call for election. (1) If the officer whose recall is sought does not resign within five days after the sufficiency of the recall petition has been sustained, the designated election official shall make notice by publication for the holding of a recall election, and the officers charged by law with election duties shall make necessary arrangements for the conduct of the election. The election shall be conducted pursuant to the provisions of this title.

(2) If the officer whose recall is sought resigns at any time after the filing of the certification of election question for the ballot, the recall election shall be called and held notwithstanding the resignation.

Source: L. 92: Entire article R&RE, p. 795, § 15, effective January 1, 1993. **L. 95:** (1) amended, p. 849, § 73, effective July 1.

1-12-111. Date of election. If the recall petition is held to be sufficient under section 1-12-108 (8) (c) and after the time for protest has passed, the officer with whom the recall petition was filed, without delay, shall submit the petition, together with a certificate of its sufficiency, to the appropriate governing body. The governing body shall set a date for the recall election not less than forty-five nor more than seventy-five days from the date of determination of sufficiency; however, if a general election is to be held within ninety days after the determination of sufficiency, the recall election shall be held as a part of the general election.

Source: L. 92: Entire article R&RE, p. 796, § 15, effective January 1, 1993. **L. 97:** Entire section amended, p. 1063, § 6, effective May 27.

1-12-112. Ballots. (1) In addition to all other requirements of law, the official ballot shall contain a statement consisting of two hundred words or less stating the reasons set forth in the petition for demanding the officer's recall. The officer sought to be recalled may submit a statement of justification of the officer's course in conduct in three hundred words or less to the designated election official. The officer shall submit any such statement no later than ten working days after the date of issuance of the certificate of sufficiency by the designated election official. The official ballot shall contain such statement of justification if submitted pursuant to this subsection (1).

(2) Ballots for the election of a successor to the officer sought to be recalled shall contain the candidates' names which shall be placed on the ballot by lot, regardless of the method of nomination.

Source: L. 92: Entire article R&RE, p. 796, § 15, effective January 1, 1993. **L. 97:** (1) amended, p. 1063, § 7, effective May 27.

1-12-113. Conduct of election. The recall election and election of a successor shall be conducted according to the provisions of articles 1 to 13 of this title.

Source: L. 92: Entire article R&RE, p. 796, § 15, effective January 1, 1993.

1-12-114. Mail-in ballots. Applications for mail-in ballots shall be made available by the appropriate designated election officials no later than twenty-four hours after the date for the recall election is set. Mail-in ballots shall be available no later than thirty days before the recall election. All other provisions of article 8 of this title shall apply to the mail-in ballot process.

Source: L. 92: Entire article R&RE, p. 796, § 15, effective January 1, 1993. **L. 95:** Entire section amended, p. 849, § 74, effective July 1. **L. 2007:** Entire section amended, p. 1796, § 64, effective June 1.

1-12-115. Write-in candidates. No write-in vote for any office shall be counted unless an affidavit of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of the office if elected. The affidavit of intent shall be filed with the designated election official not later than the date required for filing nominating petitions pursuant to section 1-12-117.

Source: L. 92: Entire article R&RE, p. 796, § 15, effective January 1, 1993. **L. 95:** Entire section amended, p. 849, § 75, effective July 1.

1-12-116. Sufficiency of the recall. If a majority of those voting on the question of the recall of any incumbent from office vote "no", the incumbent shall continue in office; if a majority vote "yes", the incumbent shall be removed from office upon the qualification of the successor.

Source: L. 92: Entire article R&RE, p. 796, § 15, effective January 1, 1993.

1-12-117. Nomination of successor. A candidate to succeed the officer sought to be recalled shall meet the qualifications of a party candidate or an unaffiliated candidate as provided in part 8 of article 4 of this title and shall be nominated by a political party petition or an unaffiliated petition as provided in part 9 of article 4 of this title. Nomination petitions and affidavits of intent to run as a write-in candidate shall be filed no later than fifteen days after the date on which the appropriate governing body convenes and sets the election date. Every petition shall be signed by the number of eligible electors required for the office in part 8 of article 4 of this title or as otherwise provided by law. The name of the officer who was sought to be recalled shall not be eligible as a candidate in the election to fill any vacancy resulting from the recall election.

Source: L. 92: Entire article R&RE, p. 797, § 15, effective January 1, 1993. **L. 94:** Entire section amended, p. 1179, § 71, effective July 1. **L. 95:** Entire section amended, pp. 849, 862, §§ 76, 123, effective July 1. **L. 97:** Entire section amended, p. 1064, § 8, effective May 27.

Editor's note: Amendments to this section by sections 76 and 123 of House Bill 95-1241 were harmonized.

1-12-118. Election of successor. (1) The election of a successor shall be held at the same time as the recall election. The names of those persons nominated as candidates to succeed the person sought to be recalled shall appear on the ballot; but, no vote cast shall be counted for any candidate for the office unless the voter also voted for or against the recall of the person sought to be recalled. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for office.

(2) (Deleted by amendment, L. 95, p. 850, § 77, effective July 1, 1995.)

Source: L. 92: Entire article R&RE, p. 797, § 15, effective January 1, 1993. **L. 95:** Entire section amended, p. 850, § 77, effective July 1.

1-12-119. Canvass of votes. (1) For the recall of a partisan officer, the canvass board shall be composed of one representative from each major political party and the county clerk and recorder. For the recall of a nonpartisan officer, the canvass board shall be composed of the designated election official, one member of the governing body, and one eligible elector of the political subdivision.

(2) The canvass board shall complete an abstract of votes cast no later than the day following the recall election. For state elections, the canvass board shall contact the secretary of state on election night with the unofficial count. For county and all other elections, the canvass board shall provide the governing body with the unofficial count at the opening of business hours on the day following the recall election.

(3) The certified abstract of votes cast shall be sent by certified mail or hand delivered to the secretary of state for state elections and to the governing body for county and all other elections no later than the close of business on the fifth day after the recall election.

(4) If the majority of those voting on the recall question voted "yes", upon receipt of the certified abstract of votes cast, the designated election official shall issue a certificate of election to the successor candidate who received the highest number of votes. A copy of the certificate shall be transmitted by the secretary of state to the appropriate house of the general assembly for recall elections concerning the general assembly and to the governor for the recall of all other elections of state officers. For all other recall elections, a copy of the certificate shall be transmitted to the governing body of the political subdivision.

Source: L. 92: Entire article R&RE, p. 797, § 15, effective January 1, 1993. **L. 95:** (3) and (4) amended, p. 850, § 78, effective July 1. **L. 99:** Entire section amended, p. 491, § 22, effective July 1.

1-12-120. Cost of recall election. (1) If at any recall election for a state office the incumbent whose recall is sought is not recalled, the incumbent shall be repaid from the state treasury any money authorized by this article which the incumbent actually expended as an expense of the recall election. In no event shall the sum repaid be greater than an amount equal to ten cents per voter. The general assembly shall provide an appropriation for state recall elections.

(2) If at any recall election for a county or local government office the incumbent whose recall is sought is not recalled, the governing body shall authorize a resolution for repayment from the general fund of the political subdivision any money authorized to be repaid to the incumbent by this article which the incumbent actually expended as an expense of the election. In no event shall the sum repaid exceed forty cents per eligible elector as defined in section 1-1-104 (16), subject to a maximum repayment of ten thousand dollars.

(3) Authorized expenses shall include, but are not limited to, moneys spent in challenging the sufficiency of the recall petition and in presenting to the electors the official position of the incumbent, including campaign literature, advertising, and maintaining campaign headquarters.

(4) Unauthorized expenses shall include, but are not limited to: Moneys spent on challenges and court actions not pertaining to the sufficiency of the recall petition; personal expenses for meals; lodging and mileage for the incumbent; costs of maintaining a campaign staff and associated expenses; reimbursement for expenses incurred by a campaign committee which has solicited contributions; reimbursement of any kind for employees in the incumbent's office; and all expenses incurred prior to the filing of the recall petition.

(5) The incumbent shall file a complete and detailed request for reimbursement within sixty days after the date of the recall election with the governing body of the political subdivision holding the recall election, who shall then review the reimbursement request for appropriateness under subsection (2) of

this section and shall refer the request, with recommendations, to the general assembly at its next general session for state recall elections or to the treasurer of the governing body for all other elections within thirty days after receipt of the request for reimbursement.

Source: L. 92: Entire article R&RE, p. 798, § 15, effective January 1, 1993. **L. 97:** (2) amended, p. 1064, § 9, effective May 27.

1-12-121. Special provisions. (1) If the governor is sought to be recalled under the provisions of this article by recall petition filed in the office of the secretary of state, the duties imposed upon the governor by this article and article XXI of the state constitution as to that recall petition shall be performed by the lieutenant governor. If the secretary of state is sought to be recalled under the provisions of this article by recall petition filed in the office of the secretary of state, the duties imposed upon the secretary of state by this article and article XXI of the state constitution as to that recall petition shall be performed by the state auditor.

(2) If the recall of any other elected or appointed officer is sought who is charged with responsibilities under this article, the governing body shall appoint another officer to perform such duties.

Source: L. 92: Entire article R&RE, p. 799, § 15, effective January 1, 1993.

1-12-122. Recalls subject to "Fair Campaign Practices Act". Recall elections are subject to the appropriate sections of article 45 of this title.

Source: L. 95: Entire section added, p. 850, § 79, effective July 1.

1-12-123. Constitutional requirements for recall of state officers. To the extent that the provisions of this part 1 concerning the recall of state officers conflict with the provisions of article XXI of the state constitution, the provisions of article XXI of the state constitution shall control.

Source: L. 97: Entire section added, p. 1064, § 10, effective May 27.

PART 2

VACANCIES IN OFFICE

1-12-201. Vacancies in office of United States senator. (1) When a vacancy occurs in the office of United States senator from this state, the governor shall make a temporary appointment to fill the vacancy until it is filled by election.

(2) When a vacancy occurs, the governor shall direct the secretary of state to include in the general election notice for the next general election a notice of the filling of the vacancy. The secretary of state shall give notice accordingly. At the election, the vacancy shall be filled for the unexpired term. If, for any reason, no United States senator is elected at the next general election, the person temporarily appointed by the governor shall hold the office until a United States senator is elected at a succeeding general election.

Source: L. 92: Entire article R&RE, p. 799, § 15, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-12-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-11-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 38 Am. Jur.2d, Governor, § 6; 63A Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 29 C.J.S., Elections, §§ 3, 132, 134.

1-12-202. Vacancies in office of representative in congress. Except as provided in section 1-4-401.5, when any vacancy occurs in the office of representative in congress from this state, the governor shall set a day to hold a congressional vacancy election to fill the vacancy and cause notice of the election to be given as required in part 2 of article 5 of this title; but congressional vacancy elections shall not be held within the ninety-day period preceding a general election.

Source: L. 92: Entire article R&RE, p. 800, § 15, effective January 1, 1993. **L. 2008:** Entire section amended, p. 410, § 5, effective August 5.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-12-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-11-101 (1) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For registration for congressional vacancy elections, see § 1-2-210; for power of the county central committee to fill vacancies, see § 1-3-104.

ANNOTATION

Am. Jur.2d. See 63A Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 29 C.J.S., Elections, §§ 3, 132, 134.

1-12-203. Vacancies in general assembly. (1) In the event of a vacancy in the general assembly caused by the death or resignation of a member who has been sworn into office, caused by the death or resignation of a member who has been elected to a seat but who has not yet been sworn into office, or caused by a person not taking the oath of office as provided in paragraph (b) of subsection (3) of this section, the vacancy shall be filled by the appropriate vacancy committee, if any, as provided in section 1-3-103 (1) (d), of the same political party and of the same representative or senatorial district represented by the former member whose seat is vacant. If the member was affiliated with a minor political party, then the vacancy shall be filled by the vacancy committee designated in the constitution or bylaws of the minor political party. If the member was unaffiliated with a political party, then the vacancy shall be filled by the vacancy committee designated on the petition for nomination pursuant to section 1-4-802 (1) (e). The vacancy shall be filled until the next general election after the vacancy occurs, when the vacancy shall be filled by election.

(2) No vacancy committee may select a person to fill a vacancy at a meeting held pursuant to this section unless a written notice announcing the time and location of the vacancy committee meeting was mailed to each of the committee members at least ten days prior to the meeting by the chairperson of the central committee that selected the members. Mailing of the notice is effective when the notice is properly addressed and deposited in the United States mail, with first-class postage prepaid.

(3) (a) The vacancy committee, by a majority vote of its members present and voting at a meeting called for that purpose and open to the public, shall select a person who possesses the constitutional qualifications for a member of the general assembly and who is affiliated with the same political party or minor political party, if any, shown on the registration books of the county clerk and recorder as the former member whose seat is vacant. No meeting shall be held until a quorum is present consisting of not less than one-half of the voting membership of the vacancy committee. No member of the vacancy committee may vote by proxy. The committee shall certify the selection to the secretary of state within thirty days from the date the vacancy occurs; except that, in the case of a vacancy filled pursuant to

section 1-4-1002 (2.5), the committee shall certify the selection within thirty days after the date of the general election affected by the vacancy. If the vacancy committee fails to certify a selection within thirty days in accordance with the provisions of this subsection (3), the governor, within five days, shall fill the vacancy by appointing a person having the qualifications set forth in this subsection (3). The name of the person selected or appointed shall be certified to the secretary of state.

(b) No sooner than two days after receiving the certification from the vacancy committee, the secretary of state shall certify the name of the person selected or appointed to the appropriate house of the general assembly. The oath of office shall be administered to the person within thirty days of the receipt of such certification by the appropriate house or on the convening date of the general assembly, whichever occurs first; except that the president of the senate or the speaker of the house of representatives, as appropriate, shall extend the time to take the oath upon a finding that extenuating circumstances prevented the person from taking the oath within the initial thirty-day period. In the event the person does not take the oath of office in accordance with this paragraph (b), the office shall be deemed vacant and shall be filled by the appropriate vacancy committee pursuant to the provisions of this section. The person, after having qualified and taken the oath of office, shall immediately assume the duties of office and shall serve until the next convening of the general assembly following the election certification and qualification of a successor. Nothing in this subsection (3) shall be construed to reduce the number of consecutive terms that a person appointed to fill a vacancy in the general assembly may serve in accordance with section 3 of article V of the state constitution.

(4) For purposes of this section, a vacancy caused by the resignation of a member of the general assembly occurs on the effective date of the member's letter of resignation to the chief clerk of the house of representatives or the secretary of the senate. If the letter of resignation gives an effective date of resignation that is later than the date the letter of resignation is submitted, the vacancy committee may meet no more than twenty days prior to the effective date of the resignation for the purposes of nominating a person to fill the vacancy. The certification of the nominee of the vacancy committee to the secretary of state may not be made prior to the effective date of the resignation; further, should the member of the general assembly withdraw the letter of resignation prior to the effective date, the person nominated by the vacancy committee may not be certified to the secretary of state.

(5) If the vacancy is caused by the death of a member-elect of the general assembly who has been elected to office but who has not yet been sworn in, the vacancy committee shall meet no more than thirty days after the death of the general assembly member-elect to fill the vacancy. The certification of the nomination of the vacancy committee to the secretary of state may be made prior to the convening of the general assembly but shall not take effect until the effective date of the vacancy, which is the first day the general assembly convenes.

Source: L. 92: Entire article R&RE, p. 800, § 15, effective January 1, 1993. **L. 95:** (1) and (3) amended and (4) and (5) added, p. 851, § 80, effective July 1. **L. 98:** (1) and (3) amended, p. 260, § 15, effective April 13; (3) amended, p. 812, § 2, effective May 26. **L. 99:** (3) amended, p. 934, § 4, effective August 4. **L. 2008:** Entire section amended, p. 1745, § 1, effective August 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-12-103 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in § 1-11-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Amendments to subsection (3) by House Bill 98-1110 and Senate Bill 98-193 were harmonized.

ANNOTATION

Am. Jur.2d. See 63A Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 100-109.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Applied in Kallenberger v. Buchanan, 649 P.2d 314 (Colo. 1982).

1-12-204. Vacancies in state and district offices. All vacancies in any state office and in the office of district attorney shall be filled by appointment by the governor until the next general election after the vacancy occurs, when the vacancy shall be filled by election.

Source: L. 92: Entire article R&RE, p. 801, § 15, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-12-104 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-11-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 38 Am. Jur.2d, Governor, § 6; 63A Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 100-109.

1-12-205. Vacancies in county offices. All vacancies in any county office, except that of county commissioner, shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs, until the next general election, at which time the vacancy shall be filled by election.

Source: L. 92: Entire article R&RE, p. 801, § 15, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-12-105 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-11-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For determination of existence of vacancy in county offices, see § 30-10-105.

ANNOTATION

Am. Jur.2d. See 63A Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 100-109.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Where a county clerk-elect died before qualification, a vacancy in the office occurred on the expiration of the term of the then incumbent, to be filled by appointment by the county commissioners. Gibbs v. People ex rel. Watts, 66 Colo. 414, 182 P. 894 (1919).

1-12-206. Vacancies in the office of county commissioner. (1) In case of a vacancy occurring in the office of county commissioner, a vacancy committee constituted as provided in this section shall, by a majority vote of its members present at a meeting called for the purpose, fill the vacancy by appointment within ten days after the occurrence of the vacancy. The meeting shall not be held unless a quorum is present consisting of not less than one-half of the voting members of the vacancy committee. A member of the vacancy committee may not vote by proxy. If the vacancy committee fails to fill the vacancy within ten days, the governor shall fill the vacancy by appointment within fifteen days after the occurrence of the vacancy.

(2) If the vacating commissioner was elected by the electors of the whole county, whether at large or from a district, the successor shall be appointed by a vacancy committee constituted of those persons

selected at the county central committee organizational meeting of the same political party as the vacating commissioner.

(3) If the vacating commissioner was elected only by the electors of the district from which the vacating commissioner was elected, the county commissioner district central committee of the same district and political party as the vacating commissioner shall appoint a vacancy committee whose sole purpose shall be to name a successor to the position of county commissioner. In the event the county commissioner district central committee fails to appoint a vacancy committee, the vacancy committee shall consist of the chairperson and the vice-chairperson of the county commissioner district central committee, and a third person designated by the chairperson and vice-chairperson from among the precinct committeepersons of the same district and the same political party as the vacating commissioner.

(4) If the vacating commissioner is unaffiliated, then a registered unaffiliated successor shall be appointed by the governor, acting as a vacancy committee, within ten days after the vacancy.

(4.5) If the vacating commissioner is affiliated with a minor political party, then a registered elector affiliated with the same minor political party shall be appointed as the successor pursuant to the constitution or bylaws of the minor political party.

(5) Any person appointed to a vacancy in the office of county commissioner under this section shall be a resident of the county and reside within the district, if any, in which the vacancy exists and shall be a member of the same political party or minor political party, if any, shown on the registration books of the county clerk and recorder as the vacating commissioner. Any person appointed pursuant to this section shall hold the office until the next general election or until the vacancy is filled by election according to law.

(6) A vacancy committee may not select a person to fill a vacancy at a meeting held pursuant to this section unless a written notice announcing the time and location of the vacancy committee meeting is mailed to each member of the vacancy committee at least six days before the meeting by the chairperson of the central committee. Mailing of the notice is effective when the notice is properly addressed and deposited in the United States mail with first-class postage prepaid.

Source: L. 92: Entire article R&RE, p. 801, § 15, effective January 1, 1993. **L. 98:** (4.5) added and (5) amended, p. 260, § 16, effective April 13. **L. 2008:** (1) amended and (6) added, p. 1747, § 2, effective August 5.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in § 1-12-106 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in § 30-10-309 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-12-207. Vacancies on nonpartisan boards. (1) Any vacancy on a nonpartisan board shall be filled by appointment by the remaining director or directors. The appointee shall meet all of the qualifications for holding the office. The appointee shall serve until the next regular election, at which time any remaining unexpired portion of the term shall be filled by election. If the board fails, neglects, or refuses to fill any vacancy within sixty days after it occurs, the board of county commissioners of the county in which the organizational petition is filed shall fill the vacancy.

(2) If there are no duly elected directors and if the failure to appoint a new board will result in the interruption of services that are being provided by the district, then the board of county commissioners of the county in which the organizational petition is filed may appoint all directors. Any board appointed pursuant to this subsection (2) shall call a special election within six months after its appointment.

Source: L. 92: Entire article R&RE, p. 802, § 15, effective January 1, 1993.

ANNOTATION

A director appointed to the board of a ground water management district pursuant to § 37-90-126 must stand for election at the district's next regular election. The ground water management law does not address the issue. Because the election code was intended to provide answers to election procedures not included in other statutes, this section controls. Deutsch v. Kalcevic, 140 P.3d 340 (Colo. App. 2006).

1-12-208. Unexpired terms less than ninety days. No person shall be elected to fill a vacancy in an elective office when the unexpired term is, at the time of the election, less than ninety days. In such case, the person appointed to fill the vacancy shall continue to hold the office for the remainder of the unexpired term and until the successor elected at the election is duly qualified.

Source: L. 92: Entire article R&RE, p. 802, § 15, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-12-107 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-11-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 63A Am. Jur.2d, Public Officers and Employees, § 155.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 104-107.

1-12-209. Terms of persons filling vacancies. Except for appointments on nonpartisan boards, any officers elected or appointed to fill vacancies as provided in this article shall qualify and enter upon the duties of their offices immediately thereafter. If elected or appointed, the officers shall hold the office during the unexpired term for which they were elected and until their successors are elected, qualified, and take office on the second Tuesday of January, except as otherwise provided by law, in accordance with section 1-1-201.

Source: L. 92: Entire article R&RE, p. 802, § 15, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-12-108 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-11-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 63A Am. Jur.2d, Public Officers and Employees, § 155.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 104-107.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

One appointed to fill the vacant and unexpired term of a public office holds precisely as his predecessor would have done had the vacancy not occurred. People ex rel. Callaway v. De Guelle, 47 Colo. 13, 105 P. 1110 (1909).

And one elected to a public office has a contingent or inchoate right which becomes absolute upon qualification. No one else can enter into the office during the term for which another is elected, until the officer elected is ousted, or his right terminated, which can never occur until the day appointed by law for the enforcement of his term. If at that date he has failed to qualify, the office is vacant. People ex rel. Callaway v. De Guelle, 47 Colo. 13, 105 P. 1110 (1909).

1-12-210. Certification of appointment. All appointments under this article shall be evidenced by an appropriate entry in the minutes of the meeting of the governing board, and the appointing body shall cause a notice of appointment and the oath of office to be delivered to the person appointed. A duplicate of each notice of appointment, an acceptance of appointment, and the mailing address of the person appointed shall be kept as a permanent record by the appointing body and forwarded to any other appropriate official.

Source: L. 92: Entire article R&RE, p. 803, § 15, effective January 1, 1993.

ARTICLE 13

Election Offenses

Editor's note: Articles 1 to 13 were repealed and reenacted in 1980. This article was numbered as article 21 of chapter 49, C.R.S. 1963. For additional historical information concerning the repeal and reenactment of articles 1 to 13 of this title in 1980, see the editor's note immediately following the title heading for this title.

Cross references: For applicability of this article to special district elections, see § 32-1-807; for election offenses in municipal elections, see part 15 of article 10 of title 31.

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1-13-801. Mailing other materials with mail-in voter's ballot.
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PART 1

OFFENSES - GENERAL PROVISIONS

1-13-101. District attorney or attorney general to prosecute. (1) Any person may file an affidavit with the district attorney stating the name of any person who has violated any of the provisions of this code and stating the facts which constitute the alleged offense. Upon the filing of such affidavit, the district attorney shall forthwith investigate, and, if reasonable grounds appear therefor, he shall prosecute the violator.

(2) The attorney general shall have equal power with district attorneys to file and prosecute informations or complaints against any persons for violating any of the provisions of this code.

Source: L. 80: Entire article R&RE, p. 428, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-101 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-102. Sufficiency of complaint - judicial notice. Irregularities or defects in the mode of calling, giving notice of, convening, holding, or conducting any general, primary, or congressional vacancy election authorized by law constitute no defense to a prosecution for a violation of this code. When an offense is committed in relation to any general, primary, or congressional vacancy election, an indictment, information, or complaint for such offense is sufficient if it alleges that such election was authorized by law without stating the call or notice of the election, the names of the judges holding such election, or the names of the persons voted for at such election. Judicial notice shall be taken of the holding of any general, primary, or congressional vacancy election.

Source: L. 80: Entire article R&RE, p. 428, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-102 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 409-417, 471.

C.J.S. See 29 C.J.S., Elections, § 540.

1-13-103. Immunity of witness from prosecution. Any person violating any of the provisions of this code is a competent witness against any other violator and may be compelled to attend and testify at any trial, hearing, proceeding, or investigation in the same manner as other persons; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying, except for perjury in giving such testimony. A person so testifying shall not thereafter be liable to indictment, prosecution, or punishment for the offense with reference to which his testimony was given and may plead or prove the giving of testimony accordingly in bar of such indictment or prosecution.

Source: L. 80: Entire article R&RE, p. 429, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-103 and similar to 1-30-116 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 477.

1-13-104. Perjury. Any person, having taken any oath or made any affirmation required by this code, who swears or affirms willfully, corruptly, and falsely in a matter material to the issue or point in question or who suborns any other person to swear or affirm as aforesaid commits perjury in the second degree as set forth in section 18-8-503, C.R.S., and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 80: Entire article R&RE, p. 429, § 1, effective January 1, 1981. **L. 2002:** Entire section amended, p. 1464, § 5, effective October 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-106, 1-30-123, and 1-30-124 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

1-13-105. False certificates by officers. Any notary public or any officer authorized by law to administer oaths who knowingly makes a false certificate in regard to a matter connected with an election held under the laws of this state commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 80: Entire article R&RE, p. 429, § 1, effective January 1, 1981. **L. 2002:** Entire section amended, p. 1464, § 6, effective October 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-111 and 1-30-125 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: (1) For the power of officers to administer oaths, see § 24-12-103.
(2) For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 453. **C.J.S.** See 29 C.J.S., Elections, § 549.

1-13-106. Forgery. Any person who falsely makes, alters, forges, or counterfeits any ballot before or after it has been cast, or who forges any name of a person as a signer or witness to a petition or nomination paper, or who forges any letter of acceptance, declination, or withdrawal, or who forges the name of a registered elector to a mail-in voter's ballot commits forgery as set forth in section 18-5-102, C.R.S., and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 80: Entire article R&RE, p. 429, § 1, effective January 1, 1981. **L. 93:** Entire section amended, p. 1435, § 120, effective July 1. **L. 94:** Entire section amended, p. 1622, § 5, effective May 31. **L. 2002:** Entire section amended, p. 1464, § 7, effective October 1. **L. 2007:** Entire section amended, p. 1797, § 65, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-107 and similar to 1-30-130 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 449-461. **C.J.S.** See 29 C.J.S., Elections, §§ 547, 556.

1-13-107. Violation of duty. Any public officer, election official, or other person upon whom any duty is imposed by this code who violates, neglects, or fails to perform such duty or is guilty of corrupt conduct in the discharge of the same or any notary public or other officer authorized by law to administer oaths who administers any oath knowing it to be false or who knowingly makes a false certificate in regard to a matter connected with any election provided by law is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 429, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-111 and similar to 1-30-113 (1) as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 453. **C.J.S.** See 29 C.J.S., Elections, § 549.

1-13-108. Anonymous statements concerning candidates or issues. (Repealed)

Source: L. 80: Entire article R&RE, p. 429, § 1, effective January 1, 1981. **L. 87:** Entire section amended, p. 297, § 30, effective June 26. **L. 89:** Entire section amended, p. 311, § 25, effective May 9. **L. 97:** Entire section repealed, p. 1545, § 15, effective July 1.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, was similar to 1-13-150 and 1-30-131 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-109. False or reckless statements relating to candidates or questions submitted to electors - penalties - definitions. (1) (a) No person shall knowingly make, publish, broadcast, or circulate or cause to be made, published, broadcasted, or circulated in any letter, circular, advertisement, or poster or in any other communication any false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office.

(b) Any person who violates any provision of paragraph (a) of this subsection (1) commits a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

(2) (a) No person shall recklessly make, publish, broadcast, or circulate or cause to be made, published, broadcasted, or circulated in any letter, circular, advertisement, or poster or in any other communication any false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office. Notwithstanding any other provision of law, for purposes of this subsection (2), a person acts "recklessly" when he or she acts in conscious disregard of the truth or falsity of the statement made, published, broadcasted, or circulated.

(b) Any person who violates any provision of paragraph (a) of this subsection (2) commits a class 2 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

(3) For purposes of this section, "person" means any natural person, partnership, committee, association, corporation, labor organization, political party, or other organization or group of persons, including a group organized under section 527 of the internal revenue code.

Source: L. 80: Entire article R&RE, p. 430, § 1, effective January 1, 1981. **L. 2002:** (2) amended, p. 1464, § 8, effective October 1. **L. 2005:** Entire section amended, p. 1366, § 1, effective September 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-30-133 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

1-13-110. Wagers with electors. It is unlawful for any person, including any candidate for election to public office, before or during any election provided by law, to make any bet or wager with an elector, or take a share or interest in, or in any manner become a party to, any such bet or wager, or provide or agree to provide any money to be used by another in making such bet or wager upon any event or contingency arising out of such election. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 430, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-126 and similar to 1-30-104 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 549.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The prohibition of wagers with electors is penal in nature. Bd. of Trustees v. People ex rel. Keith, 13 Colo. App. 553, 59 P. 72 (1899).

But it does not make a forfeiture of office a part of the punishment. Bd. of Trustees v. People ex rel. Keith, 13 Colo. App. 553, 59 P. 72 (1899).

Even if the offense were sufficient to justify a removal from office, a board of trustees could not remove the mayor of a town on such charge till he had been tried and convicted in a court of competent jurisdiction. Bd. of Trustees v. People ex rel. Keith, 13 Colo. App. 553, 59 P. 72 (1899).

1-13-111. Penalties for election offenses. In all cases where an offense is denominated by this code as being a misdemeanor and no penalty is specified, the offender, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: L. 80: Entire article R&RE, p. 430, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-104 (2) as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 469-474.

1-13-112. Offenses relating to mail ballots. Any person who, by use of force or other means, unduly influences an elector to vote in any particular manner or to refrain from voting, or who falsely makes, alters, forges, or counterfeits any mail ballot before or after it has been cast, or who destroys, defaces, mutilates, or tampers with such a ballot shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: L. 90: Entire section added, p. 318, § 2, effective January 1, 1991. **L. 95:** Entire section amended, p. 852, § 83, effective July 1.

1-13-113. Interference with distribution of election material. During the period beginning forty-five days before and ending four days after any election, any person who prevents, hinders, or interferes with the lawful distribution of any card, pamphlet, circular, poster, handbill, yard sign, or other written material relating to any candidate for election for any office or relating to any issue that is to be submitted to the electors in any election, or any person who removes, defaces, or destroys any lawfully placed billboard, sign, or written material from any premises to which it was delivered, commits a misdemeanor and shall be punished by a fine of not more than seven hundred fifty dollars. Any person found guilty of removing, defacing, or destroying any billboard, sign, or written material shall pay the cost of replacement. The owner of the premises, an authorized agent of the owner, or any person charged with enforcement of any state law, ordinance, or regulation may remove any billboard, sign, or written material without penalty when placed without permission or authorization of the owner of such premises, or in violation of state law or county or municipal ordinance or regulation, or which is in place at any

time other than during the period beginning forty-five days before and ending four days after any election.

Source: L. 93: Entire section added, p. 1627, § 1, effective July 1.

1-13-114. Failure to comply with requirements of secretary of state. Any person who willfully interferes or willfully refuses to comply with the rules of the secretary of state or the secretary of state's designated agent in the carrying out of the powers and duties prescribed in section 1-1-107 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

Source: L. 96: Entire section added with relocations, p. 1764, § 48, effective July 1.

Editor's note: This section was formerly numbered as 1-1-107 (3).

PART 2

OFFENSES - QUALIFICATIONS AND REGISTRATION OF ELECTORS

1-13-201. Interfering with or impeding registration. Any person who intentionally interferes with or impedes the registration of electors, whether by act of commission or by failure to perform any act or duty imposed or required for the proper administration of parts 2 and 3 of article 2 of this title, or who knowingly permits or encourages another to do so is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111. A person who collects a voter registration application from an eligible elector for mailing or delivery to the county clerk and recorder and who fails to mail or deliver the application to the proper county clerk and recorder within five business days after the application is signed is guilty of a violation of this section.

Source: L. 80: Entire article R&RE, p. 430, § 1, effective January 1, 1981. **L. 2005:** Entire section amended, p. 1425, § 54, effective June 6; entire section amended, p. 1460, § 54, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-108 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 449-461.

C.J.S. See 29 C.J.S., Elections, § 548.

1-13-202. Unlawful qualification as taxpaying elector. It is unlawful to take or place title to property in the name of another or to pay the taxes or to take or issue a tax receipt in the name of another for the purpose of attempting to qualify such person as a taxpaying elector or as a qualified taxpaying elector or to aid or assist any person to do so. The ballot of any person violating this section shall be void. Any person, company, corporation, or association violating this section shall forfeit and lose all rights, franchises, or other benefits accruing or to accrue to the benefit of such person, company, corporation, or association by or as the result of any such election. Any person who violates any of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 430, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-113 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 547, 548.

1-13-203. Procuring false registration. It is unlawful for any person to procure his or her own name, or the name of any other person, to be registered in the registration book of a precinct in which such person is not, at the time of such registration, entitled to be registered or for any person to procure any fictitious name to be registered in the registration book of any precinct. Any person who violates any of the provisions of this section shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment. Each violation shall be considered a separate offense.

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981. **L. 95:** Entire section amended, p. 852, § 84, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-114 and 1-30-119 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 548.

1-13-204. Adding names after registration closed. No name shall be added to the registration book of any precinct after the close of the registration, and, if any county clerk and recorder, judge of election, or other person willfully and knowingly adds any such name of any person or any fictitious or false name to the registration book of any precinct after the close of registration, he is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars. Each violation shall be considered a separate offense.

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-117 and 1-30-120 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 453. **C.J.S.** See 29 C.J.S., Elections, § 548.

1-13-205. County clerk and recorder signing wrongful registration. Every county clerk and recorder who willfully signs his name on the registration record opposite the name of any person knowing that said person is not legally entitled to be registered pursuant to the provisions of section 1-2-101 is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981. **L. 91:** Entire section amended, p. 638, § 79, effective May 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-115 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 453. **C.J.S.** See 29 C.J.S., Elections, § 548.

1-13-206. Disposition of mail voter registration application. (Repealed)

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981. **L. 95:** Entire section repealed, p. 853, § 88, effective July 1.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, was similar to 1-13-118 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-207. Signature on registration record is proof of oath. Any elector, election official, or other person, by his signature on the registration record, shall be conclusively deemed in law to have duly verified such registration record. The registration record containing such signature, or a copy thereof certified by the county clerk and recorder, shall be admissible in evidence as proof of the taking of an oath or affirmation as to the information contained therein in all criminal proceedings pursuant to sections 1-13-104, 1-13-203, and 1-13-205.

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981. **L. 91:** Entire section amended, p. 638, § 80, effective May 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-116 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 548.

1-13-208. Deputy county clerk and recorder - influencing party affiliation. Any deputy county clerk and recorder for voter registration purposes, or employee of the department of revenue who is authorized to conduct voter registration at local driver's license examination facilities, or employee of a voter registration agency who is authorized to conduct voter registration who influences or attempts to influence any person during the registration process to affiliate with a political party or to affiliate with a specific political party is guilty of a misdemeanor and, upon conviction, shall be punished as provided in section 1-13-111.

Source: L. 92: Entire section added, p. 803, § 16, effective January 1, 1993. **L. 94:** Entire section amended, p. 1771, § 34, effective January 1, 1995.

1-13-209. High school deputy registrar - influencing party affiliation. Any high school deputy registrar for voter registration purposes who influences or attempts to influence any person during the registration process to affiliate with a political party or to affiliate with a specific political party is guilty of a misdemeanor and, upon conviction, shall be punished as provided in section 1-13-111.

Source: L. 92: Entire section added, p. 623, § 2, effective July 1. **L. 93:** Entire section amended, p. 1435, § 121, effective July 1.

PART 3

OFFENSES - POLITICAL PARTY ORGANIZATION

1-13-301. Fraud at precinct caucus, assembly, or convention. Any person in authority at any precinct caucus, assembly, or convention who in any manner dishonestly, corruptly, or fraudulently performs any act devolving on him by virtue of the position of trust which he fills or knowingly aids or abets any other person to do any fraudulent, dishonest, or corrupt act or thing in reference to the carrying on of any precinct caucus, assembly, or convention or the ascertaining or promulgating of its true will is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-112 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 553.

1-13-302. Fraudulent voting in precinct caucus, assembly, or convention. Any person who fraudulently participates and votes in a precinct caucus, assembly, or convention when he is not a member of the political party holding such precinct caucus, assembly, or convention, as shown on the registration books of the county clerk and recorder, is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-119 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 553.

1-13-303. Offenses at precinct caucus, assembly, or convention. (1) It is unlawful for any person at any precinct caucus, assembly, or convention:

(a) To fraudulently vote more than once; or

(b) To knowingly hand in two or more ballots deceitfully folded together; or

(c) To knowingly procure, aid, counsel, or advise another to vote or attempt to vote fraudulently or corruptly; or

(d) To falsely personate any elector and vote under his name or under an assumed name; or

(e) To fraudulently procure, aid, abet, or encourage, directly or indirectly, any person to attempt to falsely personate any elector or to vote under an assumed name; or

(f) To influence any voter in the casting of his vote by bribery, duress, or any other corrupt or fraudulent means; or

(g) To receive any money or valuable thing, or the promise of either, for casting his vote for or against any person or measure or to offer his vote for or against any person or measure in consideration of money or other valuable thing, or the promise of either.

(2) Each offense mentioned in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 432, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-120 and similar to 1-30-127 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 449-461.

C.J.S. See 29 C.J.S., Elections, § 540

PART 4

OFFENSES - ACCESS TO BALLOT BY CANDIDATE

1-13-401. Bribery of petition signers. Any person who offers or, with knowledge of the same, permits any person to offer for his benefit any bribe or promise of gain to an elector to induce him to sign any petition or other election paper or any person who accepts any bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe is offered or accepted before or after signing, is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 432, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-121 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 449-461.

C.J.S. See 29 C.J.S., Elections, § 554.

1-13-402. Tampering with nomination papers - nomination petitions. (1) Any person who, being in possession of any petition, certificate of nomination, or letter of acceptance, declination, or withdrawal, wrongfully or willfully destroys, defaces, mutilates, suppresses, neglects to file, or fails to cause to be filed the same within the prescribed time or who files any such paper knowing the same, or any part thereof, to be falsely made or who adds, amends, alters, or in any way changes the information on the petition as written by a signing elector is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

(2) Any person who willfully destroys, defaces, mutilates, or suppresses any nomination petition or who willfully neglects to file or delays the delivery of the nomination petition or who conceals or removes any petition from the possession of the person authorized by law to have the custody thereof, or who aids, counsels, procures, or assists any person in doing any of said acts commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 432, § 1, effective January 1, 1981. **L. 88:** Entire section amended, p. 294, § 5, effective May 29. **L. 89:** (1) amended, p. 311, § 26, effective May 9.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-129 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 219.

1-13-403. Defacing of petitions other than nominating petitions. Any person who willfully destroys, defaces, mutilates, or suppresses a petition; who willfully neglects to file or delays delivery of a petition; who conceals or removes a petition from the possession of the person authorized by law to have custody of it; or who aids, counsels, procures, or assists any person in doing any of the above acts commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 95: Entire section added, p. 852, § 84, effective July 1. **L. 96:** Entire section amended, p. 1764, § 49, effective July 1.

PART 5

(Reserved)

PART 6

OFFENSES - NOTICE AND PREPARATION FOR ELECTIONS

1-13-601. Tampering with notices or supplies. Any person who, prior to an election, willfully defaces, removes, or destroys any notice of election posted in accordance with the provisions of this code, or who, during an election, willfully defaces, removes, or destroys any card of instruction or sample ballot printed or posted for the instruction of electors, or who, during an election, willfully defaces, removes, or destroys any of the supplies or conveniences furnished to enable a voter to prepare his ballot is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-130 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 345, 540.

PART 7

OFFENSES - CONDUCT OF ELECTIONS

1-13-701. Interference with election official. Any person who, at any election provided by law, interferes in any manner with any election official in the discharge of his duty or who induces any election official to violate or refuse to comply with his duty or any law regulating the same is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-109 and 1-30-108 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 449-461.

C.J.S. See 29 C.J.S., Elections, § 550.

1-13-702. Interfering with watcher. Any person who intentionally interferes with any watcher while he is discharging his duties set forth in section 1-7-108 (3) is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981. **L. 2003:** Entire section amended, p. 1981, § 1, effective May 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-110 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 550.

1-13-703. Tampering with registration book, registration list, or pollbook. Any person who mutilates or erases any name, figure, or word in any registration book, registration list, or pollbook; or who removes such registration book, registration list, or pollbook or any part thereof from the place where it has been deposited with an intention to destroy the same, or to procure or prevent the election of any person, or to prevent any voter from voting; or who destroys any registration book, registration list, or pollbook or part thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-131 and similar to 1-30-129 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 540.

1-13-704. Unlawfully refusing ballot or permitting to vote. If at any election provided by law any judge of election willfully and maliciously refuses or neglects to receive the ballot of any registered elector who has taken or offered to take the oath prescribed by section 1-9-204 or knowingly and willfully permits any person to vote who is not entitled to vote at such election, such judge is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-134 and similar to 1-30-117 and 1-30-126 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 453.

C.J.S. See 29 C.J.S., Elections, § 551.

1-13-704.5. Voting by persons not entitled to vote - penalty. (1) Any person voting in any election provided by law knowing that he or she is not entitled to vote in such election commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

Source: L. 2006, 1st Ex. Sess.: Entire section added, p. 19, § 1, effective July 31.

ANNOTATION

Law reviews. For article, "2006 Immigration Legislation in Colorado", see 35 Colo. Law. 79 (October 2006).

1-13-705. Personating elector. Any person who falsely personates any elector and votes at any election provided by law under the name of such elector shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981. **L. 95:** Entire section amended, p. 853, § 85, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-30-122 and 1-13-136 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 452.

C.J.S. See 29 C.J.S., Elections, § 547.

1-13-706. Delivering and receiving ballots at polls. (1) No voter shall receive an official ballot from any person except one of the judges of election having charge of the ballots, nor shall any person other than such judge deliver an official ballot to such voter.

(2) No person except a judge of election shall receive from any voter a ballot prepared for voting.

(3) Any voter who does not vote the ballot received by him shall return his ballot to the judge from whom he received the same before leaving the polling place.

(4) Each violation of the provisions of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-139 and similar to 1-30-114 (2) as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-707. Inducing defective ballot. Any person who causes any deceit to be practiced with intent to fraudulently induce a voter to deposit a defective ballot so as to have the ballot thrown out and not counted is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 434, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-133 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-708. Tampering with voting equipment. Any person who tampers with any electronic or electromechanical voting equipment before, during, or after any election provided by law with intent to change the tabulation of votes thereon to reflect other than an accurate accounting is guilty of a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 80: Entire article R&RE, p. 434, § 1, effective January 1, 1981. **L. 2004:** Entire section amended, p. 1361, § 28, effective May 28. **L. 2007:** Entire section amended, p. 1982, § 33, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as § 1-13-132 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act amending this section takes effect January 1, 2006. However, section 31 was further amended establishing an effective date of May 28, 2004, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-13-708.5. Elected officials not to handle electronic or electromechanical voting equipment or devices. Any person who violates any provision of section 1-5-607 is guilty of a misdemeanor and shall be punished as provided in section 1-13-111.

Source: L. 96: Entire section added with relocations, p. 1764, § 50, effective July 1.

Editor's note: This section was formerly numbered as 1-5-607 (4).

1-13-709. Voting in wrong precinct. Any person who, at any election provided by law, knowingly votes or offers to vote in any election precinct in which he or she is not qualified to vote shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: L. 80: Entire article R&RE, p. 434, § 1, effective January 1, 1981. **L. 95:** Entire section amended, p. 853, § 86, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-135 and 1-30-128 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 452.

Conduct prohibited by this section is sufficiently distinguishable from felony election statute to create two separate offenses, avoiding violation of equal protection clause. This section relates to voting or the offer to vote in a precinct in which defendant is not qualified to vote. Felony statute relates to actually voting by providing false information regarding place of residence. People v. Onesimo Romero, 746 P.2d 534 (Colo. 1987).

Voting in the wrong precinct is an unclassified misdemeanor, and trial court may not reclassify the offense as a petty offense but must apply the penalties and statute of limitation consistent with the limits and constraints legislatively imposed by statute. People v. Onesimo Romero, 746 P.2d 534 (Colo. 1987).

1-13-709.5. Residence - false information - penalty. Any person who votes by knowingly giving false information regarding the elector's place of present residence commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 96: Entire section added, p. 1764, § 51, effective July 1. **L. 2002:** Entire section amended, p. 1464, § 9, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

1-13-710. Voting twice - penalty. Any voter who votes more than once or, having voted once, offers to vote again or offers to deposit in the ballot box more than one ballot shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: L. 80: Entire article R&RE, p. 434, § 1, effective January 1, 1981. **L. 95:** Entire section amended, p. 853, § 87, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-137 and 1-30-101 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 452. **C.J.S.** See 29 C.J.S., Elections, § 547.

1-13-711. Interference with voter while voting. Any person who interferes with any voter who is inside the immediate voting area or is marking a ballot or operating a voting device or electronic voting device at any election provided by law is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 434, § 1, effective January 1, 1981. **L. 2004:** Entire section amended, p. 1361, § 29, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-138 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 551.

1-13-712. Disclosing or identifying vote. (1) Except as provided in section 1-7-108, no voter shall show his ballot after it is prepared for voting to any person in such a way as to reveal its contents. No voter shall place any mark upon his ballot by means of which it can be identified as the one voted by him, and no other mark shall be placed on the ballot by any person to identify it after it has been prepared for voting.

(2) No person shall endeavor to induce any voter to show how he marked his ballot.

(3) No election official, watcher, or person shall reveal to any other person the name of any candidate for whom a voter has voted or communicate to another his opinion, belief, or impression as to how or for whom a voter has voted.

(4) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 434, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 325, 549.

1-13-713. Intimidation. It is unlawful for any person directly or indirectly, by himself or by any other person in his behalf, to impede, prevent, or otherwise interfere with the free exercise of the elective franchise of any elector or to compel, induce, or prevail upon any elector either to give or refrain from giving his vote at any election provided by law or to give or refrain from giving his vote for any particular person or measure at any such election. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 435, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

Cross references: For criminal extortion (formerly criminal intimidation), see § 18-3-207.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 457. **C.J.S.** See 29 C.J.S., Elections, § 551.

1-13-714. Electioneering - removing and return of ballot. No person shall do any electioneering on the day of any election within any polling place or in any public street or room or in any public manner within one hundred feet of any building in which a polling place is located, as publicly posted by the designated election official. As used in this section, the term "electioneering" includes campaigning for or against any candidate who is on the ballot or any ballot issue or ballot question that is on the ballot. "Electioneering" also includes soliciting signatures for a candidate petition, a recall petition, or a petition to place a ballot issue or ballot question on a subsequent ballot. "Electioneering" shall not include a respectful display of the American flag. No person shall remove any official ballot from the polling place before the closing of the polls. Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 435, § 1, effective January 1, 1981. **L. 94:** Entire section amended, p. 1179, § 72, effective July 1. **L. 95:** Entire section amended, p. 853, § 88, effective July 1. **L. 2006:** Entire section amended, p. 2035, § 23, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 451.

1-13-715. Liquor in or near polling place. (1) It is unlawful for any election official or other person to introduce into any polling place, or to use therein, or to offer to another for use therein, at any time while any election is in progress or the result thereof is being ascertained by the counting of the ballots, any intoxicating malt, spirituous, or vinous liquors.

(2) It is unlawful for any officer or board of officers of any county or any municipality, whether incorporated under general law or by special charter, who may at any time be by law charged with the duty of designating polling places for the holding of any general or congressional election therein, to select therefor a room wherein any intoxicating malt, spirituous, or vinous liquors are usually sold for consumption on the premises.

(3) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 435, § 1, effective January 1, 1981. **L. 83:** (2) amended, p. 358, § 31, effective July 1. **L. 96:** (2) amended, p. 1765, § 52, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

1-13-716. Destroying, removing, or delaying delivery of election records. (1) No person shall willfully destroy, deface, or alter any ballot or any election records or willfully delay the delivery of any such ballots or election records, or take, carry away, conceal, or remove any ballot, ballot box, or election records from the polling place or from the possession of a person authorized by law to have the custody thereof, or aid, counsel, procure, advise, or assist any person to do any of the aforesaid acts.

(2) No election official who has undertaken to deliver the official ballots and election records to the county clerk and recorder shall neglect or refuse to do so within the time prescribed by law or shall fail to account fully for all official ballots and other records in his charge. Informality in the delivery of the ballots and election records shall not invalidate the vote of any precinct if such records are delivered prior to the canvassing of the votes by the county board of canvassers.

(3) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 435, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 453. **C.J.S.** See 29 C.J.S., Elections, § 549.

1-13-717. Penalty for destruction of supplies. Any person who, during an election, willfully defaces, tears down, removes, or destroys any card of instruction or sample ballot printed or posted for the instruction of voters or who, during an election, willfully removes or destroys any of the supplies or conveniences furnished to enable a voter to prepare his ballot or willfully hinders the voting of others is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Source: L. 80: Entire article R&RE, p. 436, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-30-112 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-718. Release of information concerning count. Any election official, watcher, or other person who releases information concerning the count of ballots cast at precinct polling places or of mail-in voters' ballots prior to 7 p.m. on the day of the election is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 436, § 1, effective January 1, 1981. **L. 93:** Entire section amended, p. 1436, § 122, effective July 1. **L. 2007:** Entire section amended, p. 1797, § 66, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-144 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Where there is a gross disregard of the procedure and formalities in the conduct of elections, whether permitted by design, through ignorance, or negligence, the returns should be rejected. People v. Lindsey, 80 Colo. 465, 253 P. 465 (1927).

And it is not necessary that actual fraud should be committed. People v. Lindsey, 80 Colo. 465, 253 P. 465 (1927).

But mere disclosure of early returns must affect result to set aside election. While it is a misdemeanor to disclose to anyone the comparative standing of candidates or questions being voted upon during an election while the polls are still open, an election will not be set aside for this reason alone unless this fact has been shown to affect the result of the election. Montrose v. Niles, 124 Colo. 535, 238 P.2d 875 (1951).

1-13-719. Employer's unlawful acts. (1) It is unlawful for any employer, whether corporation, association, company, firm, or person, or any officer or agent of such employer:

(a) In any manner to control the action of his employees in casting their votes for or against any person or measure at any precinct caucus, assembly, or convention; or

(b) To refuse to an employee the privilege of taking time off to vote as provided by section 1-7-102, or to subject an employee to a penalty or reduction of wages because of the exercise of such privilege, or to violate any of the provisions of section 1-7-102 in any other way; or

(c) In paying his employees the salary or wages due them, to enclose their pay in pay envelopes upon which there is written or printed any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinions, views, or actions of such employees; or

(d) Within ninety days of any election provided by law, to put up or otherwise exhibit in his factory, workshop, mine, mill, boardinghouse, office, or other establishment or place where his employees may be working or be present in the course of such employment any handbill, notice, or placard containing any threat, notice, or information that, if any particular ticket or candidate is elected, work in his place or establishment will cease in whole or in part, or his establishment will be closed, or the wages of his workmen will be reduced or containing other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees.

(2) Each offense mentioned in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111. In addition thereto, any corporation violating this section shall forfeit its charter and right to do business in this state.

Source: L. 80: Entire article R&RE, p. 436, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 551.

Law reviews. For article, "Punitive Damages in Wrongful Discharge Cases", see 15 Colo. Law. 658 (1986).

1-13-720. Unlawfully giving or promising money or employment. (1) It is unlawful for any person, directly or indirectly, by himself or through any other person:

(a) To pay, loan, or contribute, or offer or promise to pay, loan, or contribute, any money or other valuable consideration to or for any elector, or to or for any other person, to induce such elector to vote or refrain from voting at any election provided by law or to induce any elector to vote or refrain from voting at such election for any particular person or to induce such elector to go to the polls or remain away from the polls at such election or on account of such elector having voted or refrained from voting for any particular person or issue or having gone to the polls or remained away from the polls at such election; or

(b) To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person with the intent that the same, or any part thereof, shall be used in bribery at any election provided by law or to knowingly pay, or cause to be paid, any money or other valuable thing to any person in discharge or repayment of any money wholly or partially expended in bribery at any such election; or

(c) To give, offer, or promise any office, place, or employment or to promise, procure, or endeavor to procure any office, place, or employment to or for any elector, or to or for any other person, in order to induce such elector to vote or refrain from voting at any election provided by law or to induce any elector to vote or refrain from voting at such election for any particular person or issue.

(2) Each offense set forth in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 436, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 454.

C.J.S. See 29 C.J.S., Elections, §§ 540, 554.

1-13-721. Receipt of money or jobs. (1) It is a misdemeanor for any person, directly or indirectly, by himself or through any other person:

(a) Before or during an election provided by law, to receive, agree to accept, or contract for any money, gift, loan, or other valuable consideration, office, place, or employment, for himself or any other person, for voting or agreeing to vote, or for going or agreeing to go to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote or refraining or agreeing to refrain from voting for any particular person or measure at any election provided by law;

(b) During or after an election provided by law, to receive any money or other valuable thing on account of himself or any other person for voting or refraining from voting at such election, or on account of himself or any other person for voting or refraining from voting for any particular person at such election, or on account of himself or any other person for going to the polls or remaining away from the polls at such election, or on account of having induced any person to vote or refrain from voting for any particular person or measure at such election.

Source: L. 80: Entire article R&RE, p. 437, § 1, effective January 1, 1981. **L. 82:** IP(1) amended, p. 220, § 1, effective February 19.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

Cross references: For the penalty for offenses denominated by this code as misdemeanors, see § 1-13-111.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 454.
C.J.S. See 29 C.J.S., Elections, §§ 540, 554.

Law reviews. For note, "Voting on Company Time", see 20 Rocky Mt. L. Rev. 417 (1948).

1-13-722. Defacing or removing abstract of votes. Any person who defaces, mutilates, alters, or removes the abstract of votes cast posted upon the outside of the polling place in accordance with section 1-7-602 is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 437, § 1, effective January 1, 1981. **L. 99:** Entire section amended, p. 492, § 23, effective July 1; entire section amended, p. 616, § 1, effective August 4.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-149 as said section existed in 1979, the year prior to the repeal and reenactment of this article.
(2) Amendments to this section by House Bill 99-1160 and House Bill 99-1360 were harmonized.

1-13-723. Penalty for neglect of duty - destruction of ballots - breaking seal. (1) Every officer upon whom any duty is imposed by any election law who violates his duty or who neglects or omits to perform the same is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

(2) Any official or person, except one authorized by law, who breaks or loosens a seal on a ballot or a ballot box with the intent to disclose or learn the number of such ballot or ballot box is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 438, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located at the back of the index.

PART 8

OFFENSES - MAIL-IN VOTING AND VOTING BY NEW RESIDENTS

1-13-801. Mailing other materials with mail-in voter's ballot. It is unlawful for any county clerk and recorder to deliver or mail to a registered elector, as a part of or in connection with the mail-in voter's ballot, anything other than the voting material as provided in article 8 of this title. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 438, § 1, effective January 1, 1981. **L. 93:** Entire section amended, p. 1436, § 123, effective July 1. **L. 2007:** Entire section amended, p. 1797, § 67, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-145 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For the delivery of mail-in ballot, see § 1-8-111.

1-13-802. Mail-in voter applications and deliveries outside county clerk and recorder's office. No county clerk and recorder shall accept any application for any mail-in voter's ballot nor make personal delivery of any such ballot to the applicant unless such acceptance and delivery occurs within the confines of the official office of such county clerk and recorder, except as otherwise provided in sections 1-8-104, 1-8-106, and 1-8-112. Any acceptance or delivery contrary to the provisions of this section renders void the ballot to which it relates. Each violation of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 438, § 1, effective January 1, 1981. **L. 93:** Entire section amended, p. 1436, § 124, effective July 1. **L. 96:** Entire section amended, p. 1774, § 80, effective July 1. **L. 2007:** Entire section amended, p. 1797, § 68, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-146 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-803. Offenses relating to mail-in voting. Any election official or other person who knowingly violates any of the provisions of article 8 of this title relative to the casting of mail-in voters' ballots or who aids or abets fraud in connection with any vote cast, or to be cast, or attempted to be cast by a mail-in voter shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: L. 80: Entire article R&RE, p. 438, § 1, effective January 1, 1981. **L. 93:** Entire section amended, p. 1436, § 125, effective July 1. **L. 95:** Entire section amended, p. 854, § 89, effective July 1. **L. 2007:** Entire section amended, p. 1797, § 69, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-148 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

PART 9

(Reserved)

ARTICLE 14

Affiliation, Designation, Nomination of Candidates

1-14-101 to 1-14-301. (Repealed)

Source: L. 80: Entire article repealed, p. 418, § 38, effective January 1, 1981.

Editor's note: This article was numbered as articles 5, 6, and 7 of chapter 49, C.R.S. 1963. For amendments to this article prior to its repeal in 1980, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 15

Primary Elections

1-15-101 to 1-15-110. (Repealed)

Source: L. 80: Entire article repealed, p. 418, § 38, effective January 1, 1981.

Editor's note: This article was numbered as article 8 of chapter 49, C.R.S. 1963. For amendments to this article prior to its repeal in 1980, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 16

General Elections

1-16-101 to 1-16-108. (Repealed)

Source: L. 80: Entire article repealed, p. 418, § 38, effective January 1, 1981.

Editor's note: This article was numbered as article 2 of chapter 49, C.R.S. 1963. For amendments to this article prior to its repeal in 1980, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 17

Presidential Electors

1-17-101 and 1-17-102. (Repealed)

Source: L. 80: Entire article repealed, p. 418, § 38, effective January 1, 1981.

Editor's note: This article was numbered as article 20 of chapter 49, C.R.S. 1963. For amendments to this article prior to its repeal in 1980, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

OTHER ELECTION PROVISIONS

ARTICLE 30

Other Election Offenses

1-30-101 to 1-30-134. (Repealed)

Source: L. 80: Entire article repealed, p. 439, § 7, effective January 1, 1981.

Editor's note: This article was numbered as article 23 of chapter 49, C.R.S. 1963. For amendments to this article prior to its repeal in 1980, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

INITIATIVE AND REFERENDUM

ARTICLE 40

Initiative and Referendum

Editor's note: This article was numbered as article 1 of chapter 70, C.R.S. 1963. The substantive provisions of this article were amended with relocations in 1993, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For amendments to the state constitution by the general assembly, see art. XIX, Colo. Const.

Law reviews: For article, "Structuring the Ballot Initiative: Procedures that Do and Don't Work", see 66 U. Colo. L. Rev. 47 (1995); for comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

1-40-101. Legislative declaration.
1-40-102. Definitions.
1-40-103. Applicability of article.
1-40-104. Designated representatives.
1-40-105. Filing procedure - review and comment - amendments - filing with secretary of state.
1-40-106. Title board - meetings - titles and submission clause.
1-40-106.5. Single-subject requirements for initiated measures and referred constitutional amendments - legislative declaration.
1-40-107. Rehearing - appeal - fees - signing.
1-40-108. Petition - time of filing.
1-40-109. Signatures required - withdrawal.
1-40-110. Warning - ballot title.
1-40-111. Signatures - affidavits - notarization - list of circulators and notaries.
1-40-112. Circulators - requirements - training.
1-40-113. Form - representatives of signers.
1-40-114. Petitions - not election materials - no bilingual language requirement.
1-40-115. Ballot - voting - publication.
1-40-116. Verification - ballot issues - random sampling.
1-40-117. Statement of sufficiency - statewide issues.
1-40-118. Protest.
1-40-119. Procedure for hearings.
1-40-120. Filing in federal court.
1-40-121. Receiving money to circulate petitions - filing.
1-40-122. Certification of ballot titles.
1-40-123. Counting of votes - effective date - conflicting provisions.
1-40-124. Publication.
1-40-124.5. Ballot information booklet.
1-40-125. Mailing to electors.
1-40-126. Explanation of effect of "yes" or "no" vote included in notices provided by mailing or publication.
1-40-127. Ordinances - effective, when - referendum. (Repealed)
1-40-128. Ordinances, how proposed - conflicting measures. (Repealed)
1-40-129. Voting on ordinances. (Repealed)
1-40-130. Unlawful acts - penalty.
1-40-131. Tampering with initiative or referendum petition.
1-40-132. Enforcement.
1-40-133. Retention of petitions.
1-40-134. Withdrawal of initiative petition.
1-40-135. Petition entities - requirements - definitions.

1-40-101. Legislative declaration. (1) The general assembly declares that it is not the intention of this article to limit or abridge in any manner the powers reserved to the people in the initiative and referendum, but rather to properly safeguard, protect, and preserve inviolate for them these modern instrumentalities of democratic government.

(2) (a) The general assembly finds, determines, and declares that:

(I) The initiative process relies upon the truthfulness of circulators who obtain the petition signatures to qualify a ballot issue for the statewide ballot and that during the 2008 general election, the honesty of many petition circulators was at issue because of practices that included: Using third parties to circulate petition sections, even though the third parties did not sign the circulator's affidavit, were not of legal age to act as a circulator, and were paid in cash to conceal their identities; providing false names or residential addresses in the circulator's affidavits, a practice that permits circulators to evade detection by persons challenging the secretary of state's sufficiency determination; circulating petition sections without even a rudimentary understanding of the legal requirements relating to petition circulation; and obtaining the signatures of persons who purported to notarize circulator affidavits, even though such persons were not legally authorized to act as notaries or administer the required oath;

(II) The per signature compensation system used by many petition entities provides an incentive for circulators to collect as many signatures as possible, without regard for whether all petition signers are registered electors; and

(III) Many petition circulator affidavits are thus executed without regard for specific requirements of law that are designed to assist in the prevention of fraud, abuse, and mistake in the initiative process.

(b) The general assembly further finds, determines, and declares that:

(I) Because petition circulators who reside in other states typically leave Colorado immediately after petitions are submitted to the secretary of state for verification, a full and fair examination of fraud related to petition circulation is frustrated, and as a result, the secretary of state has been forced to give effect to certain circulator affidavits that were not properly verified and thus were not prima facie evidence of the validity of petition signatures on affected petition sections; and

(II) The courts have not had authority to exercise jurisdiction over fraudulent acts by circulators and notaries public in connection with petition signatures reviewed as part of the secretary of state's random sample.

(c) Therefore, the general assembly finds, determines, and declares that:

(I) As a result of the problems identified in paragraphs (a) and (b) of this subsection (2), one or more ballot measures appeared on the statewide ballot at the 2008 general election even though significant numbers of the underlying petition signatures were obtained in direct violation of Colorado law and the accuracy of the secretary of state's determination of sufficiency could not be fully evaluated by the district court; and

(II) For the initiative process to operate as an honest expression of the voters' reserved legislative power, it is essential that circulators truthfully verify all elements of their circulator affidavits and make themselves available to participate in challenges to the secretary of state's determination of petition sufficiency.

Source: L. 93: Entire article amended with relocations, p. 676, § 1, effective May 4. **L. 2009:** Entire section amended, (HB 09-1326), ch. 258, p. 1169, § 2, effective May 15.

Editor's note: (1) This section was formerly numbered as section 1-40-111. The former section 1-40-101 (1) was relocated to section 1-40-105 (1) and (2), section 1-40-101 (2), which was further amended by HB 93-1155, was relocated to section 1-40-105 (4) and section 1-40-106 (1) and (3), section 1-40-101 (3) was relocated to section 1-40-107 (1) and (2), and section 1-40-101 (4) was relocated to section 1-40-107 (6).

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending this section applies to any ballot issue that has a ballot title fixed and determined by the title board on or after May 15, 2009.

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 1-5.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This statute is constitutional. Zaner v. City of Brighton, 899 P.2d 263 (Colo. App. 1994).

The legislative intent of article 40 primarily is to make the initiative process fair and impartial. In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Legislation may not restrict right to vote. Legislative acts which prescribe the procedure to be used in voting on initiatives may not restrict the free exercise of the right to vote. City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978).

1-40-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Ballot issue" means a nonrecall, citizen-initiated petition or legislatively-referred measure which is authorized by the state constitution, including a question as defined in sections 1-41-102 (3) and 1-41-103 (3), enacted in Senate Bill 93-98.

(2) "Ballot title" means the language which is printed on the ballot which is comprised of the submission clause and the title.

(3) (Deleted by amendment, L. 95, p. 430, § 2, effective May 8, 1995.)

(3.5) "Circulator" means a person who presents to other persons for possible signature a petition to place a measure on the ballot by initiative or referendum.

(4) "Draft" means the typewritten proposed text of the initiative which, if passed, becomes the actual language of the constitution or statute, together with language concerning placement of the measure in the constitution or statutes.

(5) (Deleted by amendment, L. 95, p. 430, § 2, effective May 8, 1995.)

(6) "Section" means a bound compilation of initiative forms approved by the secretary of state, which shall include pages that contain the warning required by section 1-40-110 (1), the ballot title, and a copy of the proposed measure; succeeding pages that contain the warning, the ballot title, and ruled lines numbered consecutively for registered electors' signatures; and a final page that contains the affidavit required by section 1-40-111 (2). Each section shall be consecutively prenumbered by the petitioner prior to circulation.

(7) (Deleted by amendment, L. 95, p. 430, § 2, effective May 8, 1995.)

(8) "Submission clause" means the language which is attached to the title to form a question which can be answered by "yes" or "no".

(9) (Deleted by amendment, L. 2000, p. 1621, § 3, effective August 2, 2000.)

(10) "Title" means a brief statement that fairly and accurately represents the true intent and meaning of the proposed text of the initiative.

Source: L. 93: Entire article amended with relocations, p. 676, § 1, effective May 4; (1) amended, p. 1436, § 126, effective July 1. **L. 95:** (3) to (7) and (9) amended, p. 430, § 2, effective May 8. **L. 2000:** (6) and (9) amended, p. 1621, § 3, effective August 2. **L. 2009:** (3.5) added, (HB 09-1326), ch. 258, p. 1170, § 3, effective May 15.

Editor's note: (1) Subsection (1) is new, subsection (2) was formerly numbered as section 1-40-100.3 (1), subsection (3) is new, subsection (4) was formerly numbered as section 1-40-100.3 (2), subsection (5) is new, subsection (6) was formerly numbered as section 1-40-100.3 (3), subsection (7) is new, subsection (8) was formerly numbered as section 1-40-100.3 (4), subsection (9) was formerly numbered as section 1-40-100.3 (5), subsection (10) was formerly numbered as section 1-40-100.3 (6). The former section 1-40-102 (1), (2), and (3)(a) were deleted by amendment and section 1-40-102 (3)(b) was relocated to section 1-40-107 (5).

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act adding subsection (3.5) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after May 15, 2009.

ANNOTATION

Title was not a brief statement that fairly and accurately represented the true intent and meaning of the proposed initiative where the title and summary did not contain any indication that the geographic area affected would have been limited, and therefore there would be a significant risk that voters statewide would have misperceived the scope of the proposed initiative. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

The titles and summary were not misleading since they tracked the language of the initiative, and any problems in the interpretation of the measure or its constitutionality were beyond the functions assigned to the title board and outside the scope of the court's review of the title board's actions. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

1-40-103. Applicability of article. (1) This article shall apply to all state ballot issues that are authorized by the state constitution unless otherwise provided by statute, charter, or ordinance.

(2) The laws pertaining to municipal initiatives, referenda, and referred measures are governed by the provisions of article 11 of title 31, C.R.S.

(3) The laws pertaining to county petitions and referred measures are governed by the provisions of section 30-11-103.5, C.R.S.

(4) The laws pertaining to school district petitions and referred measures are governed by the provisions of section 22-30-104 (4), C.R.S.

Source: L. 93: Entire article amended with relocations, p. 677, § 1, effective May 4. **L. 95:** Entire section amended, p. 431, § 3, effective May 8. **L. 96:** (3) and (4) added, p. 1765, § 53, effective July 1.

Editor's note: This section is new. The former section 1-40-103 (1) was relocated to section 1-40-107 (3), and section 1-40-103 (2) was relocated to section 1-40-107 (4).

ANNOTATION

Petition was circulated within the period specified by law.
See Baker v. Bosworth, 122 Colo. 356, 222 P.2d 416 (1950).

1-40-104. Designated representatives. At the time of any filing of a draft as provided in this article, the proponents shall designate the names and mailing addresses of two persons who shall represent the proponents in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed.

Source: L. 93: Entire article amended with relocations, p. 677, § 1, effective May 4.

Editor's note: This section is new. The former section 1-40-104 was relocated to section 1-40-108 (1).

ANNOTATION

The designation requirement is a procedural one, so the proponents' failure to designate two persons to receive mail notices did not deprive the board of jurisdiction. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

1-40-105. Filing procedure - review and comment - amendments - filing with secretary of state. (1) The original typewritten draft of every initiative petition for a proposed law or amendment to the state constitution to be enacted by the people, before it is signed by any elector, shall be submitted by the proponents of the petition to the directors of the legislative council and the office of legislative legal services for review and comment. Proponents are encouraged to write such drafts in plain, nontechnical language and in a clear and coherent manner using words with common and everyday meaning which are understandable to the average reader. Upon request, any agency in the executive department shall assist in reviewing and preparing comments on the petition. No later than two weeks after the date of

submission of the original draft, unless it is withdrawn by the proponents, the directors of the legislative council and the office of legislative legal services, or their designees, shall render their comments to the proponents of the petition concerning the format or contents of the petition at a meeting open to the public. Where appropriate, such comments shall also contain suggested editorial changes to promote compliance with the plain language provisions of this section. Except with the permission of the proponents, the comments shall not be disclosed to any person other than the proponents prior to the public meeting with the proponents of the petition.

(2) After the public meeting but before submission to the secretary of state for title setting, the proponents may amend the petition in response to some or all of the comments of the directors of the legislative council and the office of legislative legal services, or their designees. If any substantial amendment is made to the petition, other than an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services, the amended petition shall be resubmitted to the directors for comment in accordance with subsection (1) of this section prior to submittal to the secretary of state as provided in subsection (4) of this section. If the directors have no additional comments concerning the amended petition, they may so notify the proponents in writing, and, in such case, a hearing on the amended petition pursuant to subsection (1) of this section is not required.

(3) To the extent possible, drafts shall be worded with simplicity and clarity and so that the effect of the measure will not be misleading or likely to cause confusion among voters. The draft shall not present the issue to be decided in such manner that a vote for the measure would be a vote against the proposition or viewpoint that the voter believes that he or she is casting a vote for or, conversely, that a vote against the measure would be a vote for a proposition or viewpoint that the voter is against.

(4) After the conference provided in subsections (1) and (2) of this section, a copy of the original typewritten draft submitted to the directors of the legislative council and the office of legislative legal services, a copy of the amended draft with changes highlighted or otherwise indicated, if any amendments were made following the last conference conducted pursuant to subsections (1) and (2) of this section, and an original final draft which gives the final language for printing shall be submitted to the secretary of state without any title, submission clause, or ballot title providing the designation by which the voters shall express their choice for or against the proposed law or constitutional amendment.

Source: L. 93: Entire article amended with relocations, p. 677, § 1, effective May 4; (1) amended, p. 994, § 1, effective June 2. **L. 2000:** (4) amended, p. 1622, § 4, effective August 2.

Editor's note: Subsections (1) and (2) were formerly numbered as section 1-40-101 (1), subsection (3) was formerly numbered as section 1-40-101 (1.5) in HB 93-1155, which further amended this section, and subsection (4) was formerly numbered as section 1-40-101 (2), which was further amended by HB 93-1155. The former section 1-40-105 was relocated to section 1-40-109 (1) and (2).

Cross references: For the general assembly, powers, and initiative and referendum reserved to the people, see also § 1 of art. V, Colo. Const.; for recall from office, see art. XXI, Colo. Const.

ANNOTATION

I. General Consideration.
II. People's Right to Enact Own Legislation.
III. Review and Comment by Legislative Agencies.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 16 Am. Jur.2d, Constitutional Law, §§ 16, 19, 30; 42 Am. Jur.2d, Initiative and Referendum, §§ 16, 18, 21, 40.

C.J.S. See 82 C.J.S., Statutes, § 128.

Law reviews. For article, "Popular Law-Making in Colorado", see 26 Rocky Mt. L. Rev. 439 (1954).

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) For additional cases concerning the initiative and referendum power, see the annotations under § 1 of article V of the state constitution.

The purpose of the initiative and referendum embodied in the constitution was to expeditiously permit

the free exercise of legislative powers by the people, and the procedural statutes enacted in connection therewith were adopted to facilitate the execution of the law. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938); Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

And the procedural sections enacted in connection therewith were adopted to facilitate the execution of the law. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Provisions relating to the initiative should be liberally construed to permit, if possible, the exercise by the electors of this most important privilege. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938); Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

Citizen held not to have an "interest in the matter in litigation" in mandamus proceedings. Where on protest the secretary of state refused to file or refile a tendered petition to initiate a measure under the initiative and referendum act, and mandamus is brought to compel him to file, a citizen who feels he will be injured by the measure has not such an "interest in the matter in litigation" or "in the success of either of the parties to the action", as gives him the right to intervene in the mandamus proceeding. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

II. PEOPLE'S RIGHT TO ENACT OWN LEGISLATION.

People have reserved to themselves right of initiative in § 1 of art. V, Colo. Const. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980).

No discretion rests with administrative officials to pass upon the validity of an act proposed by the people. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

The people then undertake to legislate for themselves. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

And the initiative and referendum laws, where invoked by the people, supplant the city council or representative body. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

And in the exercise of their right to vote upon such proposal, wisely adopt or reject it. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

And the town or city clerk is required to perform certain statutory duties in connection therewith, for failure of which he is subject to penalties. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

Because it is not within the discretion of the clerk and city council to question the acts of their principal, the people. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

The people express their sanction and approval of the ordinance by their vote, and its enforcement is attempted by one whose rights are affected, then the courts are open to pass upon the question of its validity. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

But a proposed ordinance is clothed with the presumption of validity and its constitutionality will not be considered by the courts by means of a hypothetical question, but only after enactment. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

And neither the supreme court nor any other court may be called upon to construe or pass upon a legislative act until it has been adopted. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

The only exception to this rule is the constitutional provision authorizing the general assembly to propound interrogatories to the supreme court upon important questions upon solemn occasions (§ 3 of art. VI, Colo. Const.). City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

Therefore, it is clear from the provisions of the initiative and referendum act and the penalties provided thereby that the legislature has been careful and diligent to safeguard the primary right of the people to propose and enact their own legislation. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

III. REVIEW AND COMMENT BY LEGISLATIVE AGENCIES.

Any proposed initiative must be submitted to the legislative research office and the legislative drafting office before it is submitted to the initiative title-setting board regardless of whether it is substantially similar to a previously proposed initiative. Without such submittal, the board lacks jurisdiction to set a title. In re Title Pertaining to "Tax Reform", 797 P.2d 1283 (Colo. 1990); In re Amendment Concerning Limited Gaming in the Town of Idaho Springs, 830 P.2d 963 (Colo. App. 1992).

But where legislative service agencies indicate that they have no additional comments beyond those made on first version of essentially the same proposal, it is not necessary to convene a second review and comment hearing. In re Second Proposed Initiative Concerning Uninterrupted Serv. by Pers. Employees, 613 P.2d 867 (Colo. 1980).

And where one feature of a proposal is not specifically pointed out by legislative service agencies, but is included in titles and summary, the measure needs not be remanded. Matter of Proposed Initiative for an Amendment Entitled "W.A.T.E.R.", 875 P.2d 861 (Colo. 1994).

No resubmission of the amended proposed initiative was required by subsection (2) since the amendments made by the proponents to the original proposed initiative were made in response to the comments of the directors of the legislative council and the office of legislative legal services. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

Where changes in final version of initiative submitted to secretary of state were in direct response to substantive questions and comments raised by directors of the legislative council and the office of legislative legal

services, the proponents of the initiative were not required to resubmit the initiative to the directors. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

While particular change was not made in direct response to the directors' questions, court concludes that, in the context of the amendment as a whole, it was a clarification and not a substantive change. Accordingly, change did not require resubmission to the directors. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

Change made in response to director's comment about a suggested grammatical change and comment regarding the overlap of terms used in the proposed initiative did not require proponents to resubmit initiative. In re Ballot Title 2007-2008 No. 57, 185 P.3d 142 (Colo. 2008).

Proponents' failure to indicate changes as specified in subsection (4) justified board's refusal to set a title. Matter of Proposed Initiative 1997-98 No. 109, 962 P.2d 252 (Colo. 1998).

1-40-106. Title board - meetings - titles and submission clause. (1) For ballot issues, beginning with the first submission of a draft after an election, the secretary of state shall convene a title board consisting of the secretary of state, the attorney general, and the director of the office of legislative legal services or the director's designee. The title board, by majority vote, shall proceed to designate and fix a proper fair title for each proposed law or constitutional amendment, together with a submission clause, at public meetings to be held at the hour determined by the title board on the first and third Wednesdays of each month in which a draft or a motion for reconsideration has been submitted to the secretary of state. To be considered at such meeting, a draft shall be submitted to the secretary of state no later than 3 p.m. on the twelfth day before the meeting at which the draft is to be considered by the title board. The first meeting of the title board shall be held no sooner than the first Wednesday in December after an election, and the last meeting shall be held no later than the third Wednesday in April in the year in which the measure is to be voted on.

(2) (Deleted by amendment, L. 95, p. 431, § 4, effective May 8, 1995.)

(3) (a) (Deleted by amendment, L. 2000, p. 1620, § 1, effective August 2, 2000.)

(b) In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board. Immediately upon completion, the secretary of state shall deliver the same with the original to the parties presenting it, keeping the copy with a record of the action taken thereon. Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered "yes" (to vote in favor of the proposed law or constitutional amendment) or "no" (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

Source: L. 93: Entire article amended with relocations, p. 679, § 1, effective May 4. **L. 95:** (1), (2), and (3)(a) amended, p. 431, § 4, effective May 8. **L. 2000:** (3) amended, p. 1620, § 1, effective August 2. **L. 2004:** (1) amended, p. 756, § 1, effective May 12. **L. 2009:** (1) amended, (HB 09-1326), ch. 258, p. 1170, § 4, effective July 1.

Editor's note: (1) Subsections (1) and (3) were formerly numbered as section 1-40-101 (2), which was further amended by HB 93-1155, and subsection (2) is new. The former section 1-40-106 (1)(a) was relocated to section 1-40-110 (1), section 1-40-106 (1)(b) was relocated to section 1-40-110 (2), section 1-40-106 (2)(a) was relocated to section 1-40-111 (1), and section 1-40-106 (2)(b) was relocated to section 1-40-111 (2).

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending subsection (1) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after July 1, 2009.

Cross references: For the general assembly, powers, and initiative and referendum reserved to the people, see also § 1 of art. V, Colo. Const.; for recall from office, see art. XXI, Colo. Const.

I. General Consideration.
II. Filing.

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IV. Title; Ballot Title and Submission Clause.
A. Sufficiency of Titles.
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B. Submission Clause.
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F. Scope of Review.
V. Summary and Fiscal Impact Statement.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 16 Am. Jur.2d, Constitutional Law, §§ 16, 19, 32; 42 Am. Jur.2d, Initiative and Referendum, §§ 16, 18, 21, 40.

C.J.S. See 82 C.J.S., Statutes, § 128.

Law reviews. For article, "Popular Law-Making in Colorado", see 26 Rocky Mt. L. Rev. 439 (1954).

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) For cases concerning the people's right to enact their own legislation, see the annotations under § 1-40-105.

(3) For additional cases concerning the initiative and referendum power, see the annotations under §1 of article V of the state constitution.

Flexible level of scrutiny applies to challenge of article V, section 1(5.5), of the Colorado Constitution and the statutory title-setting procedures implementing it. Under this standard, courts must weigh the "character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against the "precise interests put forward by the State as justifications for the burden imposed by its rule", taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights". Anderson v. Celebrezze, 460 U.S. 780, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983); Campbell v. Buckley, 11 F. Supp.2d 1260 (D. Colo. 1998).

Single-subject requirement in article V, section 1 (5.5), of the constitution and the statutory title-setting procedures implementing it do not violate initiative proponents' free speech or associational rights under the first amendment nor do they discriminate against proponents in violation of the fourteenth amendment's equal protection clause. Campbell v. Buckley, 11 F. Supp.2d 1260 (D. Colo. 1998), aff'd, 203 F.3d 738 (10th Cir. 2000).

The summary, single subject and title requirements serve to prevent voter confusion and promote informed decisions by narrowing the initiative to a single matter and providing information on that single subject. Campbell v. Buckley, 203 F.3d 738 (10th Cir. 2000).

The requirements serve to prevent a provision that would not otherwise pass from becoming law by "piggybacking" it on a more popular proposal or concealing it in a long and complex initiative. Campbell v. Buckley, 203 F.3d 738 (10th Cir. 2000).

The 12-day notice requirement in subsection (1) only governs the time requirement for submitting a draft of the text of the initiative. Subsection (1) does not require that any proposed amendments or modifications to the title or submission clause be submitted to the board at least twelve days prior to the hearing. Proposed additions or deletions from the title and submission clause may be offered by any registered elector during the public hearing or rehearing before the board. In re Proposed Initiated Constitutional Amendment, 877 P.2d 329 (Colo. 1994).

"Substantial compliance" is the standard by which to judge compliance with the fiscal impact information filing requirements of subsection (3)(a). Invalidation of the board's actions when the fiscal impact information was filed five minutes late, then refiled three hours later to correct a calculation error, would impermissibly infringe on the fundamental right of initiative. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000) (decided under law in effect prior to 2000 amendment).

The purpose of the title setting process is to ensure that person reviewing the initiative petition and voters are fairly advised of the import of the proposed amendment. In re Title, Ballot Title and Submission Clause, 910 P.2d 21 (Colo. 1996).

Applied in Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

II. FILING.

The filing of a petition to initiate a measure under the initiative and referendum statute is a ministerial act, and the secretary of state has discretion in the first instance to determine its sufficiency to entitle it to be filed. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938) (decided under former law).

III. STATUTORY BOARD.

It is the duty of those to whom the duty is assigned to prepare a title to an initiated measure to use such language as shall correctly and fairly express the true intent and meaning of the proposal to be submitted to the voters. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

But the action of the statutory board empowered to fix a ballot title and submission clause is presumptively valid. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958); In re Proposed Initiative "Automobile Insurance Coverage," 877 P.2d 853 (Colo. 1994); In re Proposed Initiative 1997-1998 No. 75, 960 P.2d 672 (Colo. 1998); In re Proposed Initiative 1997-1998 No. 105, 961 P.2d 1092 (Colo. 1998); Matter of Title, Ballot Title and Submission

Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

And those who contend to the contrary must show wherein the assigned title does not meet the statutory requirement. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

The reason being that, under our system of government, the resolution of these questions, when the formalities for submission have been met, rests with the electorate. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

Title board had discretion to set the titles and summary of proposed initiative despite proponents' failure to indicate all of the differences between the original and final versions of the measure submitted to the secretary of state. Matter of Prop. Init. Const. Amend. 1996-3, 917 P.2d 1274 (Colo. 1996).

Board was created by statute to assist the people in the implementation of their right to initiate laws. In re Proposed Initiative Concerning Drinking Age, 691 P.2d 1127 (Colo. 1984).

Deputy attorney general. Because the title board is created by statute, the attorney general may designate, pursuant to § 24-31-103, a deputy to serve in her place. Amendment to Const. Section 2 to Art. VII, 900 P.2d 104 (Colo. 1995).

Delegation. Because the title board is created by statute, the attorney general, pursuant to § 24-31-103, and the secretary of state, pursuant to § 24-21-105, may designate deputies to serve in their place. Matter of Title, Ballot Title & Sub. Cl., 900 P.2d 121 (Colo. 1995).

The provisions of this statute, rather than those of the Administrative Procedure Act, govern the Board's action in designating and fixing the title, ballot title and submission clause, and summary of a proposed initiative measure. In re Proposed Initiative Entitled W.A.T.E.R., 831 P.2d 1301 (Colo. 1992).

Plaintiff has a liberty right to challenge the decision of the title board. This section and § 1-40-101 insufficiently provide for the notice required by the United States Constitution to protect this liberty interest, thereby depriving plaintiff of her constitutional rights. Montero v. Meyer, 790 F. Supp. 1531 (D. Colo. 1992).

As to all initiatives and referenda hearings governed by this section occurring after April 27, 1992, defendants are ordered to publish pre-hearing and post-hearing notices to electors at least sufficient to meet the fair notice requirements of due process of law under the Fourteenth Amendment to the United States Constitution. Montero v. Meyer, 790 F. Supp. 1531 (D. Colo. 1992).

Neither the secretary of state nor any reviewing court should be concerned with the merit or lack of merit of a proposed constitutional amendment. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

And a board acts wisely in refusing to use words in a title which would tend to color the merit of the proposal on one side or the other. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

The burden of proving procedural noncompliance rests with the petitioner, not with the proponents of the initiative. A presumption exists that the secretary of state properly determined the sufficiency of the filing of a petition to initiate a measure. Because the petitioner has not shown any defect in the proceeding that would destroy the board's jurisdiction in the matter, the petitioner's jurisdictional challenge is rejected. In re Petition on Campaign and Political Finance, 877 P.2d 311 (Colo. 1994).

Board is not required to give opinion regarding ambiguity of a proposed initiative, nor is it necessary for the board to be concerned with legal issues which the proposed initiative may create. Matter of Title, Ballot Title, Etc., 797 P.2d 1275 (Colo. 1990).

Task of the board is to provide a concise summary of the proposed initiative, focusing on the most critical aspects of the proposal, not simply to restate all of the provisions of the proposed initiative. Board not required to include every aspect of a proposal in the title and submission clause. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Board may be challenged when misleading summary of amendment prejudicial. A misleading summary of the fiscal impact of a proposed amendment is likely to create an unfair prejudice against the measure and is a sufficient basis, under this section, for challenging the board's action. In re An Initiated Constitutional Amendment, 199 Colo. 409, 609 P.2d 631 (1980).

Request for agency assistance at board's discretion. The decision of whether and from which of the two state agencies to request information is within the discretion of the board. Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

Technical correction of proposed initiative permitted. Allowing a technical correction of the proposed initiative to conform with the intent of the proponents does not frustrate the purpose of the statute. Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

Purpose of statutory time table for meetings of initiative title setting review board is to assure that the titles, submission clause, and summary of an initiated measure are considered promptly by the board well in advance of the date by which the signed petitions must be filed with the secretary of state. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980); Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Section not frustrated by next-day continuance of statutory date for last meeting. A continuance to the next day following the statutory date for the last meeting in order to comply fully with other statutory requirements does not frustrate the purpose of this section. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980).

Initiative did not qualify for November 1997 election. The requisite signatures had to be filed in the first week of August, but the title setting was not until the third week in that month and the board could not meet to consider the initiative before the third Wednesday in May of 1998. Matter of Title, Ballot Title for 1997-98 No. 30, 959 P.2d 822 (Colo. 1998).

Board had the authority to set a title, ballot title

and submission clause, and summary for the proposed constitutional amendment at issue, but the question of the board's jurisdiction to set titles for a ballot issue in an odd-numbered year was premature, as the secretary of state, not the board, has the authority to place measures on the ballot. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Board had the authority to set the titles and summary of an initiative filed June 20, 1997, because the measure was eligible, at the earliest, for placement on the ballot in the November 1998 general election. In re Initiative #25A Concerning Hous. Unit Construction Limits, 954 P.2d 1063 (Colo. 1998).

Hearings on motions to reconsider. Even in odd numbered years, hearings on motions to reconsider decisions entered during the last meeting in May must be held within 48 hours of filing of the motion. Byrne v. Title Bd., 907 P.2d 570 (Colo. 1995); Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

When board may hold meetings. Under this section, the title setting board is subject to two specific prohibitions with regard to the timing of its meetings: (1) The board may not meet between an election and the first Wednesday in December in any year in which an election is held, and (2) the board may not meet after the third Wednesday in May to consider measures that will be voted on in the upcoming November election. Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Meetings in July and August are proper when considering titles for a measure that will not be placed on the ballot until November of the following year. Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Actions of state officers under this statute upheld. Bauch v. Anderson, 178 Colo. 308, 497 P.2d 698 (1972).

The board did not intrude on the jurisdiction of the supreme court by correcting two transcription errors in the summary after the matter was on appeal before the court. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

IV. TITLE; BALLOT TITLE AND SUBMISSION CLAUSE.

A. Sufficiency of Titles.

1. In General.

The purpose of the title-setting process is to ensure that both the persons reviewing an initiative petition and the voters are fairly and succinctly advised of the import of the proposed law. In re Proposed Initiative on Education Tax Refund, 823 P.2d 1353 (Colo. 1991); Matter of Title, Ballot Title & S. Clause, 872 P.2d 698 (Colo. 1994).

Initiated measure's title, as set by review board, must be proper and fair and must correctly and fairly express the true intent and meaning of the proposed measure. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980); In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990).

Ballot title shall correctly and fairly express the true intent and meaning of the proposed measure and shall unambiguously state the principle of the provision sought to be added, amended, or repealed. In re Proposed Initiative for 1999-2000 No. 29, 972 P.2d 257 (Colo. 1999); Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

The titles must be fair, clear, accurate, and complete, but they need not set out every detail of the initiative. Court reviews titles set by the board with great deference and will only reverse the board's decision if the titles are insufficient, unfair, or misleading. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006).

In fixing titles and summaries, the board's duty is to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice. In re Ballot Title 1999-2000 No. 29, 972 P.2d 257 (Colo. 1999); Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37, 977 P.2d 845 (Colo. 1999); Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 38, 977 P.2d 849 (Colo. 1999).

It is not the court's function to write the best possible titles. Only if the Board's chosen language is clearly inaccurate or misleading will the court reverse it. Nor is it the court's function to speculate on the future effects the initiative may have if it is adopted. Whether the initiative will indeed have the effect claimed by petitioners is beyond the scope of the court's review. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

Title and summary fail to convey to voters the initiative's likely impact on state spending on state programs, therefore, they may not be presented to voters as currently written. Title and summary are not clear perhaps because the original text of the proposed initiative is difficult to comprehend. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37, 977 P.2d 845 (Colo. 1999).

In approaching the question as to whether a title is a proper one, all legitimate presumptions should be indulged in favor of the propriety of an attorney general's actions. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958); Matter of Title, Ballot Title, Etc., 850 P.2d 144 (Colo. 1993).

And if reasonable minds may differ as to the sufficiency of a title, the title should be held to be sufficient. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

Only in a clear case should a title so prepared be held insufficient. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

Burden for invalidating an amendment because of an alleged misleading ballot title, after adoption by the people in a general election, is heavy since the general assembly has provided procedures for challenging a ballot title prior to elections. Unless the challengers to the amendment can prove that so many voters were actually misled by the title that the result of the election might have

been different, the challenge will fail. City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978).

And under the provisions of this section to the effect that an initiative petition shall contain a "submission clause" before being signed by electors, a petition which contains a ballot title together with the words "yes" and "no" and blank spaces opposite thereto, may be deemed to comply with the requirements of this section concerning submission clauses. Noland v. Hayward, 69 Colo. 181, 192 P. 657 (1920) (decided under former law).

The board need not and cannot describe every feature of a proposed measure in the titles and submission clause. In re Proposed Initiative Concerning State Pers. Systems, 691 P.2d 1121 (Colo. 1984); In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

To require an item by item paraphrase of the proposed constitutional amendment or statutory provision would undermine the intended relatively short and plain statement of the board that sets forth the central features of the initiative. The aim is to capture, succinctly and accurately, the initiative's plain language to enable informed voter choice. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

Title board not required to include every aspect of a proposal in the title and submission clause, to discuss every possible effect, or provide specific explanations of the measure. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Board has discretion in resolving interrelated problems of length, complexity, and clarity in designating a title and ballot title and submission clause. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

The board is charged with the duty to act with utmost dedication to the goal of producing documents which will enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal. In re Proposed Initiative Concerning "State Personnel System", 691 P.2d 1121 (Colo. 1984); Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Duty to voters is paramount. Board should not resolve all ambiguities in favor of proponents when to do so would come at the expense of other, equally important duties. Board is statutorily required to exercise its authority to protect against public confusion and reject an initiative that cannot be understood clearly enough to allow the setting of a clear title. In re Proposed Initiative 1999-2000 No. 25, 974 P.2d 458 (Colo. 1999).

The board must avoid titles for which a general understanding of a "yes" or "no" vote would be unclear. In re Proposed Initiative Concerning "Automobile Insurance Coverage," 877 P.2d 853 (Colo. 1994).

Explanation of effect on existing law permitted. The board is not precluded from adopting language which explains to the signers of a petition and the voter how the initiative fits in the context of existing law, even though the specific language is not found in the text of the proposed statute. In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982).

Although every possible effect need not be included. There is no requirement that every possible effect be included within the title or the ballot title and submission clause. In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

And the board is not required to explain the relationship between the initiative and other statutes or constitutional provisions. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

In considering whether the title, ballot title and submission clause, and summary accurately reflect the intent of the proposed initiative, it is appropriate to consider the testimony of the proponent concerning the intent of the proposed initiative that was offered at the public meeting at which the title, ballot title and submission clause, and summary were set. In re Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment, 830 P.2d 1031 (Colo. 1992).

Initiated measure's title will be rejected only if it is misleading, inaccurate, or fails to reflect the central features of the proposed initiative. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

It is well established that the titles and summary of a proposed initiative need not spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

In setting titles, the board must correctly and fairly express the true intent and meaning of the proposed initiative and must consider the public confusion that might be caused by misleading titles. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Title and summary are sufficient if a voter would not be confused about the nature of the initiative or its provisions regarding election information. Where the summary for an initiative concerning the procedures to be used to provide the public with information about a judge standing for a retention or removal election fully sets forth the information that will be provided to the public and discloses that no judicial performance commission reviews will be published, a voter would not be confused about the initiative or the provisions regarding election information. Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

2. Titles Held Sufficient.

The adoption of article X, section 20 of the Colorado constitution does not obligate the board to disclose every ramification of a proposed tax measure. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689

(Colo. 1994).

There is no requirement that the board state the effect an initiative will have on other constitutional and statutory provisions or describe every feature of a proposed measure in the titles. In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the Town of Burlington, 830 P.2d 1023 (Colo. 1992); In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in Manitou Springs, 826 P.2d 1241 (Colo. 1992); Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993); Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994); In re Petition on Campaign and Political Finance, 877 P.2d 311 (Colo. 1994).

Failure to mention existing similar statute of no effect. The failure to mention the existence of a statute addressing the same or similar subject as that of a proposed amendment does not have any effect on the acceptability of the titles, summary, and submission clause. In re Proposed Initiative on Transf. of Real Estate, 200 Colo. 40, 611 P.2d 981 (1980).

No requirement that provisions of section to be repealed must be set out in the ballot title and submission clause. Matter of Proposed Constitutional Amendment, 757 P.2d 132 (Colo. 1988).

Where an initiative includes language that states, "This section was adopted by a vote of the people at the general election in 1998", the title board need not include this language in the summary or title. The general assembly may amend or repeal statutory provisions regardless of whether they are voter approved or not. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Board had no duty to reveal in the title, ballot title and submission clause, and summary the alleged irrepealability of initiative during a certain period where initiative did not state anywhere that it was "irrepealable" and petitioner failed to provide any evidence of proponent's intent to effect an irrepealability clause. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

Reference does not have to be made in the ballot title to the purpose of the initiative. The fact that disability benefits were to be provided at a reasonable cost to employers was not essential for title setting purposes. The Title Setting Board is not required to describe every feature of a proposed measure in the title or submission clause. Matter of Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment, 873 P.2d 718 (Colo. 1994).

Subsection (3)(b) requires that conflicting ballot titles distinguish between overlapping or conflicting proposals. Petitioners' claim that the board had erred by not specifying that the proposed amendment conflicted with the Workers' Choice of Care Amendment was rejected. The court held that there was no "discernible conflict" between the two ballot titles. Matter of Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment, 873 P.2d 718 (Colo. 1994).

Board was not required to interpret meaning of two conflicting provisions in initiative or indicate whether they would conflict where two conflicting amendments may be proposed or even adopted at same election and where board disclosed both provisions in the title and submission clause. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

Although the texts of two initiatives are similar, the titles and submission clauses set by the board accurately reflect an important distinction between them. Voters comparing the titles and submission clauses for the two measures would be able to distinguish between the measures and would not be misled into voting for or against either measure by reason of the words chosen by the board. In re Proposed Initiated Constitutional Amendment, 877 P.2d 329 (Colo. 1994).

The title board's failure to include a reference to other related proposed initiatives in title and summary of initiative do not make them misleading. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Not specifying where gambling would be lawful or which city ordinances would be applicable was not essential to nor fatal to the title. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

It is not the function of the Board to disclose every possible interpretation of the language of the initiative. In Re Prop. Init. "Fair Fishing", 877 P.2d 1355 (Colo. 1994).

The title, submission clause, and summary must reflect the intent of the initiative as drafted. They need not reflect intentions of the proponents that are not expressed in the measure itself. In re Proposed Initiative on Water Rights, 877 P.2d 321 (Colo. 1994).

Board is not required to give opinion regarding ambiguity of a proposed initiative, nor is it necessary for the board to be concerned with legal issues which the proposed initiative may create. Matter of Title, Ballot Title, Etc., 797 P.2d 1275 (Colo. 1990).

Board is not required to consider and resolve potential or theoretical disputes or determine the meaning or application of proposed amendment. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

Board's duty is merely to summarize central features of initiated measure in the title, ballot title and submission clause, and summary in a clear and concise manner. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

There is no requirement that ballot title and submission clause identify any articles or sections which are amended. Matter of Title, Ballot Title, Etc., 797 P.2d 1275 (Colo. 1990).

No clear case presented for the invalidation of titles fixed by the board where the wording of the titles attributes a meaning to the text that is reasonable, although nor free from all doubt, and relates to a feature of the proposed law that is both peripheral to its central purpose and of limited temporal relevance. In re Proposed Initiative Concerning Drinking Age, 691 P.2d 1127 (Colo. 1984).

Titles were not insufficient for failure to contain the

general subject matter of the proposed constitutional amendment or because the provisions of the proposed amendment were listed chronologically rather than in order of significance. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

The fact that the ballot title contains two separate paragraphs that are not identical does not make the ballot title ambiguous for purposes of this section. The relevant determination is whether the two paragraphs are sufficiently different such that a voter reasonably could vote in favor of the question as presented in one paragraph and yet decide to vote against the question as presented in the other paragraph. It is implausible to suggest that a voter reasonably could have considered voting in favor of one paragraph in the ballot title and against the other paragraph where the only difference between the two paragraphs is that one paragraph is slightly more detailed than the other. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994).

All three of the main tax issues were set forth in the title, submission clause, and summary with sufficient particularity to apprise voters that the proposed amendment would increase taxes on cigarettes and tobacco products. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

It was within the board's discretion to omit information from the title or submission clause regarding the creation of a citizen's commission on tobacco and health and that spending categories and required appropriations contained in the proposed amendment could only be changed by a subsequent constitutional amendment since neither were central features to the proposal. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

Absence of definitions was distinguishable from situation in In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990), since although the definitions may have been broader than common usage in some respects and narrower in others, they appeared to be included for sake of brevity and they would not adopt a new or controversial legal standard which would be of significance to all concerned with the issues surrounding election reform. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

The titles are not required to include definitions of terms unless the terms adopt a new or controversial legal standard that would be of significance to all concerned with the initiative. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

And the board is not usually required to define a term that is undefined in the proposed measure. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

A title and summary that repeat or reword much of the language of the proposed initiative and contain complex clauses are not insufficient if they fairly express the intent and meaning of the proposed initiative. Percy v. Hayes, 954 P.2d 1063 (Colo. 1998).

Titles are fair, sufficient, and clear. Titles track the language of the proposed initiative. By using general language suggesting initiative limited to "tax or debt campaigns", titles fairly put public on notice that provision applies to any election that affects taxes or the creation of public debt. Although titles do not mention "pass-through" or "pooling" provisions of proposed initiative, these provisions are not central features of the measure. Finally, because titles state that any election that violates provisions of the initiative is void, titles that fail to disclose that district must refund moneys collected in violation of initiative are not confusing, and voters would not be misled. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006).

Title is fair, clear, and accurate and includes the central features of the proposed initiative. In re Ballot Title 2007-2008 No. 57, 185 P.3d 142 (Colo. 2008).

3. Titles Held Insufficient.

A title and submission clause do not fairly and accurately reflect the intent and purpose of an initiative if the voters are not informed that the intent is to prevent the state courts from adopting a definition of obscenity that is broader than under the U.S. Constitution. In re Proposed Initiative on "Obscenity," 877 P.2d 848 (Colo. 1994).

Titles set by board create confusion and are misleading because they do not sufficiently inform the voter of the parental-waiver process and its virtual elimination of bilingual education as a viable parental and school district option. In re Ballot Titles 001-02 No. 21 & No. 22, 44 P.3d 213 (Colo. 2002).

Failure of title, ballot title, and submission clause to include definition of abortion which would impose a new legal standard which is likely to be controversial made title, ballot title, and submission clause deficient in that they did not fully inform signers of initiative petitions and voters and did not fairly reflect the contents of the proposed initiative. In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990); In re Proposed Initiative Concerning "Automobile Insurance Coverage", 877 P.2d 853 (Colo. 1994).

Titles set by the board were insufficient in that they did not state that the proposal would impose mandatory fines for willful violations of the campaign contribution and election reforms, they did not state that the proposal would prohibit certain campaign contributions from certain sources, they did not state that the proposal would make both procedural and substantive changes to the petition process, and they did not specifically list the changes to the numbers of seats in the house of representatives and the senate. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Ballot title was misleading because of the order in which the material was presented. The court held that in order to correctly and fairly express the true intent and meaning of the initiative all provisions concerning the city of Antonito must be grouped together. Further, the board could arrange the title to reflect the subject matter at issue. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

Repetition of the language from the initiative itself

in the title and submission clause does not necessarily ensure that the voters will be apprised of the true intent and purpose of the initiative. In re Proposed Initiative on "Obscenity," 877 P.2d 848 (Colo. 1994); In re Ballot Titles 2001-02 No. 21 & No. 22, 44 P.3d 213 (Colo. 2002).

Where the board deferred to the proponents' statements of intent and attempted to set a title reflective of such intent, but the record showed that the board itself did not fully understand the measure, title was not sufficiently clear and board was directed to strike the title and return the measure to the proponents. In re Proposed Initiative 1999-2000 No. 25, 974 P.2d 458 (Colo. 1999).

Ballot title found insufficient. The title "Petition Procedures" fails to convey the fact that the initiative would create numerous "fundamental rights" retroactively to 1990 unrelated to procedural changes. Amendment to Const. Section 2 to Art. VII, 900 P.2d 104 (Colo. 1995).

Ballot title found insufficient and misleading. In re Tax Reform, 797 P.2d 1283 (Colo. 1990).

In a proceeding involving the sufficiency of a ballot title and submission clause for a proposed initiative amendment to the state constitution, it was held that the title as fixed by the statutory board was deficient as indicated, and the title was amended in conformity with a stipulation of the parties, and as amended, approved. Jennings v. Morrison, 117 Colo. 363, 187 P.2d 930 (1947).

Title was misleading as to the true intent and meaning of the proposed initiative where the title and summary did not contain any indication that the geographic area affected would have been limited, and therefore there would be a significant risk that voters statewide would have misperceived the scope of the proposed initiative. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

Title was misleading because combination of language specifying that parents of non-English speaking children could opt out of an English immersion program in favor of a bilingual education program and lack of language specifying that school districts would be prohibited from requiring schools to offer bilingual education programs had the potential to mislead voters into thinking parents would have a choice between English immersion and bilingual education programs when bilingual programs actually might not be available in many instances. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

Title board directed on remand to fix the ballot title and submission clause of proposed initiatives where the language of the designated titles is inconsistent with their summaries. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000).

The title and summary on an initiative concerning judicial personnel held unclear. Title and summary contain contradictory language regarding the definition of personnel, and a voter would not be able to determine which judicial personnel were included in the initiative. Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

The title and summary on an initiative concerning the procedure used to remove a judge held unclear. Language in the summary, which was repeated verbatim from the language of the initiative but was not explained or analyzed in the summary, creates confusion and ambiguity and is therefore insufficient. Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

B. Submission Clause.

To submit means to present and leave to the judgment of the qualified voters. Noland v. Hayward, 69 Colo. 181, 192 P. 657 (1920).

The submission clause is the one that appears on the ballot at the election and upon which the electorate may vote for or against the proposed amendment. Dye v. Baker, 143 Colo. 458, 354 P.2d 498 (1960); Henry v. Baker, 143 Colo. 461, 354 P.2d 490 (1960).

But the expression "submission clause" was used in referring to a ballot title or to the matter which went upon the ballot and which was before the electors at the time they cast their respective votes for or against the initiated measure. In People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55, 1914D Ann. Cas. 1154 (1913).

Nevertheless, it should fairly and succinctly advise the voters what is being submitted, so that in the haste of an election the voter will not be misled into voting for or against a proposition by reason of the words employed. Dye v. Baker, 143 Colo. 458, 354 P.2d 498 (1960).

C. Catch Phrases.

"Catch phrases," or words which could form the basis of a slogan for use by those who expect to carry on a campaign for or against an initiated constitutional amendment, should be carefully avoided by the statutory board in writing a ballot title and submission clause. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

The title board should avoid the use of catch phrases or slogans in the title, ballot title and submission clause, and summary of proposed initiatives. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

"Catch phrases" are forbidden in ballot titles. Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

And where a catch phrase was used in the submission clause by the statutory board in fixing a submission clause and ballot title to a proposed constitutional amendment, the supreme court, on review, remanded the matter to the board with instruction to revise the submission clause by elimination of the catch phrase. Henry v. Baker, 143 Colo. 461, 354 P.2d 490 (1960); Dye v. Baker, 143 Colo. 458, 354 P.2d 498 (1960).

Words "rapidly and effectively as possible" are a prohibited "catch phrase" because they mask the policy question of whether the most rapid and effective way to teach English to non-English speaking children is through an English immersion program and tip the substantive debate surrounding the issue to be submitted to the electorate. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d

1094 (Colo. 2000).

The words "adjusted net proceeds" and "adjusted gross proceeds" are not prohibited "catch phrases". The fact that such phrases were not defined in the initiative reflected the proponent's intent that the legislature interpret their meaning. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

The phrase "be on" the water is not misleading and is sufficiently clear. In Re Prop. Init. "Fair Fishing", 877 P.2d 1355 (Colo. 1994).

Because the proposed amendment contains no definition of the term "strong public trust doctrine", such a definition must await future judicial construction and cannot appropriately be included in the title or submission clause. In re Proposed Initiative on Water Rights, 877 P.2d 321 (Colo. 1994).

The phrase "refund to taxpayers" is not an inherently prohibited catch phrase. The term "refund" may be characterized inaccurately when read in isolation. When read in the context in which the term is used in the titles and summary and in the proposed initiative, however, the special sense of "refund" is adequately clarified. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Deterioration of a group of terms into an impermissible catch phrase is an imprecise process. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Use of the phrase "to preserve . . . the social institution of marriage" in titles and summaries of measures to recognize marriage between a man and a woman as valid does not constitute an impermissible catch phrase that may create prejudice in violation of this section. In re Ballot Title 1999-2000 Nos. 227 and 228, 3 P.3d 1 (Colo. 2000).

The phrase "concerning the management of growth" is neutral, with none of the hallmarks that have characterized catch phrases in the past. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

"Term limits" is not a catch phrase. In re Ballot Title 2005-2006 No. 75, 138 P.3d 267 (Colo. 2006).

"Criminal conduct" is not a catch phrase. The phrase does not contain an appeal to emotion that would prejudice a vote; it is simply a descriptive term. In re Ballot Title 2007-2008 No. 57, 185 P.3d 142 (Colo. 2008).

D. When Ballot Title and Submission Clause Fixed.

The titles and submission clause of an initiated measure were fixed and determined within the meaning of this section on the date that the three designated officials convened and fixed a title, ballot title and submission clause, and not on the date that the right of appeal from their decision expired. Baker v. Bosworth, 122 Colo. 356, 222 P.2d 416 (1950).

E. Brevity Required.

Ballot title and submission clause of proposed initiative measure must be brief. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980).

The board is given considerable discretion in resolving the interrelated problems of length, complexity, and clarity in designating a title and submission clause. In re Proposed Initiative Concerning State Personnel System, 691 P.2d 1121 (Colo. 1984); Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

If a choice must be made between brevity and a fair description of essential features of a proposal, where a complex measure embracing many different topics is involved and the titles and summary cannot be abbreviated by omitting references to the measure's salient features, the decision must be made in favor of full disclosure to the registered electors. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Ballot title and submission clause did not comply with the brevity requirement where the ballot title and submission clause for proposed constitutional amendment, as fixed by the administrative board, contained 369 words while the proposed amendment itself contained but 505 words. Cook v. Baker, 121 Colo. 187, 214 P.2d 787 (1950).

F. Scope of Review.

The court's scope of review is limited to ensuring that the title, ballot title and submission clause and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

There is a presumption in favor of decisions made by the title board. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Board's actions are presumptively valid, and this presumption precludes the court from second-guessing every decision the board makes in setting a title. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

The court gives great deference to the board's drafting authority. Matter of Title, Ballot Title for 1997-98 No. 80, 961 P.2d 1120 (Colo. 1998); In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

It is not the function of the court to rewrite the titles and summary to achieve the best possible statement of the proposed measure's intent, and the court will reverse the board's action in setting the titles only when the language chosen is clearly misleading. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

The title board's function is extremely important in light of the court's limited scope of review of the board's actions, and the court will not address the merits of a proposed initiative, interpret its language, or predict its application. In re Proposed Election Reform Amend., 852 P.2d 28 (Colo. 1993); In re Proposed Initiative on Fair

Treatment of Injured Workers, 873 P.2d 718 (Colo. 1994); In re Petition on Campaign & Political Fin., 877 P.2d 311 (Colo. 1994); Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

Court will not rewrite the titles or submission clause for the board. Also, the court will reverse the board's action in preparing the title or submission clause only if the title and submission clause contain a material omission, misstatement, or misrepresentation. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998); In re Ballot Title 1990-2000 No. 29, 972 P.2d 257 (Colo. 1999).

Not within the purview of the court to determine the efficacy, construction, or future application of an initiative in the process of reviewing the action of the title board in setting titles for a proposed initiative. Such matters are more appropriately addressed in a proper case if the voters approve the initiative. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Upon review, supreme court treats actions of board as presumptively valid. Supreme court will not address the merits of a proposed initiative, interpret its language, or predict its application. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Presumption of validity precludes supreme court from second-guessing every decision board makes in setting titles. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Supreme court's review of title board's actions is limited, and the court will not address the merits of a proposed initiative or construe the future legal effects of an initiative. The court will, however, when necessary, characterize a proposal sufficiently to enable review of the board's actions and to determine whether the initiative contains incongruous or hidden purposes or bundles incongruous measures under a broad theme. In re Ballot Title 2005-2006 No. 55, 138 P.3d 273 (Colo. 2006).

V. SUMMARY AND FISCAL IMPACT STATEMENT.

Impartiality required in summary. The summary prepared by the board must be true and impartial statement of intent of proposed law and must not be an argument, nor likely to create prejudice either for or against the measure. In re Branch Banking Initiative, 200 Colo. 85, 612 P.2d 96 (1980); In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

And summary is to include estimate of any fiscal impact upon the state or any of its political subdivisions with an explanation thereof. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

Unless fiscal impact cannot be determined. Where the fiscal impact upon local government could not be determined because of the variables involved, a definitive statement concerning fiscal impact is not required. Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

School districts and school boards are "political subdivisions of the state" as to which fiscal impact is to be estimated. Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Purpose of including fiscal impact statement in the summary is to inform the electorate of fiscal implications of proposed measure. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

In formulating a fiscal impact statement, the board is not limited to information submitted by the department of local affairs or the office of state planning and budgeting. Nor is the board required to accept at face value the information provided to it. Percy v. Hayes, 954 P.2d 1063 (Colo. 1998).

Faced with conflicting evidence regarding the fiscal impact, the board's determination that the proposed measure "may" have a negative fiscal impact on certain local governments was consistent with its statutory authority. Percy v. Hayes, 954 P.2d 1063 (Colo. 1998).

The fiscal impact statement was adequate, and the title board was within its discretion in not speculating in that statement about whether the transportation commission would impose tolls. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

The fiscal impact statement adequately described impact because it estimated current costs, included a one time cost for a water pump prior to the effective date of the initiative, included no speculation of the water district's obligation to the department of wildlife for fish and wildlife expenses, and provided an estimate for possible litigation costs because of the measure. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Fiscal impact statement not incomplete or inaccurate because it did not include any long range estimate of the costs of elections through the year 2013. The title board was not required to provide a further elaboration of the costs through the year 2013, even though the department of local affairs presented an estimate in a letter. The board had discretion to omit the estimate from the fiscal impact statement. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

The board is not required to determine the exact fiscal impact of each proposed measure; if the board finds that the proposed initiative will have a fiscal impact on the state or any of its political subdivisions, the summary must include an estimate and explanation. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

The board may properly exercise its judgment in concluding that the fiscal impact upon local government cannot be determined because of the variables involved. In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

The board may properly find that certain costs are indeterminate because of the variables and uncertainties

involved. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

The title board is not required to spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly. Only where the language chosen is clearly misleading will the court revise the title board's formulation. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

Omission of a sentence describing the proposed initiative's legislative declaration does not render the summary clearly misleading to the electorate. In re Ballot Title 1999-2000 No. 265, 3 P.3d 1210 (Colo. 2000).

A separate explanation of the fiscal impact of a measure is not required when the fiscal impact cannot be reasonably determined from the materials submitted to the board due to the variables or uncertainties inherent in the particular issue. In re Title Pertaining to Tax Reform, 797 P.2d 1283 (Colo. 1990); Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994); In re Proposed Initiative on "Trespass - Streams With Flowing Water", 910 P.2d 21 (Colo. 1996); Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

Given the disparate conclusions regarding the fiscal impact of the measure, the board acted within its authority in making the decision to include in the summary the statement that the net effect of the changes on state or local governments was not known. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

If provisions of measure do not produce a separate and conflicting impact and the aggregate impact is known, each provision of the proposed amendment need not be addressed individually in the statement of fiscal impact. Where the board cannot determine the aggregate fiscal impact of a proposed measure, but has adequate information to assess the impact of a particular provision, the board should state with specificity which provision will have fiscal impacts that are capable of being estimated and which are truly indeterminate. In re Petition on Campaign and Political Finance, 877 P.2d 311 (Colo. 1994).

Explanation of fiscal impact not required given the complexity of the issues and uncertainty expressed by the department of revenue. The board's conclusion that the fiscal impact was indeterminate was reasonable. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

Lack of specificity held justified. The Board has no independent fact-finding ability and its choice of language was judicious and within its authority. The fiscal impact could not reasonably be determined because of inherent uncertainties in the text of the amendment. In Re Prop. Init. "Fair Fishing", 877 P.2d 1355 (Colo. 1994).

Statement of fiscal impact was insufficient since, although the board was not required to include a definitive estimate of any fiscal impact on the state or its political subdivisions when that impact cannot be determined because of the variables involved, where the indeterminacy resulted from the multitude of provisions having separate and sometimes conflicting fiscal impacts producing an indeterminate aggregate impact and the board had sufficient information to assess the fiscal impact of each provision in isolation, the board should state with specificity which provisions will have fiscal impacts which are capable of being estimated, and which are truly indeterminate. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Board has discretion in exercising its judgment in how to best communicate that a proposed measure will have a fiscal impact on government without creating prejudice for or against the measure. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

Statement of fiscal impact was insufficient where it did not include estimates of the initiative's impact on school boards. Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Fiscal impact statement was inaccurate description of the fiscal impact of initiative where the office of state planning and budgeting prepared two cost estimates based on two possible scenarios. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

Request for agency assistance at board's discretion. The decision of whether and from which of the two state agencies to request information is within the discretion of the board. Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

Summary need not mention the effect of the amendment on an existing statute addressing the same or a similar subject as the proposed amendment. In re Mineral Prod. Tax Initiative, 644 P.2d 20 (Colo. 1982).

Board is not required to explain meaning or potential effects of proposed initiative on the present statutory scheme in the summary. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

The board is not required to provide lengthy explanations of every portion of a proposed constitutional amendment as overly detailed titles and submission clauses could by their very length confuse voters. In re Proposed Initiative Concerning State Personnel Systems, 691 P.2d 1121 (Colo. 1984).

Mere ambiguity of a summary, if not clearly misleading, does not require disapproval by court. In re Proposed Initiative Concerning State Personnel System, 691 P.2d 1121 (Colo. 1984).

Board may be challenged when misleading summary of amendment prejudicial. A misleading summary of the fiscal impact of a proposed amendment is likely to create an unfair prejudice against the measure and is a sufficient basis, under this section, for challenging the board's action. In re An Initiated Constitutional Amendment, 199 Colo. 409, 609 P.2d 631 (1980).

The titles and summary were not misleading since they tracked the language of the initiative, and any problems in the interpretation of the measure or its constitutionality were beyond the functions assigned to the title board and outside the scope of the court's review of the title board's actions. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

Proposed initiative violates the single-subject requirement because it (1) provides for tax cuts and (2) imposes mandatory reductions in state spending on state programs. Matter of Proposed Initiative 1997-98 No. 86,

962 P.2d 245 (Colo. 1998).

Use of the word "of" in the initiative summary instead of the word "by" does not create confusion on how directors of a board are selected. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Failure of title and summary to specify which taxpayers would receive a refund if one is necessary does not render the title or summary confusing. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Title summary not misleading because it identified uncertainties of the effect of the measure by noting that a surplus may be created by the payments under the initiative and any surplus may be refunded to the taxpayers under TABOR, article X, § 20, of the Colorado Constitution. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

1-40-106.5. Single-subject requirements for initiated measures and referred constitutional amendments - legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Section 1 (5.5) of article V and section 2 (3) of article XIX of the state constitution require that every constitutional amendment or law proposed by initiative and every constitutional amendment proposed by the general assembly be limited to a single subject, which shall be clearly expressed in its title;

(b) Such provisions were referred by the general assembly to the people for their approval at the 1994 general election pursuant to Senate Concurrent Resolution 93-4;

(c) The language of such provisions was drawn from section 21 of article V of the state constitution, which requires that every bill, except general appropriation bills, shall be limited to a single subject, which shall be clearly expressed in its title;

(d) The Colorado supreme court has held that the constitutional single-subject requirement for bills was designed to prevent or inhibit various inappropriate or misleading practices that might otherwise occur, and the intent of the general assembly in referring to the people section 1 (5.5) of article V and section 2 (3) of article XIX was to protect initiated measures and referred constitutional amendments from similar practices;

(e) The practices intended by the general assembly to be inhibited by section 1 (5.5) of article V and section 2 (3) of article XIX are as follows:

(I) To forbid the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits;

(II) To prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters.

(2) It is the intent of the general assembly that section 1 (5.5) of article V and section 2 (3) of article XIX be liberally construed, so as to avert the practices against which they are aimed and, at the same time, to preserve and protect the right of initiative and referendum.

(3) It is further the intent of the general assembly that, in setting titles pursuant to section 1 (5.5) of article V, the initiative title setting review board created in section 1-40-106 should apply judicial decisions construing the constitutional single-subject requirement for bills and should follow the same rules employed by the general assembly in considering titles for bills.

Source: L. 94: Entire section added, p. 73, § 1, effective January 19, 1995.

Editor's note: Section 2 of chapter 22, Session Laws of Colorado 1994, provided that the act enacting this section was effective on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of SCR 93-004, enacted at the First Regular Session of the Fifty-ninth General Assembly. The date of the proclamation of the Governor announcing the approval of SCR 93-004 was January 19, 1995.

Law reviews. For article, "The Single-Subject Requirement For Initiatives", see 29 Colo. Law. 65 (May 2000).

In determining whether a proposed measure contains more than one subject, the court may not interpret the language of the measure or predict its application if it is adopted. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

In order to violate the single subject requirement, the text of the measure must relate to more than one subject and have at least two distinct and separate purposes which are not dependent upon or connected with each other. The single subject requirement is not violated if the matters included are necessarily or properly connected to each other. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

In order to pass constitutional muster, a proposed initiative must concern only one subject. In other words, it must effectuate or carry out only one general object or purpose. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006); In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

The intent of the requirement that an initiative be limited to a single subject is to ensure that each proposal depends on its own merits for passage. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996); Matter of Title, Ballot Title for 1997-98 No. 105, 961 P. 2d 1093 (Colo. 1998).

Subsection (1)(a)(I) prohibits the joinder of incongruous subjects in the same petition. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P. 2d 1093 (Colo. 1998).

The intent of the single-subject requirement is to prevent voters from being confused or misled and to ensure that each proposal is considered on its own merits. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

The single-subject requirement must be liberally construed so as not to impose undue restrictions on the initiative process. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

The single-subject requirement is not violated simply because an initiative with a single, distinct purpose spells out details relating to its implementation. As long as the procedures specified have a necessary and proper relationship to the substance of the initiative, they are not a separate subject. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998); In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

A proposed measure that tends to effect or to carry out one general purpose presents only one subject. Consequently, minor provisions necessary to effectuate the purpose of the measure are properly included within its text. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

Just because a proposal may have different effects or that it makes policy choices that are not invariably interconnected does not mean that it necessarily violates the single-subject requirement. It is enough that the provisions of a proposal are connected. Here, the initiative addresses numerous issues in a detailed manner. However, all of these issues relate to the management of development. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

To evaluate whether or not an initiative effectuates or carries out only one general object or purpose, supreme court looks to the text of the proposed initiative. The single-subject requirement is not violated if the "matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous". Stated another way, the single-subject requirement is not violated unless the text of the measure "relates to more than one subject and has at least two distinct and separate purposes that are not dependent upon or connected with each other". Mere implementation or enforcement details directly tied to the initiative's single subject will not, in and of themselves, constitute a separate subject. Finally, in order to pass the single-subject test, subject of the initiative should also be capable of being expressed in the initiative's title. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006); In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

The fact that provisions of measure may affect more than one statutory provision does not itself mean that measure contains multiple subjects. Where initiative requiring background checks at gun shows also authorizes licensed gun dealers who conduct such background checks to charge a fee, the initiative contains a single subject. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

Single-subject requirement eliminates the practice of combining several unrelated subjects in a single measure for the purpose of enlisting support from advocates of each subject and thus securing the enactment of measures that might not otherwise be approved by voters on the basis of the merits of those discrete measures. In re Petitions, 907 P.2d 586 (Colo. 1995); In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

A proposed measure impermissibly includes more than one subject if its text relates to more than one subject and if the measure has at least two distinct and separate purposes that are not dependent upon or connected with each other. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996); In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Grouping the provisions of a proposed initiative under a broad concept that potentially misleads voters will not satisfy the single-subject requirement. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996); In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Neither this section nor §1(5.5) of article V of the state constitution creates any exemptions for initiatives that attempt to repeal constitutional provisions. Also,

no special permission exists for initiatives that seek to address constitutional provisions adopted prior to the enactment of the single-subject requirement. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

The term "measure" includes initiatives that either enact or repeal. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

In cases of repeal, the underlying constitutional provision to be repealed must be examined in order to determine whether the repealing and reenacting initiative contains a single subject. If a provision contains multiple subjects and an initiative proposes to repeal the entire underlying provision, then the initiative contains multiple subjects. On the other hand, if an initiative proposes anything less than a total repeal, it may satisfy the single-subject requirement. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

Title-setting board has no duty to advise proponents concerning possible solutions to a single-subject violation. Comment by the board is within its sound discretion; requiring comment would unconstitutionally expand the board's authority and shift initiative-drafting responsibility from proponents to the board. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

If the title-setting board rejects an initiative for violating the single-subject requirement, then proponents may pursue one of two courses of action. They may either (1) commence a new review and comment process, or (2) present a revised title to the board. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

Single-subject requirement for ballot initiatives met where provisions in initiative make reference to the initiative's subject and the provisions are sufficiently connected to the subject. Matter of Title, Ballot Title, 917 P.2d 292 (Colo. 1996).

An election provision in a measure does not constitute a separate subject if there is a sufficient connection between the provision and the subject of the initiative. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Title board is vested with considerable discretion in setting the title, ballot title and submission clause, and summary. In reviewing actions of the title board, court must liberally construe the single-subject and title requirements for initiatives. Matter of Title, Ballot Title, 917 P.2d 292 (Colo. 1996); Matter of Title, Ballot Title, Submission Clause, 917 P.2d 1277 (Colo. 1996).

Proposed initiative contains only one subject. Although initiative is comprehensive, all of its numerous provisions relate to the single subject of reforming petition rights and procedures. Matter of Petition for Amend. to Const., 907 P.2d 586 (Colo. 1995).

Proposed initiative that applies a $60 tax credit contains only one subject, even though it applies the credit to more than one tax and requires the state to replace monthly local government revenues lost because of the tax credit. Matter of Proposed Petition for an Amendment to the Constitution Adding Paragraph (d) Section (8) of Section 20 of Article X (Amend TABOR No. 32), 908 P.2d 125 (Colo. 1995).

The texts of the initiatives encompass the single subject of gaming activities conducted by nonprofit organizations. The initiatives detail what games of chance may be conducted, who may conduct such games, and how such games may be conducted. In re Proposed Init. Bingo-Raffle Lic. (I), 915 P.2d 1320 (Colo. 1996).

Proposed initiative did not violate the single-subject requirement where "the public's interest in state waters" was sufficiently narrow and connected with both a "public trust doctrine" and the assignment of water use rights to the public or a watercourse. Matter of Title, Ballot Title, Submission Clause, 917 P.2d 1277 (Colo. 1996).

Proposed initiative did not contain more than one subject merely because it provided for alternative ways to accomplish the same result. The alternate ways were related to and connected with each other and plainly did not violate the single-subject requirement. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

Initiative that assessed fees for water pumped from beneath trust lands and then allocated the pumping fees for school finance was not considered two subjects by the court because the theme of the purpose of state trust lands and the educational recipient provide a unifying thread. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Proposed initiative concerning uniform application of laws to livestock operations was upheld without opinion against challenges on basis of single-subject requirement and on other grounds. Matter of Proposed Initiative 1997-98 No. 112, 962 P.2d 255 (Colo. 1998).

Measure to recognize marriage between a man and a woman as valid does not contravene the single subject requirement of this section. In re Ballot Title 1999-2000 Nos. 227 and 228, 3 P.3d 1 (Colo. 2000).

Proposed initiative that employs a growth formula limiting the rate of future development, delineates a system of measurement to determine the "base developed" area of each jurisdiction, allows for alternative treatment of commenced but not completed projects, excludes low-income housing, public parks and open space, and historic landmarks, and establishes a procedure for exemptions does not violate the constitutional prohibition against single subjects. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Proposed initiative that prohibits school districts from requiring schools to provide bilingual education programs while allowing parents to transfer children from an English immersion program to a bilingual program does not contain more than one subject. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

Enforcement provision under which election will be declared void and revenues collected pursuant to election will be refunded is directly tied to initiative's purpose of eliminating pay-to-play contributions and, therefore, is not a separate subject. Clause in question should be interpreted as nothing more than an enforcement or implementation clause that does nothing more than incorporate inherent right of taxpayers to challenge tax, spending, or bond measures when they have standing to do so. Thus,

enforcement provision is not a separate subject but rather is tied directly to initiative's single subject. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006).

Proposed initiative contains more than one subject. Citizen initiative that retroactively creates substantive fundamental rights in charter and constitutional amendments approved after 1990, requires the word "shall" in such amendments be mandatory regardless of the context, establishes standards for judicial review of filed petitions, provides that challenges to petitions can be upheld only if beyond a reasonable doubt by a unanimous supreme court, and contains other substantive and procedural provisions relating to recall, referendum, and initiative petitions contains more than one subject. Amendment to Const. Section 2 to Art. VII, 900 P.2d 104 (Colo. 1995).

Proposed initiative that establishes a tax credit and sets forth procedural requirements for future ballot titles contains more than one subject. Matter of Title, Ballot Title & Sub. Cl., 900 P.2d 121 (Colo. 1995).

Initiative that contains both tax cuts and mandatory reductions in state spending on state programs violates the single subject requirement. Matter of Title, Ballot Title for 1997-98 No. 88, 961 P.2d 1106 (Colo. 1998).

Proposed initiative that repealed the constitutional requirement that each judicial district have a minimum of one district court judge; deprived the city and county of Denver of control over Denver county court judgeships; immunized from liability persons who criticize a judicial officer regarding his or her qualifications; and altered the composition and powers of the commission on judicial discipline contains more than one subject. Matter of Title, Ballot Title for 1997-98 No. 64, 960 P.2d 1192 (Colo. 1998); Matter of Title, Ballot Title for 1997-98 No. 95, 960 P.2d 1204 (Colo. 1998).

Proposed initiative that also proposed to make all municipal court judges subject to its term of office and retention provisions and expanded the jurisdiction of the commission on judicial discipline to include municipal court judges contains more than one subject. Matter of Title, Ballot Title for 1997-98 No. 95, 960 P.2d 1204 (Colo. 1998).

Proposed initiative that creates a tax cut, imposes new criteria for voter approval of tax, spending, and debt increases, and imposes likely reductions in state spending on state programs contains at least three subjects. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37, 977 P.2d 845 (Colo. 1999).

Proposed initiative that creates a tax cut and imposes new criteria for voter approval of tax, spending, and debt increases contains multiple subjects. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 38, 977 P.2d 849 (Colo. 1999).

Proposed initiative has more than single subject and, therefore, is unconstitutional. Initiative presents multiple subjects: (1) Time limits for tax measures; (2) time limits for public debt authorizations; and (3) time limits for voter-authorized relief from spending limits. While voters may well be receptive to a broadly applicable 10-year limitation upon the duration of any tax increases, they may not realize that they will be simultaneously limiting their ability to incur multiple-fiscal year district debt obligation to fund public projects. Voters would also be limiting prospectively the duration of all future ballot issues designed to provide relief from TABOR's wholly independent spending caps. Voters are entitled to have each of these separate subjects considered upon its own merits. In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

Initiative that proposed the creation of a new Colorado department of environmental conservation and the creation of a mandatory public trust standard that would have required the department to resolve conflicts between economic interest and public ownership and public conservation values in lands, waters, public resources, and wildlife in favor of public ownerships and public values contained multiple subjects. In re Ballot Title 2007-2008 No. 17, 172 P.3d 871 (Colo. 2007).

1-40-107. Rehearing - appeal - fees - signing. (1) Any person presenting an initiative petition or any registered elector who is not satisfied with a decision of the title board with respect to whether a petition contains more than a single subject pursuant to section 1-40-106.5, or who is not satisfied with the titles and submission clause provided by the title board and who claims that they are unfair or that they do not fairly express the true meaning and intent of the proposed state law or constitutional amendment may file a motion for a rehearing with the secretary of state within seven days after the decision is made or the titles and submission clause are set. The motion for rehearing shall be heard at the next regularly scheduled meeting of the title board; except that, if the title board is unable to complete action on all matters scheduled for that day, consideration of any motion for rehearing may be continued to the next available day, and except that, if the titles and submission clause protested were set at the last meeting in April, the motion shall be heard within forty-eight hours after the expiration of the seven-day period for the filing of such motions.

(2) If any person presenting an initiative petition for which a motion for a rehearing is filed, any registered elector who filed a motion for a rehearing pursuant to subsection (1) of this section, or any

other registered elector who appeared before the title board in support of or in opposition to a motion for rehearing is not satisfied with the ruling of the title board upon the motion, then the secretary of state shall furnish such person, upon request, a certified copy of the petition with the titles and submission clause of the proposed law or constitutional amendment, together with a certified copy of the motion for rehearing and of the ruling thereon. If filed with the clerk of the supreme court within five days thereafter, the matter shall be disposed of promptly, consistent with the rights of the parties, either affirming the action of the title board or reversing it, in which latter case the court shall remand it with instructions, pointing out where the title board is in error.

(3) The secretary of state shall be allowed a fee which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., for certifying a record of any proceedings before the title board. The clerk of the supreme court shall receive one-half the ordinary docket fee for docketing any such cause, all of which shall be paid by the parties desiring a review of such proceedings.

(4) No petition for any initiative measure shall be circulated nor any signature thereto have any force or effect which has been signed before the titles and submission clause have been fixed and determined as provided in section 1-40-106 and this section.

(5) In the event a motion for rehearing is filed in accordance with this section, the period for filing a petition in accordance with section 1-40-108 shall not begin until a final decision concerning the motion is rendered by the title board or the Colorado supreme court; except that under no circumstances shall the period for filing a petition be extended beyond three months and three weeks prior to the election at which the petition is to be voted upon.

(6) (Deleted by amendment, L. 2000, p. 1622, § 5, effective August 2, 2000.)

(7) (Deleted by amendment, L. 95, p. 432, § 5, effective May 8, 1995.)

Source: L. 93: Entire article amended with relocations, p. 680, § 1, effective May 4. **L. 95:** (1) and (7) amended, p. 432, § 5, effective May 8. **L. 98:** (2) amended, p. 635, § 9, effective May 6. **L. 2000:** (1), (2), (4), and (6) amended, pp. 1621, 1622, §§ 2, 5, effective August 2; (6) amended, p. 297, § 1, effective August 2. **L. 2004:** (1) amended, p. 756, § 2, effective May 12. **L. 2009:** (1) and (5) amended, (HB 09-1326), ch. 258, p. 1171, § 5, effective July 1, 2009.

Editor's note: (1) Subsections (1) and (2) were formerly numbered as section 1-40-101 (3), subsection (3) was formerly numbered as section 1-40-103 (1), subsection (4) was formerly numbered as section 1-40-103 (2), subsection (5) was formerly numbered as section 1-40-102 (3)(b), subsection (6) was formerly numbered as section 1-40-101 (4), and subsection (7) is new. The former section 1-40-107 was relocated to section 1-40-113.

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending subsections (1) and (5) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after July 1, 2009.

Cross references: For the general assembly, powers, and initiative and referendum reserved to the people, see also § 1 of art. V, Colo. Const.; for recall from office, see art. XXI, Colo. Const.

ANNOTATION

Am. Jur.2d. See 16 Am. Jur.2d, Constitutional Law, §§ 16, 19, 32; 42 Am. Jur.2d, Initiative and Referendum, §§ 16, 18, 21, 40.

C.J.S. See 82 C.J.S., Statutes, §§ 116, 117, 121, 128.

Law reviews. For article, "Popular Law-Making in Colorado", see 26 Rocky Mt. L. Rev. 439 (1954).

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) On rehearing by the title-setting board or review by the supreme court under this section, many of the same concerns will be relevant as are relevant to the initial setting of titles under § 1-40-106. To avoid excessive duplication, most of the annotations to cases construing § 1-40-106 are not repeated here. Please see the annotations under § 1-40-106 for additional cases concerning the sufficiency of titles, and the authority and powers of the title-setting board, and the compliance of the title-setting board with statutory requirements.

(3) For additional cases concerning the initiative and referendum power, see the annotations under § 1 of article V of the state constitution.

Subsection (1) allows an objector to bring only one motion for rehearing to challenge the titles set by the title board. The title board properly denied an objector's second motion for rehearing based on lack of jurisdiction. In re Ballot Title 1999-2000 No. 219, 999 P.2d 819 (Colo. 2000).

This section provides a special statutory process that overrides claim preclusion or law of the case

principles. Consequently, the title board and the supreme court must review an initiative challenged under this section even if its language is identical to the language of a previous initiative. In re Ballot Title 2005-2006 No. 55, 138 P.3d 273 (Colo. 2006).

In a proceeding under this statute: (1) the supreme court must not in any way concern itself with the merit or lack of merit of the proposed amendment since, under our system of government, that resolution rests with the electorate; (2) all legitimate presumptions must be indulged in favor of the propriety of the board's action; and (3) only in a clear case should a title prepared by the board be held invalid. Bauch v. Anderson, 178 Colo. 308, 497 P.2d 698 (1972); In re An Initiated Constitutional Amendment, 199 Colo. 409, 609 P.2d 631 (1980); In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982); In re Proposed Initiated Constitutional Amendment, 682 P.2d 480 (Colo. 1984); In re Proposed Initiative Concerning State Personnel System, 691 P.2d 1121 (Colo. 1984); In re Proposed Initiative Concerning Drinking Age, 691 P.2d 1127 (Colo. 1984); In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990).

In reviewing the board's title-setting process, the court does not address the merits of the proposed initiative and should not interpret the meaning of proposed language or suggest how it will be applied if adopted by the electorate; should resolve all legitimate presumptions in favor of the board; will not interfere with the board's choice of language if the language is not clearly misleading; and must ensure that the title, ballot title, submission clause, and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the board. In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the Town of Burlington, 830 P.2d 1023 (Colo. 1992); Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993); In re Proposed Initiative Concerning "Automobile Insurance Coverage," 877 P.2d 853 (Colo. 1994).

Court will not address the merits of proposed initiatives nor interpret the meaning of proposed language. It is beyond the scope of the court's review to interpret or construe the language of a proposed initiative. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

So long as the language chosen by the board fairly summarizes the intent and meaning of the proposed amendment, without arguing for or against its adoption, it is sufficient. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

The board is not required to state the effect that an initiative may have on other constitutional provisions and the initiative summary is not intended to fully educate people on all aspects of the proposed law. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

Court will not rewrite the titles or submission clause for the title board. Also, the court will reverse the title board's action in preparing the title or submission clause only if they contain a material and significant omission, misstatement, or misrepresentation. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

And the mere fact that, after an appeal has been taken and a court has had the benefit of the additional labor bestowed upon the ballot title by counsel, a court may be able to write a better ballot title than the one prepared by an attorney general constitutes no reason for discarding his title. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

Because the purpose of an appeal is not to secure for the bill the best possible ballot title, but to eliminate one that is insufficient or unfair, if it should develop that the one submitted by an attorney general is of that kind. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958); In re Branch Banking Initiative, 200 Colo. 85, 612 P.2d 96 (1980); Matter of Educ. Tax Reform, 823 P.2d 1353 (Colo. 1991).

Court's function limited. It is not the function of the supreme court to rephrase the language of the summary and title in order to achieve the best possible statement of the intent of the amendment. In re Mineral Prod. Tax Initiative, 644 P.2d 20 (Colo. 1982).

Actions of the title setting review board will not be reversed just because a better title could have been adopted. Matter of Proposed Initiated Constitutional Amendment Concerning Suits Against Nongovernmental Employers Who Knowingly and Recklessly Maintain an Unsafe Work Environment, 898 P.2d 1071 (Colo. 1995).

Review limited to whether intent of initiative properly reflected. On review, the supreme court can only consider whether the titles, summary, and submission clause reflect the intent of the initiative, not whether they reflect all possible problems that may arise in the future in applying the language of the proposed initiative. In re Proposed Initiative on Transf. of Real Estate, 200 Colo. 40, 611 P.2d 981 (1980); In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982); In re Proposed Initiative on Confidentiality of Adoption Records, 832 P.2d 229 (Colo. 1992); In re Proposed Initiative on Sch. Pilot Program, 874 P.2d 1066 (Colo. 1994); Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

And interpretation of initiative not permitted. It is not the function of the supreme court in the review proceeding, nor is it the board's function, to determine the meaning of the language of the initiative: A judicial interpretation of the meaning of the initiative must await an adjudication in a specific factual context. Spelts v. Klausing, 649 P.2d 303 (Colo. 1982); In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990).

Court will not rewrite the titles or submission clause for the title board. Also, the court will reverse the title board's action in preparing the title or submission clause only if they contain a material and significant omission, misstatement, or misrepresentation. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

Title language employed by the title board will be

rejected only if it is misleading, inaccurate or fails to reflect the central features of the proposed measure. In re Ballot Title 1999-2000 No. 215 (Prohibiting Certain Open Pit Mining), 3 P.3d 11 (Colo. 2000).

Title, ballot title, and submission clause of an initiative measure were not unfair or misleading where a term was not defined that would have required detailed statutory explanation. The board's omission of a definition in its title and summary is not an abuse of discretion where the definition is complex and would be impossible to define within the title and summary of the initiative without a detailed statutory explanation, even though the term is obscure and not within the common knowledge of most voters. Matter of Title, Ballot Title for 1997-98 No. 75, 960 P.2d 672 (Colo. 1998).

Title set by the title board was misleading and inaccurate and would be modified where the intent of the proposed measure was to prohibit the modification of certain mining permits to allow the expansion of mining operations but the title could be construed as prohibiting the expansion of mining operations under an existing, unmodified mining permit. In re Ballot Title 1999-2000 No. 215 (Prohibiting Certain Open Pit Mining), 3 P.3d 11 (Colo. 2000).

Issues of whether initiative violated article X, section 20, of the Colorado Constitution are premature and the court will not address them since that determination would necessarily require the court to interpret its language or predict its application if adopted by the electorate. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

Although this section provides for supreme court review of citizen initiatives before they are submitted to the general electorate, it does not confer jurisdiction on the supreme court to review the constitutionality of legislative referenda prior to enactment. Thus, the supreme court lacked jurisdiction to review a legislative referendum for compliance with the single-subject requirement prior to enactment of the referendum. Polhill v. Buckley, 923 P.2d 119 (Colo. 1996).

Judicial determination of retroactive application of proposed amendment. If a controversy arises in a specific factual context, then judicial determination of retroactive application may be appropriate, but it is not relevant to the determination of the accuracy of the language of the titles, summary, and submission clause of a proposed amendment. In re Proposed Initiative on Transf. of Real Estate, 200 Colo. 40, 611 P.2d 981 (1980); In re Proposed Initiative on Confidentiality of Adoption Records, 832 P.2d 229 (Colo. 1992).

Where a proposed amendment uses the term "strong public trust doctrine" but does not define it, such a definition must await future judicial construction and cannot appropriately be included in the title or submission clause. In re Proposed Initiative on Water Rights, 877 P.2d 321 (Colo. 1994).

The board is not required to state the effect that an initiative may have on other constitutional provisions, and the court may not address the potential constitutional interpretation implications of the initiative in the court's review. In re Proposed Initiative on Water Rights, 877 P.2d 321 (Colo. 1994).

As a general rule, court will reject the board's actions only where the language it has adopted is so inaccurate as to clearly mislead the electorate. In re Petition on Campaign and Political Finance, 877 P.2d 311 (Colo. 1994).

Burden for invalidating an amendment because of an alleged misleading ballot title, after adoption by the people in a general election, is heavy since the general assembly has provided procedures for challenging a ballot title prior to elections. Unless the challengers to the amendment can prove that so many voters were actually misled by the title that the result of the election might have been different, the challenge will fail. City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978).

In considering whether the title, ballot title and submission clause, and summary accurately reflect the intent of the proposed initiative, it is appropriate to consider the testimony of the proponent concerning the intent of the proposed initiative that was offered at the public meeting at which the title, ballot title and submission clause, and summary were set. In re Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment, 830 P.2d 1031 (Colo. 1992).

Once petitioners file their petitions for review with the supreme court pursuant to subsection (2), the board loses jurisdiction to make substantive changes to the titles and summary. The board properly refused to consider a motion for rehearing filed by one opponent that raised substantive issues when the other opponents had already filed petitions for review with the supreme court; any action by the board to make substantive changes to the summary after the matter was before the supreme court on review would impermissibly intrude on the court's jurisdiction over the case. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

The time for filing an appeal to a decision of the title board is five days after the board denies the motion for rehearing and not five days from the date the secretary of state certifies the documents requested for appeal. Five days from the board's denial of a motion for rehearing is final action by the board regardless of whether an appeal is filed. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

For a timely appeal, it must be filed within five days from the board's denial of a motion for rehearing and must be construed with C.A.R. 26, thus clarifying the computation of five days to exclude Saturday and Sunday. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

Initiative proponents may circulate petitions for signatures after the title board has taken its final action in regard to the ballot titles and summary, pursuant to subsections (1) and (5), and while an appeal of that action to the supreme court is pending pursuant to subsection (2). Setting of titles and summary becomes a final title board action upon denial of a rehearing petition or upon expiration of the time for filing a rehearing petition with the title board. Armstrong v. Davidson, 10 P.3d 1278

(Colo. 2000).

Objector may not raise in a second motion for rehearing a challenge that the objector could have raised in the first motion for rehearing. Case-by-case analysis of the interests involved in setting the titles to an initiative is not required. In re Ballot Title 1999-2000 No. 215, 3 P.3d 447 (Colo. 2000).

Applied in Matter of Proposed Initiative 1997-98 No. 86, 962 P.2d 245 (Colo. 1998); Matter of Proposed Initiative 1997-98 No. 109, 962 P.2d 252 (Colo. 1998); Matter of Proposed Initiative 1997-98 No. 112, 962 P.2d 255 (Colo. 1998).

1-40-108. Petition - time of filing. (1) No petition for any ballot issue shall be of any effect unless filed with the secretary of state within six months from the date that the titles and submission clause have been fixed and determined pursuant to the provisions of sections 1-40-106 and 1-40-107 and unless filed with the secretary of state no later than three months and three weeks before the election at which it is to be voted upon. A petition for a ballot issue for the election to be held in November of odd-numbered years shall be filed with the secretary of state no later than three months and three weeks before such odd-year election. All filings under this section must be made by 3 p.m. on the day of filing.

(2) (Deleted by amendment, L. 95, p. 433, § 6, effective May 8, 1995.)

Source: L. 93: Entire article amended with relocations, p. 682, § 1, effective May 4; (1) amended, p. 1437, § 127, effective July 1. **L. 95:** Entire section amended, p. 433, § 6, effective May 8. **L. 2000:** (1) amended, p. 1622, § 6, effective August 2. **L. 2009:** (1) amended, (HB 09-1326), ch. 258, p. 1171, § 6, effective May 15.

Editor's note: (1) Subsection (1) was formerly numbered as section 1-40-104 and subsection (2) is new. The former section 1-40-108 (1), which was further amended by HB 93-1155, was relocated to section 1-40-115 (1) and (2), and section 1-40-108 (2) was relocated to section 1-40-115 (3).

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending subsection (1) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after May 15, 2009.

Cross references: For computation of time under the "Uniform Election Code of 1992", articles 1 to 13 of this title, see § 1-1-106; for computation of time under the statutes generally, see § 2-4-108.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 216-220.

C.J.S. See 82 C.J.S., Statutes, § 121.

Law reviews. For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The requirement that petitions be circulated within a six-month period is not an unreasonable burden on the rights of either the proponents of the petition or of the voting public. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

The six-month deadline set forth in subsection (1) is a reasonable, nondiscriminatory ballot access regulation; it does not offend the first and fourteenth amendments of the United States Constitution. The requirement preserves the integrity of the state's elections, maintains an orderly ballot, and limits voter confusion. The requirement advances those interests by establishing a reasonable window in which proponents must demonstrate support for their causes. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Petition for initiative may be filed or circulated anytime after previous general election. Matter of Title, Ballot Title, Etc., 850 P.2d 144 (Colo. 1993) (decided under former §1-40-104 prior to 1993 amendments).

Applied in Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

1-40-109. Signatures required - withdrawal. (1) No petition for any initiated law or amendment to the state constitution shall be of any force or effect, nor shall the proposed law or amendment to the state constitution be submitted to the people of the state of Colorado for adoption or rejection at the polls, as is by law provided for, unless the petition for the submission of the initiated law or amendment to the state constitution is signed by the number of electors required by the state constitution.

(2) (Deleted by amendment, L. 95, p. 433, § 7, effective May 8, 1995.)

(3) Any person who is a registered elector may sign a petition for any ballot issue for which the elector is eligible to vote. A registered elector who signs a petition may withdraw his or her signature from the petition by filing a written request for such withdrawal with the secretary of state at any time on or before the day that the petition is filed with the secretary of state.

Source: L. 93: Entire article amended with relocations, p. 682, § 1, effective May 4. **L. 94:** (2) amended, p. 1180, § 73, effective July 1. **L. 95:** (2) and (3) amended, p. 433, § 7, effective May 8. **L. 2009:** (3) amended, (HB 09-1326), ch. 258, p. 1172, § 7, effective May 15.

Editor's note: (1) Subsections (1) and (2) were formerly numbered as section 1-40-105, and subsection (3) is new. The former section 1-40-109 (1)(a) was relocated to section 1-40-116 (1), section 1-40-109 (1)(b)(I) was relocated to section 1-40-116 (2) and (3) and section 1-40-117 (1), section 1-40-109 (1)(b)(II)(A) was relocated to section 1-40-117 (3)(a), section 1-40-109 (1)(b)(II)(B) was relocated to section 1-40-117 (3)(b), section 1-40-109 (1)(c) was relocated to section 1-40-118 (1) and (2), section 1-40-109 (1.6)(a) was relocated to section 1-40-118 (3), section 1-40-109 (1.6)(b) was relocated to section 1-40-118 (4), section 1-40-109 (1.6)(c) was deleted by amendment, section 1-40-109 (2)(a) was relocated to section 1-40-119, section 1-40-109 (2)(b) was relocated to section 1-40-120, and section 1-40-109 (3) was deleted by amendment.

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending subsection (3) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after May 15, 2009.

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, § 24.

C.J.S. See 82 C.J.S., Statutes, § 119.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Applied in Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

1-40-110. Warning - ballot title. (1) At the top of each page of every initiative or referendum petition section shall be printed, in a form as prescribed by the secretary of state, the following:

WARNING:

IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR AND ELIGIBLE TO VOTE ON THIS MEASURE. TO BE A REGISTERED ELECTOR, YOU MUST BE A CITIZEN OF COLORADO AND REGISTERED TO VOTE.

Before signing this petition, you are encouraged to read the text or the title of the proposed initiative or referred measure.

By signing this petition, you are indicating that you want this measure to be included on the ballot as a proposed change to the (Colorado constitution/Colorado Revised Statutes). If a sufficient number of registered electors sign this petition, this measure will appear on the ballot at the November (year) election.

(2) The ballot title for the measure shall then be printed on each page following the warning.

Source: L. 93: Entire article amended with relocations, p. 682, § 1, effective May 4. **L. 95:** IP(1) amended, p. 433, § 8, effective May 8. **L. 2000:** (1) amended, p. 1622, § 7, effective August 2. **L. 2009:** (1) amended, (HB 09-1326), ch. 258, p. 1172, § 8, effective May 15.

Editor's note: (1) Subsection (1) was formerly numbered as section 1-40-106 (1)(a), and subsection (2) was formerly numbered as section 1-40-106 (1)(b). The former section 1-40-110 was relocated to section 1-40-121 (1).

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending subsection (1) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after May 15, 2009.

ANNOTATION

I. General Consideration.
II. Constitutional Construction.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 26-28.

C.J.S. See 82 C.J.S., Statutes, § 119.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Subsection (2) (now § 1-40-111) prohibited the court from validating the signatures collected for an initiative when its title and submission clause were found to be misleading. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

II. CONSTITUTIONAL CONSTRUCTION.

Section 1-40-106 must be construed so as to allow qualified electors of the ages of eighteen through twenty to participate in the initiative process. Colo. Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972).

Liberal construction must be given to statutes implementing initiative provisions of constitution. Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).

1-40-111. Signatures - affidavits - notarization - list of circulators and notaries. (1) Any initiative or referendum petition shall be signed only by registered electors who are eligible to vote on the measure. Each registered elector shall sign his or her own signature and shall print his or her name, the address at which he or she resides, including the street number and name, the city and town, the county, and the date of signing. Each registered elector signing a petition shall be encouraged by the circulator of the petition to sign the petition in ink. In the event a registered elector is physically disabled or is illiterate and wishes to sign the petition, the elector shall sign or make his or her mark in the space so provided. Any person, but not a circulator, may assist the disabled or illiterate elector in completing the remaining information required by this subsection (1). The person providing assistance shall sign his or her name and address and shall state that such assistance was given to the disabled or illiterate elector.

(2) (a) To each petition section shall be attached a signed, notarized, and dated affidavit executed by the person who circulated the petition section, which shall include his or her printed name, the address at which he or she resides, including the street name and number, the city or town, the county, and the date he or she signed the affidavit; that he or she has read and understands the laws governing the circulation of petitions; that he or she was a resident of the state, a citizen of the United States, and at least eighteen years of age at the time the section of the petition was circulated and signed by the listed electors; that he or she circulated the section of the petition; that each signature thereon was affixed in the circulator's presence; that each signature thereon is the signature of the person whose name it purports to be; that to the best of the circulator's knowledge and belief each of the persons signing the petition section was, at the time of signing, a registered elector; that he or she has not paid or will not in the future pay and that he or she believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix his or her signature to the petition; that he or she understands that he or she can be prosecuted for violating the laws governing the circulation of petitions, including the requirement that a circulator truthfully completed the

affidavit and that each signature thereon was affixed in the circulator's presence; and that he or she understands that failing to make himself or herself available to be deposed and to provide testimony in the event of a protest shall invalidate the petition section if it is challenged on the grounds of circulator fraud.

(b) (I) A notary public shall not notarize an affidavit required pursuant to paragraph (a) of this subsection (2), unless:

(A) The circulator is in the physical presence of the notary public;

(B) The circulator has dated the affidavit and fully and accurately completed all of the personal information on the affidavit required pursuant to paragraph (a) of this subsection (2); and

(C) The circulator presents a form of identification, as such term is defined in section 1-1-104 (19.5). A notary public shall specify the form of identification presented to him or her on a blank line, which shall be part of the affidavit form.

(II) An affidavit that is notarized in violation of any provision of subparagraph (I) of this paragraph (b) shall be invalid.

(III) If the date signed by a circulator on an affidavit required pursuant to paragraph (a) of this subsection (2) is different from the date signed by the notary public, the affidavit shall be invalid. If, notwithstanding sub-subparagraph (B) of subparagraph (I) of this paragraph (b), a notary public notarizes an affidavit that has not been dated by the circulator, the notarization date shall not cure the circulator's failure to sign the affidavit and the affidavit shall be invalid.

(c) The secretary of state shall reject any section of a petition that does not have attached thereto a valid notarized affidavit that complies with all of the requirements set forth in paragraphs (a) and (b) of this subsection (2). Any signature added to a section of a petition after the affidavit has been executed shall be invalid.

(3) (a) As part of any court proceeding or hearing conducted by the secretary of state related to a protest of all or part of a petition section, the circulator of such petition section shall be required to make himself or herself available to be deposed and to testify in person, by telephone, or by any other means permitted under the Colorado rules of civil procedure. Except as set forth in paragraph (b) of this subsection (3), the petition section that is the subject of the protest shall be invalid if a circulator fails to comply with the requirement set forth in this paragraph (a) for any protest that includes an allegation of circulator fraud that is pled with particularity regarding:

(I) Forgery of a registered elector's signature;

(II) Circulation of a petition section, in whole or part, by anyone other than the person who signs the affidavit attached to the petition section;

(III) Use of a false circulator name or address in the affidavit; or

(IV) Payment of money or other things of value to any person for the purpose of inducing the person to sign the petition.

(b) Upon the finding by a district court or the secretary of state that the circulator of a petition section is unable to be deposed or to testify at trial or a hearing conducted by the secretary of state because the circulator has died, become mentally incompetent, or become medically incapacitated and physically unable to testify by any means whatsoever, the provisions of paragraph (a) of this subsection (3) shall not apply to invalidate a petition section circulated by the circulator.

(4) The proponents of a petition or an issue committee acting on the proponents' behalf shall maintain a list of the names and addresses of all circulators who circulated petition sections on behalf of the proponents and notaries public who notarized petition sections on behalf of the proponents and the petition section numbers that each circulator circulated and that each notary public notarized. A copy of the list shall be filed with the secretary of state along with the petition. If a copy of the list is not filed, the secretary of state shall prepare the list and charge the proponents a fee, which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., to cover the cost of the preparation. Once filed or

prepared by the secretary of state, the list shall be a public record for purposes of article 72 of title 24, C.R.S.

Source: L. 93: Entire article amended with relocations, p. 683, § 1, effective May 4; (2)(a) amended, p. 2049, § 1, effective July 1. **L. 95:** (2) amended, p. 433, § 9, effective May 8. **L. 2007:** (2) amended, p. 1982, § 34, effective August 3. **L. 2009:** (2) amended and (3) and (4) added, (HB 09-1326), ch. 258, p. 1172, § 9, effective May 15.

Editor's note: (1) Subsection (1) was formerly numbered as § 1-40-106 (2)(a), and subsection (2) was formerly numbered as § 1-40-106 (2)(b). The former § 1-40-111 was relocated to § 1-40-101. Section 1-40-106 (2)(a) was amended by Senate Bill 93-229, and the amendment to it has been harmonized with subsection (1) of this section.

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending subsection (2) and adding subsections (3) and (4) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after May 15, 2009.

ANNOTATION

I. General Consideration.
II. Constitutional Construction.
III. Required Data.
IV. Signatures.
V. Circulators.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 26-28.

C.J.S. See 82 C.J.S., Statutes, §§ 119, 120, 122.

Law reviews. For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Section 1-40-106 (2) (now this section) prohibited the court from validating the signatures collected for an initiative when its title and submission clause were found to be misleading. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

II. CONSTITUTIONAL CONSTRUCTION.

Section 1-40-106 must be construed so as to allow qualified electors of the ages of eighteen through twenty to participate in the initiative process. Colo. Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972).

Liberal construction must be given to statutes implementing initiative provisions of constitution. Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).

III. REQUIRED DATA

The purpose of the required data is that those interested in protesting may be apprised of that which will enable them conveniently to check the petition. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934). **And therefore, the careful entry of the residence (not mere post-office address) of each person with each name should be made** at the time of the signing, and should show, in all cities and towns where there are street numbers, the street number of the residence of the signer. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

This is a very important provision. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

And it is the most efficient provision against fraud in this section. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

Also it is essential to an intelligent protest and should always be carefully obeyed. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

And the entry of the date of the signature is only less important. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

But both residence and date of the signature are mandatory by the provisions of § 1 of art. V, Colo. Const. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

Therefore, signatures to a petition, where the signer's residence can be identified by street and number, should be rejected if these are lacking. Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

But the residence and date of signing may be added by a person other than the petitioner. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

Because neither the constitution nor this section specifically requires the signer to add his address and date of signing. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

Such additions, although preferably done by the petitioner, may be done by another. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

And failure of signers to insert residences is not ground for rejection. There is nothing in the constitution, statutes, or decisions justifying the rejection of signatures solely by reasons of the failure of signers, under the circumstances prevailing, to insert in the petition streets and numbers of their residences. Case v. Morrison, 118 Colo. 517, 197 P.2d 621 (1948).

And also omission of year from date petition signed was held immaterial. In considering the sufficiency of a petition, the fact that the year is omitted from the date upon which a signer affixed his signature to the petition is

immaterial, where the document as a whole conclusively establishes the year in which the petition was signed. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934), distinguishing Miller v. Armstrong, 84 Colo. 416, 270 P.877 (1928).

Moreover, until filed with the secretary of state, a petition for the initiation of a law is in no sense a public document, and may be checked and corrected by the sponsors before filing. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

Computation of residency applicable for municipal referendum. Computation of residency by looking to the date of signature and then to the date of the prospective election to determine whether the durational requirement is satisfied is applicable to a municipal referendum residency requirement. Francis v. Rogers, 182 Colo. 430, 514 P.2d 311 (1973).

IV. SIGNATURES.

Where two or more signatures on a petition are in the same handwriting, all such must be rejected. Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

So also where sections of a petition have been tampered with after the signatures have been affixed thereto, they must be rejected. Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

Newspaper pages cut and reassembled for inclusion in petition. Where newspaper pages, on which were printed petition forms in three parts which were used to secure signatures in support of a petition to place a proposed constitutional amendment on the ballot, were cut into the separate parts and then reassembled and bound together for inclusion in the petition presented to the secretary of state, this procedure did not invalidate the signatures since there was no showing or intimation that the separation of the forms involved any alteration, irregularity, or fraud. Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).

V. CIRCULATORS.

Since there was little in the record to support plaintiffs' claim that the affidavit requirement in subsection (2) significantly burdens political expression by decreasing the pool of available circulators, exacting scrutiny is not required. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Given the responsibility circulators bear in ensuring the integrity of elections involving ballot issues, and given the fact that the affidavit requirement is a reasonable, nondiscriminatory restriction, subsection (2) is not unduly burdensome and unconstitutionally vague. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

The requirements of this section are justified by the state's compelling need for the names and addresses of the circulators and the requirement is sufficiently narrowly drawn to be constitutional. The affidavit requirement has the primary purpose of providing the opportunity for an adequate hearing on the sufficiency of the signatures for the petition for other matters relevant to placing the measure on the ballot. There is a compelling necessity to be able to summon circulators to provide testimony at a hearing on challenges to the validity of the signatures and for other matters relevant to the petitioning process. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd on other grounds, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

"Read and understand" requirement is a formal requirement to which the court will not apply strict scrutiny in a constitutional challenge: Although requirements limit the power of initiative, the limitation is not substantive. Loonan v. Woodley, 882 P.2d 1380 (Colo. 1994).

"Read and understand" requirement enhances the integrity of the election process and does not unconstitutionally infringe on the right to petition. Loonan v. Woodley, 882 P.2d 1380 (Colo. 1994).

"Read and understand" requirement is not unconstitutionally vague. Loonan v. Woodley, 882 P.2d 1380 (Colo. 1994).

Subsection (2) is sufficiently definite because it explicitly endorses the lay circulator's own interpretation of "understanding", and does not invest law enforcement officers with sweeping, unrestrained discretion. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Omission of required affidavit language demonstrated that circulators of the petition did not read and understand the statute as required by this section. Loonan v. Woodley, 882 P.2d 1380 (Colo. 1994).

The circulator of a petition for the initiation of a measure can make a positive affidavit that a signature thereon is genuine by reason of its having been written in his presence or through his familiarity with the signer's handwriting, the pertinent law requiring only that the affidavit state that each signature is the signature of the person whose name it purports to be. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

But this section makes it a felony for one person to sign for another. Miller v. Armstrong, 84 Colo. 416, 270 P.877 (1928).

And a circulator who makes oath to the genuineness of such signatures, if done with knowledge, is guilty of perjury. Miller v. Armstrong, 84 Colo. 416, 270 P.877 (1928).

Since "purport" means to have the appearance or convey the impression of being. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And in a proceeding to determine the sufficiency of a petition, the contention that portions of the petition, although not vulnerable otherwise, should be discarded because circulators, as shown by other sections, had so deported themselves that they were unworthy of belief,

overruled. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

Substantial compliance is the standard the court must apply in assessing the effect of the deficiencies that caused the district court to hold petition signatures invalid. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

Discrepancies in the day or month of the circulator's date of signing and the date of notary acknowledgment render the relevant petitions invalid absent evidence that explains the differences in question. Petitions containing such discrepancies do not provide the necessary safeguards against abuse and fraud in the initiative process. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

Absent evidence that the change in signing was the product of the signing party, changes to a circulator's signing date do not represent substantial compliance with subsection (2) and serve to invalidate the signatures within the affected petitions. The district court properly held invalid signatures that were tainted by a change in the circulator's date of signing, where the date of signing was not accompanied by the initials of the circulator or other evidence in the record establishing that the circulator made the change. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

The district court erred in invalidating petitions that did not contain a notary seal. The purpose of the notarized affidavit provision in subsection (2) was substantially achieved despite the proponents' failure to secure a notary seal on petitions affecting 92 signatures. The record contains evidence that the affidavits with omitted seals were notarized by individuals with the same signature and commission expiration found on other affidavits with proper seals. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

The initiative proponents substantially complied with the requirements for a circulator's affidavit even though the circulator did not include a date of signing. When the circulator simply omits the date of signing, there is no reason to believe that the affidavit was not both subscribed and sworn to before the notary public on the date indicated in the jurat. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

1-40-112. Circulators - requirements - training. (1) No person shall circulate a petition for an initiative or referendum measure unless the person is a resident of the state, a citizen of the United States, and at least eighteen years of age at the time the petition is circulated.

(2) (a) A circulator who is not to be paid for circulating a petition concerning a ballot issue shall display an identification badge that includes the words "VOLUNTEER CIRCULATOR" in bold-faced type that is clearly legible.

(b) A circulator who is to be paid for circulating a petition concerning a ballot issue shall display an identification badge that includes the words "PAID CIRCULATOR" in bold-faced type that is clearly legible and the name and telephone number of the individual employing the circulator.

(3) The secretary of state shall develop circulator training programs for paid and volunteer circulators. Such programs shall be conducted in the broadest, most cost-effective manner available to the secretary of state, including but not limited to training sessions for persons associated with the proponents or a petition entity, as defined in section 1-40-135 (1), and by electronic and remote access. The proponents of an initiative petition or the representatives of a petition entity shall inform paid and volunteer circulators of the availability of these training programs as one manner of complying with the requirement set forth in the circulator's affidavit that a circulator read and understand the laws pertaining to petition circulation.

(4) It shall be unlawful for any person to pay a circulator more than twenty percent of his or her compensation for circulating petitions on a per signature or petition section basis.

Source: L. 93: Entire article amended with relocations, p. 684, § 1, effective May 4. **L. 2007:** Entire section amended, p. 1982, § 35, effective August 3. **L. 2009:** (3) and (4) added, (HB 09-1326), ch. 258, p. 1174, § 10, effective July 1.

Editor's note: (1) Subsection (1) was formerly numbered as § 1-40-106 (3), and subsection (2) is new. The former § 1-40-112 was relocated to § 1-40-122 (1).

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act adding subsections (3) and (4) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after July 1, 2009.

ANNOTATION

Law reviews. For article, "Colorado's Citizen Initiative Again Scrutinized by the U.S. Supreme Court", see 28 Colo. Law. 71 (June 1999). For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. Since § 1-40-112 is similar to § 1-40-106 as it existed prior to the 1993 amendment of title 1, article 40, which resulted in the relocation of provisions, see the annotations under former § 1-40-106 in the 1980 replacement volume.

Identification badge requirement violates the first and fourteenth amendments to the United States constitution. The requirement substantially affects the number of potential petition circulators which translates into a corresponding decrease in the amount of protected political speech. The state's articulated interests, an interest in honesty in public discussion of governmental issues and in demonstrating grassroots support for an initiative, are not compelling and the restriction has not been narrowly drawn to further those interests. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd on other grounds, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

Badge requirement discourages participation in the petition circulation process by forcing name identification without sufficient cause. Buckley v. Am. Constitutional Law Found., 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

Because the requirement in subsection (1) that circulators be registered voters is not narrowly tailored to a compelling state interest, it unconstitutionally impinges on free expression. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

The age requirement is a neutral restriction that imposes only a temporary disability-it does not establish an absolute prohibition but merely postpones the opportunity to circulate petitions. Exacting scrutiny is not required. Because maturity is reasonably related to Colorado's interest in preserving the integrity of ballot issue elections, the first amendment challenge fails. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

Subsection (2) is not narrowly tailored to serve the state's interest. Conditioning circulation upon wearing an identification badge is a broad intrusion, discouraging truthful, accurate speech by those unwilling to wear a badge, and applying regardless of the character or strength of an individual's interest in anonymity. Additionally, the badges are but one part of the state's comprehensive scheme to combat circulation fraud. Article 40 of title 1 provides other tools that are much more narrowly tailored to serve the state's interest. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

All circulators of initiative petitions must be registered electors, as required in both section 1 of article V of the state constitution and this section. Although the secretary of state was at one time enjoined by federal action from enforcing this requirement, after the injunction was lifted, she properly disallowed petitions circulated by nonregistered voters. McClellan v. Meyer, 900 P.2d 24 (Colo. 1995).

1-40-113. Form - representatives of signers. (1) Each section of a petition shall be printed on a form as prescribed by the secretary of state. No petition shall be printed, published, or otherwise circulated unless the form and the first printer's proof of the petition have been approved by the secretary of state. Each petition section shall designate by name and mailing address two persons who shall represent the signers thereof in all matters affecting the same. The secretary of state shall assure that the petition contains only the matters required by this article and contains no extraneous material. All sections of any petition shall be prenumbered serially, and the circulation of any petition section described by this article other than personally by a circulator is prohibited. Any petition section circulated in whole or in part by anyone other than the person who signs the affidavit attached to the petition section shall be invalid. Any petition section that fails to conform to the requirements of this article or is circulated in a manner other than that permitted in this article shall be invalid.

(2) Any disassembly of a section of the petition which has the effect of separating the affidavits from the signatures shall render that section of the petition invalid and of no force and effect.

(3) Prior to the time of filing, the persons designated in the petition to represent the signers shall bind the sections of the petition in convenient volumes consisting of one hundred sections of the petition if one hundred or more sections are available or, if less than one hundred sections are available to make a volume, consisting of all sections that are available. Each volume consisting of less than one hundred sections shall be marked on the first page of the volume. However, any volume that contains more or less than one hundred sections, due only to the oversight of the designated representatives of the signers or their staff, shall not result in a finding of insufficiency of signatures therein. Each section of each

volume shall include the affidavits required by section 1-40-111 (2), together with the sheets containing the signatures accompanying the same. These bound volumes shall be filed with the secretary of state.

Source: L. 93: Entire article amended with relocations, p. 684, § 1, effective May 4. **L. 95:** (1) and (3) amended, p. 434, § 10, effective May 8. **L. 2009:** (1) amended, (HB 09-1326), ch. 258, p. 1175, § 11, effective May 15.

Editor's note: (1) This section was formerly numbered as § 1-40-107. The former § 1-40-113 was relocated to § 1-40-123.

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending subsection (1) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after May 15, 2009.

ANNOTATION

C.J.S. See 82 C.J.S., Statutes, §§ 116, 117, 121.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

There is a substantial compliance with the requirements that petitions for the initiation of measures shall be printed on pages eight and one-half inches wide, and fourteen inches long with a margin of two inches at the top for binding, where the pages of the protested document are eight and one-half inches wide, thirteen and fifteen-sixteenths inches long, and the top margin varies from one and five-sixteenths inches to two and one-sixteenth inches on the various sheets. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And the separation and alteration of sections of a petition to initiate a measure, destroys the integrity of each one so separated and altered, and renders it worthless. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926); Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

Applied in Leach & Arnold Homes, Inc. v. City of Boulder, 32 Colo. App. 16, 507 P.2d 476 (1973).

1-40-114. Petitions - not election materials - no bilingual language requirement. The general assembly hereby determines that initiative petitions are not election materials or information covered by the federal "Voting Rights Act of 1965", and therefore are not required to be printed in any language other than English to be circulated in any county in Colorado.

Source: L. 93: Entire article amended with relocations, p. 685, § 1, effective May 4.

Editor's note: This section was formerly numbered as section 1-40-107.5. The former section 1-40-114 (1) and (2) was relocated to section 1-40-124, and subsection (3), which was added by House Bill 93-1155, was relocated to section 1-40-126.

ANNOTATION

Law reviews. For comment, "Montero v. Meyer: Official English, Initiative Petitions and the Voting Rights Act", see 66 Den. U. L. Rev. 619 (1989). For comment, "Another View of Montero v. Meyer and the English-Only Movement: Giving Language Prejudice the Sanction of the Law", see 66 Den. U. L. Rev. 633 (1989).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Minority language provisions of the federal "Voting Rights Act" not applicable to initiative petitions. With respect to initiative petitions, electoral process to which the minority language provisions of the "Voting Rights Act" would apply did not commence under state law until the measure was certified as qualified for placement on the ballot. Furthermore, the signing of petitions did not constitute "voting" under the act. Montero v. Meyer, 861 F.2d 603 (10th Cir. 1988) (decided prior to enactment of this section).

1-40-115. Ballot - voting - publication. (1) Measures shall appear upon the official ballot by ballot title only. The measures shall be placed on the ballot in the order in which they were certified to the ballot and as provided in section 1-5-407 (5).

(2) All ballot issues shall be printed on the official ballot in that order, together with their respective letters and numbers prefixed in bold-faced type. Each ballot shall have the following explanation printed one time at the beginning of such ballot issues: "Ballot issues referred by the general assembly or any political subdivision are listed by letter, and ballot issues initiated by the people are listed numerically. A 'yes' vote on any ballot issue is a vote in favor of changing current law or existing circumstances, and a

'no' vote on any ballot issue is a vote against changing current law or existing circumstances." Each ballot title shall appear on the official ballot but once and shall be separated from the other ballot titles next to it by heavy black lines and shall be followed by the words "yes" and "no" with blank spaces to the right and opposite the same as follows:

(HERE SHALL APPEAR THE

BALLOT TITLE IN FULL)

YES _____ NO _____

Editor's note: This version of subsection (2) is effective until January 1, 2010.

(2) (a) All ballot issues shall be printed on the official ballot in that order, together with their respective letters and numbers prefixed in bold-faced type. Each ballot shall have the following explanation printed one time at the beginning of such ballot issues: "Ballot issues referred by the general assembly or any political subdivision are listed by letter, and ballot issues initiated by the people are listed numerically. A ballot issue listed as an 'amendment' proposes a change to the Colorado constitution, and a ballot issue listed as a 'proposition' proposes a change to the Colorado Revised Statutes. A 'yes' vote on any ballot issue is a vote in favor of changing current law or existing circumstances, and a 'no' vote on any ballot issue is a vote against changing current law or existing circumstances." Each ballot title shall appear on the official ballot but once. For each ballot title that is an amendment, the amendment number or letter shall be immediately followed by the description "(CONSTITUTIONAL)". For each ballot title that is a proposition, the proposition number or letters shall be immediately followed by the description "(STATUTORY)". Each ballot title shall be separated from the other ballot titles next to it by heavy black lines and shall be followed by the words "yes" and "no" with blank spaces to the right and opposite the same as follows:

(HERE SHALL APPEAR THE

BALLOT TITLE IN FULL)

YES _____ NO _____

(b) For purposes of preparing an audio ballot as part of an accessible voting system:

(I) In lieu of the parenthetical description preceding a ballot title that is an amendment required by paragraph (a) of this subsection (2), the audio ballot shall include the following: "The following ballot issue proposes a change to the Colorado constitution."; and

(II) In lieu of the parenthetical description preceding a ballot title that is a proposition required by paragraph (a) of this subsection (2), the audio ballot shall include the following: "The following ballot issue proposes a change to the Colorado Revised Statutes."

Editor's note: This version of subsection (2) is effective January 1, 2010.

(3) A voter desiring to vote for the measure shall make a cross mark (X) in the blank space to the right and opposite the word "yes"; a voter desiring to vote against the measure shall make a cross mark (X) in the blank space to the right and opposite the word "no"; and the votes marked shall be counted accordingly. Any measure approved by the people of the state shall be printed with the acts of the next general assembly.

Source: L. 93: Entire article amended with relocations, p. 685, § 1, effective May 4. **L. 94:** (1) amended, p. 1180, § 74, effective July 1. **L. 95:** (3) amended, p. 434, § 11, effective May 8. **L. 97:** (2) amended, p. 189, § 17, effective August 6. **L. 2000:** (2) amended, p. 297, § 2, effective August 2. **L. 2009:** (2) amended, (HB 09-1326), ch. 258, p. 1175, § 12, effective January 1, 2010.

Editor's note: (1) Subsections (1) and (2) were formerly numbered as § 1-40-108 (1), which was further amended by HB 93-1155, and subsection (3) was formerly numbered as § 1-40-108 (2). The former § 1-40-115 was relocated to § 1-40-127.

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending subsection (2) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after January 1, 2010.

Cross references: For printing of session laws, see § 24-70-223.

ANNOTATION

Am. Jur.2d See 42 Am. Jur.2d, Initiative and Referendum, § 46.

C.J.S. See 82 C.J.S., Statutes, §§ 131, 132.

1-40-116. Verification - ballot issues - random sampling. (1) For ballot issues, each section of a petition to which there is attached an affidavit of the registered elector who circulated the petition that each signature thereon is the signature of the person whose name it purports to be and that to the best of the knowledge and belief of the affiant each of the persons signing the petition was at the time of signing a registered elector shall be prima facie evidence that the signatures are genuine and true, that the petitions were circulated in accordance with the provisions of this article, and that the form of the petition is in accordance with this article.

(2) Upon submission of the petition, the secretary of state shall examine each name and signature on the petition. The petition shall not be available to the public for a period of no more than thirty calendar days for the examination. The secretary shall assure that the information required by sections 1-40-110 and 1-40-111 is complete, that the information on each signature line was written by the person making the signature, and that no signatures have been added to any sections of the petition after the affidavit required by section 1-40-111 (2) has been executed.

(3) No signature shall be counted unless the signer is a registered elector and eligible to vote on the measure. A person shall be deemed a registered elector if the person's name and address appear on the master voting list kept by the secretary of state at the time of signing the section of the petition. In addition, the secretary of state shall not count the signature of any person whose information is not complete or was not completed by the elector or a person qualified to assist the elector. The secretary of state may adopt rules consistent with this subsection (3) for the examination and verification of signatures.

(4) The secretary of state shall verify the signatures on the petition by use of random sampling. The random sample of signatures to be verified shall be drawn so that every signature filed with the secretary of state shall be given an equal opportunity to be included in the sample. The secretary of state is authorized to engage in rule-making to establish the appropriate methodology for conducting such random sample. The random sampling shall include an examination of no less than five percent of the signatures, but in no event less than four thousand signatures. If the random sample verification establishes that the number of valid signatures is ninety percent or less of the number of registered eligible electors needed to find the petition sufficient, the petition shall be deemed to be not sufficient. If the random sample verification establishes that the number of valid signatures totals one hundred ten percent or more of the number of required signatures of registered eligible electors, the petition shall be deemed sufficient. If the random sampling shows the number of valid signatures to be more than ninety percent but less than one hundred ten percent of the number of signatures of registered eligible electors needed to declare the petition sufficient, the secretary of state shall order the examination and verification of each signature filed.

Source: L. 93: Entire article amended with relocations, p. 686, § 1, effective May 4. **L. 95:** (1) amended, p. 435, § 12, effective May 8.

Editor's note: Subsection (1) was formerly numbered as section 1-40-109 (1)(a), subsections (2) and (3) were formerly numbered as section 1-40-109 (1)(b)(I), and subsection (4) is new. The former section 1-40-116 (1) was relocated to section 1-40-128, section 1-40-116 (2) was relocated to section 1-40-129 (1), and section 1-40-116 (3) was relocated to section 1-40-129 (2).

ANNOTATION

I. General Consideration.
II. Prima Facie Evidence Signatures Genuine.
III. Amendment and Withdrawal of Petition.
IV. Supplements to the Petition.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

Law reviews. For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Subsection (1) is not unconstitutionally vague. The general reference to circulator affidavits in this section is controlled by the specific affidavit requirements in § 1-40-111(2). Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd in part and rev'd in part on other grounds, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

The secretary of state is deemed to have complied with the 30-day requirement for verifying signatures when he or she conducts the random sampling and issues a statement determining the petition to be either sufficient or insufficient, even though the sampling is later found to be erroneous. The petition is not automatically deemed sufficient even though final determination of the sufficiency of the petition occurs outside of the thirty-day time frame. Buckley v. Chilcutt, 968 P.2d 112 (Colo. 1998).

If, based on a random sample, the secretary of state issues a good faith determination of insufficiency and a timely protest establishes that the petition contains more than 90% but less than 110% of the required signatures, the secretary of state is required to conduct a line-by-line examination of each signature. The results of the line-by-line count are subject to the protest and appeal process provided in § 1-40-118. Buckley v. Chilcutt, 968 P.2d 112 (Colo. 1998).

II. PRIMA FACIE EVIDENCE SIGNATURES GENUINE.

The statement in an affidavit attached to a petition for the initiation of a measure, that the signer "is a qualified elector", is prima facie evidence that the signatures thereon are genuine and that the persons signing are electors. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And the filing of a protest to the petition does not nullify this prima facie status nor relieve the protestants of the burden of establishing the insufficiency of the petition. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Moreover, payment to circulators for procuring signatures held not to constitute fraud. A protest filed to a petition to initiate a measure, alleging fraud in the procurement of signatures, is not supported by the fact that circulators were paid a certain sum for signatures procured, there being nothing in the constitution or statutes prohibiting such practice. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

III. AMENDMENT AND WITHDRAWAL OF PETITION.

There is no provision permitting the amendment of a protest to a petition for the initiation of a measure after the expiration of the time allowed for filing the protest. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

The provision that a rejected petition for the initiation of a measure may be refiled "as an original petition" after amendment is to be construed, not that it must be refiled within the statutory time fixed for the initial filing of such petitions, but after being refiled it is to be considered "as an original petition". Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Former subsection (2), which provided that a rejected petition may be amended and refiled as an original, did not subject a cured petition to the deadline set forth in Colo. Const. art. V, § 11 (2). Montero v. Meyer, 795 P.2d 242 (Colo. 1990) (decided under law in effect prior to 1989 amendment).

But where a petition for the initiation of a constitutional amendment is filed within the time fixed by statute, in the event of protest and rejection, the sponsors, at their election, are entitled to refile the petition when amended within the 15 days allowed by this section. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

This is true even though the refiling date may fall beyond the six-month period fixed by §1-40-104 for the filing of original petitions. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And there is no statutory authorization for a protest against the filing, or refiling after withdrawal, of a petition, to initiate a measure under the initiative and

referendum. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

Moreover, when a petition to initiate a measure under initiative and referendum is once withdrawn, it passes from official control and may be tampered with, amended, or destroyed. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932); Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

If the petition is withdrawn, no review can thereafter be prosecuted because without the petition no court could adjudicate its sufficiency. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And an action to review an order of the secretary of state declaring a referendum petition insufficient cannot be left standing until the petition is amended and refiled, and later tried on an issue which did not exist when the cause was instituted. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

An action for review cannot survive a withdrawal to be further prosecuted on amendment and refiling because if refiled it comes back "as an original petition". Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

Therefore, the withdrawal of such a petition is equivalent to the dismissal of an action to review. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And a demand for its withdrawal and a suit in mandamus to enforce that demand must necessarily have the same effect. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

Rule of the secretary of state regarding the procedure to determine the total number of valid petition signatures after submittal of additional signatures by addendum was authorized and is consistent with subsection (4). The rule increases the accuracy of sufficiency determination, enhances the integrity of the petition process, and assures compliance with the constitutionally prescribed minimum number of votes necessary to qualify for placement of a measure on the statewide ballot. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

IV. SUPPLEMENTS TO THE PETITION.

Section 1 of art. V. Colo. Const., fixes the time within which a petition must be filed with the secretary of state. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

And requires a certain number of signatures of legal voters to be affixed thereto before a matter can be submitted to the voters at an election. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Section 1 of art. V, Colo. Const., is a self-executing constitutional provision. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

So where there are insufficient signatures when a petition is originally presented, and too late filing when the supplements are presented, the petition for an initiated amendment to the constitution is not filed in compliance with § 1 of art. V, Colo. Const. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Because permitting the filing of late supplements containing enough signatures to satisfy the mandate of the constitution would be a circumvention of this fundamental document. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Moreover, § 1 of art. V. Colo. Const., mandatorily forecloses the acceptance of tardy supplements to a petition for an initiated amendment to the constitution. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

1-40-117. Statement of sufficiency - statewide issues. (1) After examining the petition, the secretary of state shall issue a statement as to whether a sufficient number of valid signatures appears to have been submitted to certify the petition to the ballot.

(2) If the petition was verified by random sample, the statement shall contain the total number of signatures submitted and whether the number of signatures presumed valid was ninety percent of the required total or less or one hundred ten percent of the required total or more.

(3) (a) If the secretary declares that the petition appears not to have a sufficient number of valid signatures, the statement issued by the secretary shall specify the number of sufficient and insufficient signatures. The secretary shall identify by section number and line number within the section those signatures found to be insufficient and the grounds for the insufficiency. Such information shall be kept on file for public inspection in accordance with section 1-40-118.

(b) In the event the secretary of state issues a statement declaring that a petition, having first been submitted with the required number of signatures, appears not to have a sufficient number of valid signatures, the representatives designated by the proponents pursuant to section 1-40-104 may cure the insufficiency by filing an addendum to the original petition for the purpose of offering such number of additional signatures as will cure the insufficiency. No addendum offered as a cure shall be considered unless the addendum conforms to requirements for petitions outlined in sections 1-40-110, 1-40-111, and 1-40-113, and unless the addendum is filed with the secretary of state within the fifteen-day period after

the insufficiency is declared and unless filed with the secretary of state no later than three months and three weeks before the election at which the initiative petition is to be voted on. All filings under this paragraph (b) shall be made by 3 p.m. on the day of filing. Upon submission of a timely filed addendum, the secretary of state shall order the examination and verification of each signature on the addendum. The addendum shall not be available to the public for a period of up to ten calendar days for such examination. After examining the petition, the secretary of state shall, within ten calendar days, issue a statement as to whether the addendum cures the insufficiency found in the original petition.

Source: L. 93: Entire article amended with relocations, p. 687, § 1, effective May 4. **L. 2009:** (3)(b) amended, (HB 09-1326), ch. 258, p. 1176, § 13, effective May 15.

Editor's note: (1) Subsection (1) was formerly numbered as § 1-40-109 (1)(b)(I), subsection (2) is new, paragraph (a) of subsection (3) was formerly numbered as § 1-40-109 (1)(b)(II)(A), and paragraph (b) of subsection (3) was formerly numbered as § 1-40-109 (1)(b)(II)(B). The former § 1-40-117 was deleted by amendment.

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending subsection (3)(b) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after May 15, 2009.

ANNOTATION

I. General Consideration.
II. Prima Facie Evidence Signatures Genuine.
III. Amendment and Withdrawal of Petition.
IV. Supplements to the Petition.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. PRIMA FACIE EVIDENCE SIGNATURES GENUINE.

The statement in an affidavit attached to a petition for the initiation of a measure, that the signer "is a qualified elector", is prima facie evidence that the signatures thereon are genuine and that the persons signing are electors. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And the filing of a protest to the petition does not nullify this prima facie status nor relieve the protestants of the burden of establishing the insufficiency of the petition. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Moreover, payment to circulators for procuring signatures held not to constitute fraud. A protest filed to a petition to initiate a measure, alleging fraud in the procurement of signatures, is not supported by the fact that circulators were paid a certain sum for signatures procured, there being nothing in the constitution or statutes prohibiting such practice. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

III. AMENDMENT AND WITHDRAWAL OF PETITION.

There is no provision permitting the amendment of a protest to a petition for the initiation of a measure after the expiration of the time allowed for filing the protest. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

The provision that a rejected petition for the initiation of a measure may be refiled "as an original petition" after amendment is to be construed, not that it must be refiled within the statutory time fixed for the initial filing of such petitions, but after being refiled it is to be considered "as an original petition". Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Former subsection (2), which provided that a rejected petition may be amended and refiled as an original, did not subject a cured petition to the deadline set forth in Colo. Const. art. V, § 11 (2). Montero v. Meyer, 795 P.2d 242 (Colo. 1990) (decided under law in effect prior to 1989 amendment).

But where a petition for the initiation of a constitutional amendment is filed within the time fixed by statute, in the event of protest and rejection, the sponsors, at their election, are entitled to refile the petition when amended within the fifteen days allowed by this section. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

This is true even though the refiling date may fall beyond the six-month period fixed by §1-40-104 for the filing of original petitions. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And there is no statutory authorization for a protest against the filing, or refiling after withdrawal, of a petition, to initiate a measure under the initiative and referendum. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

Moreover, when a petition to initiate a measure under initiative and referendum is once withdrawn, it passes from official control and may be tampered with, amended, or destroyed. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932); Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

If the petition is withdrawn, no review can thereafter be prosecuted because without the petition no court could adjudicate its sufficiency. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And an action to review an order of the secretary of state declaring a referendum petition insufficient cannot be left standing until the petition is amended and refiled, and later tried on an issue which did not exist when the cause was instituted. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

An action for review cannot survive a withdrawal to be further prosecuted on amendment and refiling because if refiled it comes back "as an original petition". Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

Therefore, the withdrawal of such a petition is equivalent to the dismissal of an action to review. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And a demand for its withdrawal and a suit in mandamus to enforce that demand must necessarily have the same effect. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

IV. SUPPLEMENTS TO THE PETITION.

Section 1 of art. V, Colo. Const., fixes the time within which a petition must be filed with the secretary of state. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

And requires a certain number of signatures of legal voters to be affixed thereto before a matter can be submitted to the voters at an election. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Section 1 of art. V, Colo. Const., is a self-executing constitutional provision. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

So where there are insufficient signatures when a petition is originally presented, and too late filing when the supplements are presented, the petition for an initiated amendment to the constitution is not filed in compliance with § 1 of art. V, Colo. Const. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Because permitting the filing of late supplements containing enough signatures to satisfy the mandate of the constitution would be a circumvention of this fundamental document. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Moreover, § 1 of art. V, Colo. Const., mandatorily forecloses the acceptance of tardy supplements to a petition for an initiated amendment to the constitution. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

1-40-118. Protest. (1) A protest in writing, under oath, together with three copies thereof, may be filed in the district court for the county in which the petition has been filed by some registered elector, within thirty days after the secretary of state issues a statement as to whether the petition has a sufficient number of valid signatures, which statement shall be issued no later than thirty calendar days after the petition has been filed. If the secretary of state fails to issue a statement within thirty calendar days, the petition shall be deemed sufficient. Regardless of whether the secretary of state has issued a statement of sufficiency or if the petition is deemed sufficient because the secretary of state has failed to issue a statement of sufficiency within thirty calendar days, no further agency action shall be necessary for the district court to have jurisdiction to consider the protest. During the period a petition is being examined by the secretary of state for sufficiency, the petition shall not be available to the public; except that such period shall not exceed thirty calendar days. Immediately after the secretary of state issues a statement of sufficiency or, if the petition is deemed sufficient because the secretary of state has failed to issue the statement, after thirty calendar days, the secretary of state shall make the petition available to the public for copying upon request.

(2) (a) If the secretary of state conducted a random sample of the petitions and did not verify each signature, the protest shall set forth with particularity the defects in the procedure used by the secretary of state in the verification of the petition or the grounds for challenging individual signatures or petition sections, as well as individual signatures or petition sections protested. If the secretary of state verified each name on the petition sections, the protest shall set forth with particularity the grounds of the protest and the individual signatures or petition sections protested.

(b) Regardless of the method used by the secretary of state to verify signatures, the grounds for challenging individual signatures or petition sections pursuant to paragraph (a) of this subsection (2) shall include, but are not limited to, the use of a petition form that does not comply with the provisions of this article, fraud, and a violation of any provision of this article or any other law that, in either case,

prevents fraud, abuse, or mistake in the petition process.

(c) If the protest is limited to an allegation that there were defects in the secretary of state's statement of sufficiency based on a random sample to verify signatures, the district court may review all signatures in the random sample.

(d) No signature may be challenged that is not identified in the protest by section number, line number, name, and reason why the secretary of state is in error. If any party is protesting the finding of the secretary of state regarding the registration of a signer, the protest shall be accompanied by an affidavit of the elector or a copy of the election record of the signer.

(2.5) (a) If a district court finds that there are invalid signatures or petition sections as a result of fraud committed by any person involved in petition circulation, the registered elector who instituted the proceedings may commence a civil action to recover reasonable attorney fees and costs from the person responsible for such invalid signatures or petition sections.

(b) A registered elector who files a protest shall be entitled to the recovery of reasonable attorney fees and costs from a proponent of an initiative petition who defends the petition against a protest or the proponent's attorney, upon a determination by the district court that the defense, or any part thereof, lacked substantial justification or that the defense, or any part thereof, was interposed for delay or harassment. A proponent who defends a petition against a protest shall be entitled to the recovery of reasonable attorney fees and costs from the registered elector who files a protest or the registered elector's attorney, upon a determination by the district court that the protest, or any part thereof, lacked substantial justification or that the protest, or any part thereof, was interposed for delay or harassment. No attorney fees may be awarded under this paragraph (b) unless the district court has first considered the provisions of section 13-17-102 (5) and (6), C.R.S. For purposes of this paragraph (b), "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(c) A district court conducting a hearing pursuant to this article shall permit a circulator who is not available at the time of the hearing to testify by telephone or by any other means permitted under the Colorado rules of civil procedure.

(3) (Deleted by amendment, L. 95, p. 435, § 13, effective May 8, 1995.)

(4) The secretary of state shall furnish a requesting protestor with a computer tape or microfiche listing of the names of all registered electors in the state and shall charge a fee which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., to cover the cost of furnishing the listing.

(5) Written entries that are made by petition signers, circulators, and notaries public on a petition section that substantially comply with the requirements of this article shall be deemed valid by the secretary of state or any court, unless:

(a) Fraud, as specified in section 1-40-135 (2) (c), excluding subparagraph (V) of said paragraph (c), is established by a preponderance of the evidence;

(b) A violation of any provision of this article or any other provision of law that, in either case, prevents fraud, abuse, or mistake in the petition process, is established by a preponderance of the evidence;

(c) A circulator used a petition form that does not comply with the provisions of this article or has not been approved by the secretary of state.

Source: L. 93: Entire article amended with relocations, p. 688, § 1, effective May 4. **L. 95:** (1) to (3) amended, p. 435, § 13, effective May 8. **L. 2009:** (1) and (2) amended and (2.5) and (5) added, (HB 09-1326), ch. 258, p. 1176, § 14, effective May 15.

Editor's note: (1) Subsections (1) and (2) were formerly numbered as § 1-40-109 (1)(c), subsection (3) was formerly numbered as § 1-40-109 (1.6)(a), and subsection (4) was formerly numbered as § 1-40-109 (1.6)(b). The former § 1-40-118 (1) was deleted by amendment, § 1-40-118 (2) was relocated to § 1-40-130 (1), and § 1-40-118 (3) was relocated to § 1-40-130 (2).

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending subsections (1) and (2) and

adding subsections (2.5) and (5) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after May 15, 2009.

ANNOTATION

I. General Consideration.
II. Specification of Grounds and Oath.
III. Amended Protest.
IV. Protests Before Secretary of State.
V. Remedy Provided.
VI. Effect on Other Tribunals.
VII. Injunction for Fraud.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

C.J.S. See 82 C.J.S., Statutes, § 124.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. SPECIFICATION OF GROUNDS AND OATH.

The provisions of this section that a protest to a petition for the submission of an act of the general assembly to the people must specify the grounds of such protest, and be under oath, are jurisdictional. Ramer v. Wright, 62 Colo. 53, 159 P. 1145 (1916); Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And the secretary of state is without power to act in the absence of a substantial compliance therewith. Ramer v. Wright, 62 Colo. 53, 159 P. 1145 (1916); Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

There was not a substantial compliance where, appended to a protest, appeared the certificate of a notary public that certain persons each "deposes and says: That he subscribed the above protest after reading the same, and the contents thereof are true to the best of his knowledge, information and belief", but there was no statement that the persons named were sworn. Therefore, the secretary had no authority to entertain the protest. Ramer v. Wright, 62 Colo. 53, 159 P. 1145 (1916).

The requirement that the protest must be under oath is not so unreasonable as to invalidate the statute. Ramer v. Wright, 62 Colo. 53, 159 P. 1145 (1916).

III. AMENDED PROTEST.

Whether a protest should specify the names protested was not determined in Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

Amended protest was properly dismissed by the secretary of state despite the secretary's incorrect notification to the protestor that a protest could be filed by a specified date. The secretary of state lacked the authority to enlarge the protest period provided in former version of this section, and protestor cannot state claim for relief under theory of estoppel against a state entity on the basis of an unauthorized action or promise. Montero v. Meyer, 795 P.2d 242 (Colo. 1990) (decided under law in effect prior to 1989 amendment).

Petitioners properly sought district court review under this section and § 1-40-119 without first pursuing the administrative remedies outlined in § 1-40-132 (1). Section 1-40-132 (1) is inapplicable to determination whether a petition has a sufficient number of valid signatures to qualify for placement of an initiated measure on the ballot. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

IV. PROTESTS BEFORE SECRETARY OF STATE.

Where a petition is protested before the secretary of state, that official in making findings should specify the names or categories of names which should be rejected. Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

The secretary of state improperly applied the perfect match rule in disallowing signatures where there was a discrepancy between the street directional or apartment number as they appeared on the petition and the master voting list. This information is not required under the statute and is therefore extraneous. McClellan v. Meyer, 900 P.2d 24 (Colo. 1995).

The secretary of state also erred in disallowing signatures based on discrepancies between the name of the town as included with the signature and as stated on the master voting list where the secretary had actual knowledge that the discrepancies were a result of the creation of a town that occurred after preparation of the master voting list. McClellan v. Meyer, 900 P.2d 24 (Colo. 1995).

The secretary of state properly disallowed signatures when the signer indicated or omitted a designation of junior or senior that was omitted from or included on the master list. McClellan v. Meyer, 900 P.2d 24 (Colo. 1995).

Where an elector moves to a new residence and retains the same post office box as a mailing address, the signature should be rejected unless the elector is registered at a post office address and the post office address is the only address assigned to a particular residence. McClellan v. Meyer, 900 P.2d 24 (Colo. 1995).

V. REMEDY PROVIDED.

This section provides one special remedy and only one, a judicial review of "the findings as to the sufficiency" of the petition. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

However, this remedy is not compulsory. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

The parties may waive it, or abandon or dismiss it after beginning it. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

But where a petition is protested before the secretary of state, after whose decision the matter is taken into court, the case is before the court for review and not for trial de novo. Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

And on dismissal of such an action, an order of the trial court that the petition be returned to the secretary of state is proper. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

If, based on a random sample, the secretary of state issues a good faith determination of insufficiency and a timely protest establishes that the petition contains more than 90 % but less than 110 % of the required signatures, the secretary of state is required to conduct a line-by-line examination of each signature. The results of the line-by-line count are subject to the protest and appeal process provided in this section. Buckley v. Chilcutt, 968 P.2d 112 (Colo. 1998).

VI. EFFECT ON OTHER TRIBUNALS.

This section sets up a special procedure for protesting petitions for the initiation of measures. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

But it does not deprive courts of equity of jurisdiction in such cases. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

And the statutory procedure outlined has no application to actions in equity courts. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

This section does not provide an exclusive and adequate remedy so as to deprive equity courts of jurisdiction. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

Section inapplicable to actions in court. The provisions of this section concerning the sufficiency of petitions for the initiation of laws have no application to action in court. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

And courts may interfere in matters preliminary to elections, such as determining the validity of a petition to initiate a measure. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

Proceedings before the secretary of state to determine the validity of a petition to initiate a measure is not another suit pending so as to oust a court of jurisdiction in an action to enjoin the placing of the measure on the ballot. And, where it does not appear on the face of a complaint that there is another suit pending, such objection may not be raised by demurrer. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

VII. INJUNCTION FOR FRAUD.

Fraud may be the basis of an injunction against the submission of the subject of the petition to vote, which submission is also a preliminary of the election. Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490 (1918); Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

And if we do not hold in this way, we shall be compelled to say that if a petition with a sufficient number of names, on its face valid, should be laid before the secretary of state, it could not be successfully attacked even though every name were forged and every affidavit attached to it were false. Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490 (1918); Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

The petition is a preliminary to an initiated election, and if fraudulent, may not be given effect. Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490 (1918); Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

1-40-119. Procedure for hearings. At any hearing held under this article, the party protesting the finding of the secretary of state concerning the sufficiency of signatures shall have the burden of proof. Hearings shall be had as soon as is conveniently possible and shall be concluded within thirty days after the commencement thereof, and the result of such hearings shall be forthwith certified to the designated representatives of the signers and to the protestors of the petition. The hearing shall be subject to the provisions of the Colorado rules of civil procedure. Upon application, the decision of the court shall be reviewed by the Colorado supreme court.

Source: L. 93: Entire article amended with relocations, p. 689, § 1, effective May 4. **L. 95:** Entire section amended, p. 436, § 14, effective May 8.

Editor's note: This section was formerly numbered as section 1-40-109 (2)(a). The former section 1-40-119 was relocated to section 1-40-132 (1).

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

C.J.S. See 82 C.J.S., Statutes, § 124.

Petitioners properly sought district court review under this section and § 1-40-118 without first pursuing the administrative remedies outlined in § 1-40-132 (1). Section 1-40-132 (1) is inapplicable to determination whether a petition has a sufficient number of valid signatures to qualify for placement of an initiated measure on the ballot. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

1-40-120. Filing in federal court. In case a complaint has been filed with the federal district court on the grounds that a petition is insufficient due to failure to comply with any federal law, rule, or regulation, the petition may be withdrawn by the two persons designated pursuant to section 1-40-104 to represent the signers of the petition and, within fifteen days after the court has issued its order in the matter, may be amended and refiled as an original petition. Nothing in this section shall prohibit the timely filing of a protest to any original petition, including one that has been amended and refiled. No person shall be entitled, pursuant to this section, to amend an amended petition.

Source: L. 93: Entire article amended with relocations, p. 689, § 1, effective May 4.

Editor's note: This section was formerly numbered as section 1-40-109 (2)(b). The former section 1-40-120 was deleted by amendment.

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

C.J.S. See 82 C.J.S., Statutes, § 124.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision that a rejected petition for the initiation of a measure may be refiled "as an original petition" after amendment is to be construed, not that it must be refiled within the statutory time fixed for the initial filing of such petitions, but after being refiled it is to be considered "as an original petition". Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Former section, which provided that a rejected petition may be amended and refiled as an original, did not subject a cured petition to the deadline set forth in Colo. Const. art. V, § 11 (2). Montero v. Meyer, 795 P.2d 242 (Colo. 1990) (decided under law in effect prior to 1989 amendment).

But where a petition for the initiation of a constitutional amendment is filed within the time fixed by statute, in the event of protest and rejection, the sponsors, at their election, are entitled to refile the petition when amended within the fifteen days allowed by this section. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

This is true even though the refiling date may fall beyond the six-month period fixed by § 1-40-104 for the filing of original petitions. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And there is no statutory authorization for a protest against the filing, or refiling after withdrawal, of a petition, to initiate a measure under the initiative and referendum. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

Moreover, when a petition to initiate a measure under initiative and referendum is once withdrawn, it passes from official control and may be tampered with, amended, or destroyed. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932); Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

If the petition is withdrawn, no review can thereafter be prosecuted because without the petition no court could adjudicate its sufficiency. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And an action to review an order of the secretary of state declaring a referendum petition insufficient cannot be left standing until the petition is amended and refiled, and later tried on an issue which did not exist when the cause was instituted. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

An action for review cannot survive a withdrawal to be further prosecuted on amendment and refiling because if refiled it comes back "as an original petition". Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

Therefore, the withdrawal of such a petition is equivalent to the dismissal of an action to review. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And a demand for its withdrawal and a suit in mandamus to enforce that demand must necessarily have the same effect. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

1-40-121. Receiving money to circulate petitions - filing. (1) The proponents of the petition or an issue committee acting on behalf of the proponents shall file with the official who receives filings under the "Fair Campaign Practices Act", article 45 of this title, for the election a report stating the dates of circulation by all circulators who were paid to circulate a section of the petition, the total hours for which each circulator was paid to circulate a section of the petition, and the gross amount of wages paid for such hours. The filing shall be made at the same time the petition is filed with the secretary of state. A payment made to a circulator is an expenditure under article 45 of this title.

(2) (Deleted by amendment, L. 2007, p. 1983, § 36, effective August 3, 2007.)

Source: L. 93: Entire article amended with relocations, p. 690, § 1, effective May 4. **L. 95:** (1) and IP(2) amended, p. 436, § 15, effective May 8. **L. 98:** (1) amended, p. 815, § 2, effective August 5. **L. 2007:** Entire section amended, p. 1983, § 36, effective August 3. **L. 2009:** (1) amended, (HB 09-1326), ch. 258, p. 1178, § 15, effective May 15.

Editor's note: (1) Subsection (1) was formerly numbered as § 1-40-110.

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending subsection (1) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after May 15, 2009.

ANNOTATION

Law reviews. For article, "Colorado's Citizen Initiative Again Scrutinized by the U.S. Supreme Court", see 28 Colo. Law. 71 (June 1999). For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Ban of "inducement" overly broad. The language of this section is too broad to survive strict scrutiny. The ban of any "inducement" to petition circulation sweeps far too broadly. Urevich v. Woodward, 667 P.2d 760 (Colo. 1983).

Section construed to delete "inducement". This section must be narrowed to delete the word "inducement". Urevich v. Woodward, 667 P.2d 760 (Colo. 1983).

Section unconstitutional. This section violates the first and fourteenth amendments to the U.S. constitution by imposing a direct and substantial restriction on the right to political speech, employing unnecessarily broad prohibitions. Grant v. Meyer, 828 F.2d 1446 (10th Cir. 1987), aff'd, 486 U.S. 414, 108 S. Ct. 1886, 100 L. Ed. 2d 425 (1988).

Given the business of circulation for hire, there is an interest in compelling disclosure by the proponents of the persons or entities being hired, not only to prevent fraud but to give the public information concerning who the principal proponents are and what kind of financial resources may be available to them. That legitimate interest, however, is not significantly advanced by disclosure of the names and addresses of each person paid to circulate any section of the petition. What is of interest is the payor, not the payees. Upon elimination of the provision requiring identification of the circulators, the burden on proponents is slight. This requirement as modified is valid. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd, 120 F.3d 1092 (10th Cir. 1997), aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

To the extent the monthly report requirement includes the name and residential and business addresses of each of the paid circulators, it is unconstitutional. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Requiring proponents to provide a detailed roster of all who were paid to circulate compromises the expressive rights of paid circulators, but sheds little light on the relative merit of the ballot issue. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Compelling detailed monthly disclosures while the petition is being circulated chills speech by forcing paid circulators to surrender the anonymity enjoyed by their volunteer counterparts. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Since the state has failed to demonstrate how monthly reports meet the stated objectives of preventing fraud as compared with the final report to be filed when the petitions are submitted to the designated election official, the monthly reports are restrictions on core political speech and are invalid. Preparation of the monthly reports is burdensome and involves an additional expense to those supporting an initiative or referendum petition. Testimony was presented showing that the monthly reports affect the circulation process and therefore the amount of core political speech. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599

(1999).

Compelling the disclosure of the identities of every paid circulator chills paid circulation, a constitutionally protected exercise. Although the fact that disclosure is made at the time the proponents file the petition lessens the burden of the disclosure, the law fails exacting scrutiny because the interests asserted by the state either already are or can be protected by less intrusive measures. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

1-40-122. Certification of ballot titles. (1) The secretary of state, at the time the secretary of state certifies to the county clerk and recorder of each county the names of the candidates for state and district offices for general election, shall also certify to them the ballot titles and numbers of each initiated and referred measure filed in the office of the secretary of state to be voted upon at such election.

(2) Repealed.

Source: L. 93: Entire article amended with relocations, p. 690, § 1, effective May 4. **L. 95:** (2) repealed, p. 436, § 16, effective May 8.

Editor's note: Subsection (1) was formerly numbered as section 1-40-112, and subsection (2) is new.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Secretary of state properly certified initiated measure for general election ballot, even though a challenge to the measure had been filed with the secretary pursuant to former § 1-40-109 (2). Montero v. Meyer, 795 P.2d 242 (Colo. 1990).

Secretary of state has sole authority to set election dates or place initiated measures on ballot, and title setting board has no such authority. Matter of Title, Ballot Title, Etc., 850 P.2d 144 (Colo. 1993).

1-40-123. Counting of votes - effective date - conflicting provisions. The votes on all measures submitted to the people shall be counted and properly entered after the votes for candidates for office cast at the same election are counted and shall be counted, canvassed, and returned and the result determined and certified in the manner provided by law concerning other elections. The secretary of state who has certified the election shall, without delay, make and transmit to the governor a certificate of election. The measure shall take effect from and after the date of the official declaration of the vote by proclamation of the governor, but not later than thirty days after the votes have been canvassed, as provided in section 1 of article V of the state constitution. A majority of the votes cast thereon shall adopt any measure submitted, and, in case of adoption of conflicting provisions, the one that receives the greatest number of affirmative votes shall prevail in all particulars as to which there is a conflict.

Source: L. 93: Entire article amended with relocations, p. 691, § 1, effective May 4. **L. 95:** Entire section amended, p. 436, § 17, effective May 8.

Editor's note: This section was formerly numbered as section 1-40-113.

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, § 37.

C.J.S. See 82 C.J.S., Statutes, § 135.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section enhances rather than limits the right of the people to amend the Colorado constitution. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

Conflicting constitutional amendments.

Amendment nos. 6 and 9, proposed constitutional amendments relating to reapportionment on the ballot at the general election held on November 5, 1974, are in conflict where the former, a housekeeping amendment, among many other things, provides that the general assembly is to establish district boundaries and that there is to be no more than a five percent population deviation from the mean in each district while the latter, dealing exclusively with reapportionment, provides for a commission to promulgate

a plan of reapportionment which the supreme court either approves or, in effect, orders modified as required by the court and for a maximum five percent deviation between the most populous and the least populous district in each house. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

One with most votes prevails. In order to carry out the meaning and purpose of § 1 of art. V, Colo. Const., the one of two inconsistent amendments which received the most votes must prevail. That, in the view of the supreme court, is what the "republican" form of government means with respect to the right of the people to amend the constitution. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

It is the duty of the court, whenever possible, to give effect to the expression of the will of the people contained in constitutional amendments adopted by them. In re Interrogatories Propounded by the Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975); Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

When two constitutional amendments are simultaneously adopted, the court should not resort to rules that give effect to one provision at the expense of the other unless there is an irreconcilable, material, and direct conflict between the two amendments. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

When constitutional amendments enacted at the same election are in such irreconcilable conflict, the one which receives the greatest number of affirmative votes shall prevail in all particulars as to which there is a conflict. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

The test for the existence of a conflict is: Does one authorize what the other forbids or forbid what the other authorizes? Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

1-40-124. Publication. (1) (a) In accordance with section 1 (7.3) of article V of the state constitution, the director of research of the legislative council of the general assembly shall cause to be published at least one time in at least one legal publication of general circulation in each county of the state, compactly and without unnecessary spacing, in not less than eight-point standard type, a true copy of:

(I) The title and text of each constitutional amendment, initiated or referred measure, or part of a measure, to be submitted to the people with the number and form in which the ballot title thereof will be printed in the official ballot; and

(II) The text of each referred or initiated question arising under section 20 of article X of the state constitution, as defined in section 1-41-102 (3), to be submitted to the people with the number and form in which such question will be printed in the official ballot.

(b) The publication may be in the form of a notice printed in a legal newspaper, as defined in sections 24-70-102 and 24-70-103 (1), C.R.S., or in the form of a publication that is printed separately and delivered as an insert in such a newspaper. The director of research of the legislative council may determine which form the publication will take in each legal newspaper. The director may negotiate agreements with one or more legal newspapers, or with any organization that represents such newspapers, to authorize the printing of a separate insert by one or more legal newspapers to be delivered by all of the legal newspapers participating in the agreement.

(c) Where more than one legal newspaper is circulated in a county, the director of research of the legislative council shall select the newspaper or newspapers that will make the publication. In making such selection, the director shall consider the newspapers' circulation and charges.

(d) The amount paid for publication shall be determined by the executive committee of the legislative council and shall be based on available appropriations. In determining the amount, the executive committee may consider the newspaper's then effective current lowest bulk comparable or general rate charged and the rate specified for legal newspapers in section 24-70-107, C.R.S. The director of research of the legislative council shall provide the legal newspapers selected to perform printing in accordance with this subsection (1) either complete slick proofs or mats of the title and text of the proposed constitutional amendment, initiated or referred measure, or part of a measure, and of the text of a referred or initiated question arising under section 20 of article X of the state constitution, as

defined in section 1-41-102 (3), at least one week before the publication date.

(e) If no legal newspaper is willing or able to print or distribute the publication in a particular county in accordance with the provisions of this subsection (1), the director of research of the legislative council shall assure compliance with the publication requirements of section 1 (7.3) of article V of the state constitution by causing the printing of additional inserts or legal notices in such manner and form as deemed necessary and by providing for their separate circulation in the county as widely as may be practicable. Such circulation may include making the publications available at government offices and other public facilities or private businesses. If sufficient funds are available for such purposes, the director may also contract for alternative methods of circulation or may cause circulation by mailing the publication to county residents. Any printing and circulation made in accordance with this paragraph (e) shall be deemed to be a legal publication of general circulation for purposes of section 1 (7.3) of article V of the state constitution.

(2) (Deleted by amendment, L. 95, p. 437, § 18, effective May 8, 1995.)

Source: L. 93: Entire article amended with relocations, p. 691, § 1, effective May 4. **L. 94:** (1) amended, p. 1688, § 1, effective January 19, 1995. **L. 95:** Entire section amended, p. 437, § 18, effective May 8. **L. 2000:** (1) amended, p. 298, § 3, effective August 2. **L. 2004:** (1) amended, p. 961, § 1, effective May 21.

Editor's note: (1) This section was formerly numbered as section 1-40-114 (1) and (2).

(2) Section 5 of chapter 284, Session Laws of Colorado 1994, provided that the act amending subsection (1) was effective on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of SCR 94-005, enacted at the Second Regular Session of the Fifty-ninth General Assembly. The date of the proclamation of the Governor announcing the approval of SCR 94-005 was January 19, 1995.

ANNOTATION

I. General Consideration.
II. Publication.
III. Newspapers of General Circulation.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, § 37.

C.J.S. See 82 C.J.S., Statutes, § 129.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The facts upon which depend the question whether an amendment proposed to the constitution has received the approval of the people will be judicially noticed and the court will resort to all sources of information which may afford satisfactory evidence upon the question. Harrison v. People ex rel. Whatley, 57 Colo. 137, 140 P. 203 (1914).

II. PUBLICATION.

The purpose of the provision that the full text of a proposed amendment be published in a newspaper of general circulation is to acquaint the voters, before they enter the polling booths, as to the contents of measures submitted. Cook v. Baker, 121 Colo. 187, 214 P.2d 787 (1950).

And to require that the text of an amendment or a substantial portion thereof be again printed on the official ballot, is contrary to all precedent, could serve no useful purpose, and was not within the contemplation of the general assembly. Cook v. Baker, 121 Colo. 187, 214 P.2d 787 (1950).

The timely publication of a constitutional amendment in 62 counties of the state, with only five days' delay in the sixty-third county and that without fault of either the proponents of the amendment or of the secretary of state, is a substantial compliance with the requirement of the statute. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

And where publication was in compliance with the provisions of the section, the supreme court makes no determination as to the validity of the statutory provisions requiring such publication. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

III. NEWSPAPERS OF GENERAL CIRCULATION.

The phrase "newspaper of general circulation in each county" means that an amendment must be published in one newspaper in each county in the state, which is published, and has a general circulation, in that county. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

The phrase "general circulation" is descriptive of the character of the newspaper. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

And it must be one of general, not special, or limited circulation. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

The newspaper may not be a mere advertising sheet, or a newspaper restricted or devoted to some particular trade or calling, or branch of industry. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

1-40-124.5. Ballot information booklet. (1) (a) The director of research of the legislative council of the general assembly shall prepare a ballot information booklet for any initiated or referred constitutional amendment or legislation, including a question, as defined in section 1-41-102 (3), in accordance with section 1 (7.5) of article V of the state constitution.

(b) The director of research of the legislative council of the general assembly shall prepare a fiscal impact statement for every initiated or referred measure, taking into consideration fiscal impact information submitted by the office of state planning and budgeting, the department of local affairs or any other state agency, and any proponent or other interested person. The fiscal impact statement prepared for every measure shall be substantially similar in form and content to the fiscal notes provided by the legislative council of the general assembly for legislative measures pursuant to section 2-2-322, C.R.S. A complete copy of the fiscal impact statement for such measure shall be available through the legislative council of the general assembly. The ballot information booklet shall indicate whether there is a fiscal impact for each initiated or referred measure and shall abstract the fiscal impact statement for such measure. The abstract for every measure shall appear after the arguments for and against such measure in the analysis section of the ballot information booklet, and shall include, but shall not be limited to:

(I) An estimate of the effect the measure will have on state and local government revenues, expenditures, taxes, and fiscal liabilities if such measure is enacted;

(II) An estimate of the amount of any state and local government recurring expenditures or fiscal liabilities if such measure is enacted; and

(III) For any initiated or referred measure that modifies the state tax laws, an estimate of the impact to the average taxpayer, if feasible, if such measure is enacted.

(c) Repealed.

(1.5) The executive committee of the legislative council of the general assembly shall be responsible for providing the fiscal information on any ballot issue that must be included in the ballot information booklet pursuant to section 1 (7.5) (c) of article V of the state constitution.

(1.7) After receiving written comments from the public in accordance with section 1 (7.5) (a) (II) of article V of the state constitution, but before the draft of the ballot information booklet is finalized, the director of research of the legislative council of the general assembly shall conduct a public meeting at which the director and other members of the legislative staff have the opportunity to ask questions that arise in response to the written comments. The director may modify the draft of the booklet in response to comments made at the hearing. The legislative council may modify the draft of the booklet upon the two-thirds affirmative vote of the members of the legislative council.

(2) Following completion of the ballot information booklet, the director of research shall arrange for its distribution to every residence of one or more active registered electors in the state. Distribution may be accomplished by such means as the director of research deems appropriate to comply with section 1 (7.5) of article V of the state constitution, including, but not limited to, mailing the ballot information booklet to electors and insertion of the ballot information booklet in newspapers of general circulation in the state. The distribution shall be performed pursuant to a contract or contracts bid and entered into after employing standard competitive bidding practices including, but not limited to, the use of requests for information, requests for proposals, or any other standard vendor selection practices determined to be

best suited to selecting an appropriate means of distribution and an appropriate contractor or contractors. The executive director of the department of personnel shall provide such technical advice and assistance regarding bidding procedures as deemed necessary by the director of research.

(3) (a) There is hereby established in the state treasury the ballot information publication and distribution revolving fund. Except as otherwise provided in paragraph (b) of this subsection (3), moneys shall be appropriated to the fund each year by the general assembly in the annual general appropriation act. All interest earned on the investment of moneys in the fund shall be credited to the fund. Moneys in the revolving fund are continuously appropriated to the legislative council of the general assembly to pay the costs of publishing the text and title of each constitutional amendment, each initiated or referred measure, or part of a measure, and the text of a referred or initiated question arising under section 20 of article X of the state constitution, as defined in section 1-41-102 (3), in at least one legal publication of general circulation in each county of the state, as required by section 1-40-124, and the costs of distributing the ballot information booklet, as required by subsection (2) of this section. Any moneys credited to the revolving fund and unexpended at the end of any given fiscal year shall remain in the fund and shall not revert to the general fund.

(b) Notwithstanding any law to the contrary, any moneys appropriated from the general fund to the legislative department of the state government for the fiscal year commencing on July 1, 2007, that are unexpended or not encumbered as of the close of the fiscal year shall not revert to the general fund and shall be transferred by the state treasurer and the controller to the ballot information publication and distribution revolving fund created in paragraph (a) of this subsection (3); except that the amount so transferred shall not exceed five hundred thousand dollars.

(c) Notwithstanding any law to the contrary, any moneys appropriated from the general fund to the legislative department of the state government for the fiscal year commencing on July 1, 2008, that are unexpended or not encumbered as of the close of the fiscal year shall not revert to the general fund and shall be transferred by the state treasurer and the controller to the ballot information publication and distribution revolving fund created in paragraph (a) of this subsection (3).

Source: L. 94: Entire section added, p. 1688, § 2, effective January 19, 1995. **L. 96:** (2) amended, p. 1511, § 35, effective July 1. **L. 97:** (3) added, p. 384, § 1, effective April 19. **L. 2000:** (1) and (3) amended and (1.5) added, p. 298, § 4, effective August 2; (1) amended, p. 1623, § 8, effective August 2. **L. 2001:** (1) amended, p. 223, § 1, effective August 8. **L. 2004:** (3) amended, p. 410, § 3, effective April 8. **L. 2005:** (3)(a) amended, p. 759, § 6, effective June 1; (1)(c) repealed and (1.7) added, p. 1371, §§ 2, 1, effective June 6. **L. 2007:** (3)(b) amended, p. 2124, § 2, effective April 11. **L. 2008:** (3)(b) amended, p. 2325, § 2, effective April 7. **L. 2009:** (3)(c) added, (SB 09-224), ch. 441, p. 2445, § 2, effective March 20.

Editor's note: (1) Section 5 of chapter 284, Session Laws of Colorado 1994, provided that the act enacting this section was effective on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of SCR 94-005, enacted at the Second Regular Session of the Fifty-ninth General Assembly. The date of the proclamation of the Governor announcing the approval of SCR 94-005 was January 19, 1995.

(2) Amendments to subsection (1) by Senate Bill 00-172 and House Bill 00-1304 were harmonized.

1-40-125. Mailing to electors. (1) The requirements of this section shall apply to any ballot issue involving a local government matter arising under section 20 of article X of the state constitution, as defined in section 1-41-103 (4), for which notice is required to be mailed pursuant to section 20 (3) (b) of article X of the state constitution. A mailing is not required for a ballot issue that does not involve a local government matter arising under section 20 of article X of the state constitution, as defined in section 1-41-103 (4).

(2) Thirty days before a ballot issue election, political subdivisions shall mail at the least cost and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to "all registered voters" at each address of one or more active registered electors. Except for voter-approved additions, notices shall include only:

(a) The election date, hours, ballot title, text, and local election office address and telephone number;

(b) For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change;

(c) For the first full fiscal year of each proposed political subdivision tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase;

(d) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining local district repayment cost;

(e) Two summaries, up to five hundred words each, one for and one against the proposal, of written comments filed with the election officer by thirty days before the election. No summary shall mention names of persons or private groups, nor any endorsements of or resolutions against the proposal. Petition representatives following these rules shall write this summary for their petition. The election officer shall maintain and accurately summarize all other relevant written comments.

(3) The provisions of this section shall not apply to a ballot issue that is subject to the provisions of section 1-40-124.5.

Source: L. 93: Entire article amended with relocations, p. 692, § 1, effective May 4; (1) amended, p. 1437, § 128, effective July 1. **L. 2000:** (1) and IP(2) amended and (3) added, p. 299, § 5, effective August 2.

1-40-126. Explanation of effect of "yes" or "no" vote included in notices provided by mailing or publication. In any notice to electors provided by the director of research of the legislative council, whether by mailing pursuant to section 1-40-124.5 or publication pursuant to section 1-40-124, there shall be included the following explanation preceding any information about individual ballot issues: "A 'yes' vote on any ballot issue is a vote in favor of changing current law or existing circumstances, and a 'no' vote on any ballot issue is a vote against changing current law or existing circumstances."

Source: L. 93: Entire article amended with relocations, p. 692, § 1, effective May 4. **L. 2000:** Entire section amended, p. 299, § 6, effective August 2.

Editor's note: This section was formerly numbered as section 1-40-114 (3), which was added by House Bill 93-1155.

ANNOTATION

C.J.S. See 82 C.J.S., Statutes, § 129.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The facts upon which depend the question whether an amendment proposed to the constitution has received the approval of the people will be judicially noticed and the court will resort to all sources of information which may afford satisfactory evidence upon the question. Harrison v. People ex rel. Whatley, 57 Colo. 137, 140 P. 203 (1914).

1-40-127. Ordinances - effective, when - referendum. (Repealed)

Source: L. 93: Entire article amended with relocations, p. 692, § 1, effective May 4. **L. 95:** Entire section repealed, p. 437, § 19, effective May 8.

Editor's note: This section was formerly numbered as section 1-40-115.

Cross references: For current provisions relating to municipal government ordinances, their effective dates, and related referendums, see § 31-11-105.

1-40-128. Ordinances, how proposed - conflicting measures. (Repealed)

Source: L. 93: Entire article amended with relocations, p. 693, § 1, effective May 4. **L. 95:** Entire section repealed, p. 438, § 20, effective May 8.

Editor's note: This section was formerly numbered as section 1-40-116 (1).

Cross references: For current provisions relating to proposing municipal government ordinances and conflicting measures, see § 31-11-104.

1-40-129. Voting on ordinances. (Repealed)

Source: L. 93: Entire article amended with relocations, p. 694, § 1, effective May 4. **L. 95:** Entire section repealed, p. 438, § 21, effective May 8.

Editor's note: Subsection (1) was formerly numbered as section 1-40-116 (2), and subsection (2) was formerly numbered as section 1-40-116 (3).

1-40-130. Unlawful acts - penalty. (1) It is unlawful:

(a) For any person willfully and knowingly to circulate or cause to be circulated or sign or procure to be signed any petition bearing the name, device, or motto of any person, organization, association, league, or political party, or purporting in any way to be endorsed, approved, or submitted by any person, organization, association, league, or political party, without the written consent, approval, and authorization of the person, organization, association, league, or political party;

(b) For any person to sign any name other than his or her own to any petition or knowingly to sign his or her name more than once for the same measure at one election;

(c) For any person to knowingly sign any petition who is not a registered elector at the time of signing the same;

(d) For any person to sign any affidavit as circulator without knowing or reasonably believing the statements made in the affidavit to be true;

(e) For any person to certify that an affidavit attached to a petition was subscribed or sworn to before him or her unless it was so subscribed and sworn to before him or her and unless the person so certifying is duly qualified under the laws of this state to administer an oath;

(f) For any officer or person to do willfully, or with another or others conspire, or agree, or confederate to do, any act which hinders, delays, or in any way interferes with the calling, holding, or conducting of any election permitted under the initiative and referendum powers reserved by the people in section 1 of article V of the state constitution or with the registering of electors therefor;

(g) For any officer to do willfully any act which shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election, or refuse to submit any petition in the form presented for submission at any election;

(h) For any officer or person to violate willfully any provision of this article;

(i) For any person to pay money or other things of value to a registered elector for the purpose of inducing the elector to withdraw his or her name from a petition for a ballot issue;

(j) For any person to certify an affidavit attached to a petition in violation of section 1-40-111 (2) (b) (I);

(k) For any person to sign any affidavit as a circulator, unless each signature in the petition section to which the affidavit is attached was affixed in the presence of the circulator;

(l) For any person to circulate in whole or in part a petition section, unless such person is the circulator who signs the affidavit attached to the petition section.

(2) Any person, upon conviction of a violation of any provision of this section, shall be punished by a fine of not more than one thousand five hundred dollars, or by imprisonment for not more than one year in the county jail, or by both such fine and imprisonment.

Source: L. 93: Entire article amended with relocations, p. 694, § 1, effective May 4. **L. 2009:** (1)(h) and (2) amended and (1)(i), (1)(j), (1)(k), and (1)(l) added, (HB 09-1326), ch. 258, p. 1178, § 16, effective May 15.

Editor's note: (1) Subsection (1) was formerly numbered as § 1-40-118 (2), and subsection (2) was formerly numbered as § 1-40-118 (3).

(2) Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending subsections (1)(h) and (2) and adding subsections (1)(i), (1)(j), (1)(k), and (1)(l) applies to any ballot issue that has a ballot title fixed and determined by the title board on or after May 15, 2009.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

It is clear from the provisions of the initiative and referendum act and the penalties provided thereby that the general assembly has been careful and diligent to safeguard the primary right of the people to propose and enact their own legislation. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

And the initiative and referendum laws, when invoked by the people, supplant the city council or representative body. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

Because the people undertake to legislate for themselves. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

And the town or city clerk is required to perform certain statutory duties, in connection therewith, for failure of which he is subject to penalties. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

1-40-131. Tampering with initiative or referendum petition. Any person who willfully destroys, defaces, mutilates, or suppresses any initiative or referendum petition or who willfully neglects to file or delays the delivery of the initiative or referendum petition or who conceals or removes any initiative or referendum petition from the possession of the person authorized by law to have the custody thereof, or who adds, amends, alters, or in any way changes the information on the petition as provided by the elector, or who aids, counsels, procures, or assists any person in doing any of said acts commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111. The language in this section shall not preclude a circulator from striking a complete line on the petition if the circulator believes the line to be invalid.

Source: L. 93: Entire article amended with relocations, p. 695, § 1, effective May 4.

Editor's note: This section was formerly numbered as section 1-40-118.5.

1-40-132. Enforcement. (1) The secretary of state is charged with the administration and enforcement of the provisions of this article relating to initiated or referred measures and state constitutional amendments. The secretary of state shall have the authority to promulgate rules as may be necessary to administer and enforce any provision of this article that relates to initiated or referred measures and state constitutional amendments. The secretary of state may conduct a hearing, upon a written complaint by a registered elector, on any alleged violation of the provisions relating to the circulation of a petition, which may include but shall not be limited to the preparation or signing of an affidavit by a circulator. If the secretary of state, after the hearing, has reasonable cause to believe that there has been a violation of the provisions of this article relating to initiated or referred measures and state constitutional amendments, he or she shall notify the attorney general, who may institute a criminal prosecution. If a circulator is found to have violated any provision of this article or is otherwise shown to have made false or misleading statements relating to his or her section of the petition, such section of the petition shall be deemed void.

(2) (Deleted by amendment, L. 95, p. 439, § 22, effective May 8, 1995.)

Source: L. 93: Entire article amended with relocations, p. 695, § 1, effective May 4. **L. 95:** Entire section amended, p. 439, § 22, effective May 8.

Editor's note: Subsection (1) was formerly numbered as section 1-40-119.

ANNOTATION

Subsection (1) is inapplicable to determination whether a petition has a sufficient number of valid signatures to qualify for placement of an initiated measure on the ballot. Read in context, subsection (1) addresses violations that involve criminal culpability. The administrative hearing required by subsection (1) is applicable to general proceedings regarding a sufficiency determination. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

1-40-133. Retention of petitions. After a period of three years from the time of submission of the petitions to the secretary of state, if it is determined that the retention of the petitions is no longer necessary, the secretary of state may destroy the petitions.

Source: L. 93: Entire article amended with relocations, p. 696, § 1, effective May 4. **L. 95:** Entire section amended, p. 439, § 23, effective May 8.

1-40-134. Withdrawal of initiative petition. The designated representatives of the proponents of an initiative petition may withdraw the petition from consideration as a ballot issue by filing a letter with the secretary of state requesting that the petition not be placed on the ballot. The letter shall be signed and acknowledged by both designated representatives before an officer authorized to take acknowledgments and shall be filed no later than sixty days prior to the election at which the initiative is to be voted upon.

Source: L. 98: Entire section added, p. 632, § 1, effective May 6. **L. 2009:** Entire section amended, (HB 09-1326), ch. 258, p. 1179, § 17, effective May 15.

Editor's note: Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act amending this section applies to any ballot issue that has a ballot title fixed and determined by the title board on or after May 15, 2009.

1-40-135. Petition entities - requirements - definitions. (1) As used in this section, "petition entity" means any person or issue committee that provides compensation to a circulator to circulate a ballot petition.

(2) (a) It is unlawful for any petition entity to provide compensation to a circulator to circulate a petition without first obtaining a license therefor from the secretary of state. The secretary of state may deny a license if he or she finds that the petition entity or any of its principals have been found, in a judicial or administrative proceeding, to have violated the petition laws of Colorado or any other state and such violation involves authorizing or knowingly permitting any of the acts set forth in paragraph (c) of this subsection (2), excluding subparagraph (V) of said paragraph (c). The secretary of state shall deny a license:

(I) Unless the petition entity agrees that it shall not pay a circulator more than twenty percent of his or her compensation on a per signature or per petition basis; or

(II) If no current representative of the petition entity has completed the training related to potential fraudulent activities in petition circulation, as established by the secretary of state, pursuant to section 1-40-112 (3).

(b) The secretary of state may at any time request the petition entity to provide documentation that demonstrates compliance with section 1-40-112 (4).

(c) The secretary of state shall revoke the petition entity license if, at any time after receiving a license, a petition entity is determined to no longer be in compliance with the requirements set forth in paragraph (a) of this subsection (2) or if the petition entity authorized or knowingly permitted:

(I) Forgery of a registered elector's signature;

(II) Circulation of a petition section, in whole or part, by anyone other than the circulator who signs the affidavit attached to the petition section;

(III) Use of a false circulator name or address in the affidavit;

(IV) Payment of money or other things of value to any person for the purpose of inducing the person to sign or withdraw his or her name from the petition;

(V) Payment to a circulator of more than twenty percent of his or her compensation on a per signature or per petition section basis; or

(VI) A notary public's notarization of a petition section outside of the presence of the circulator or without the production of the required identification for notarization of a petition section.

(3) (a) Any procedures by which alleged violations involving petition entities are heard and adjudicated shall be governed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S. If a complaint is filed with the secretary of state pursuant to section 1-40-132 (1) alleging that a petition entity was not licensed when it compensated any circulator, the secretary may use information that the entity is required to produce pursuant to section 1-40-121 (1) and any other information to which the secretary may reasonably gain access, including documentation produced pursuant to paragraph (b) of subsection (2) of this section, at a hearing. After a hearing is held, if a violation is determined to have occurred, such petition entity shall be fined by the secretary in an amount not to exceed one hundred dollars per circulator for each day that the named individual or individuals circulated petition sections on behalf of the unlicensed petition entity. If the secretary finds that a petition entity violated a provision of paragraph (c) of subsection (2) of this section, the secretary shall revoke the entity's license for not less than ninety days or more than one hundred eighty days. Upon finding any subsequent violation of a provision of paragraph (c) of subsection (2) of this section, the secretary shall revoke the petition entity's license for not less than one hundred eighty days or more than one year. The secretary shall consider all circumstances surrounding the violations in fixing the length of the revocations.

(b) A petition entity whose license has been revoked may apply for reinstatement to be effective upon expiration of the term of revocation.

(c) In determining whether to reinstate a license, the secretary may consider:

(I) The entity's ownership by, employment of, or contract with any person who served as a director, officer, owner, or principal of a petition entity whose license was revoked, the role of such individual in the facts underlying the prior license revocation, and the role of such individual in a petition entity's post-revocation activities; and

(II) Any other facts the entity chooses to present to the secretary, including but not limited to remedial steps, if any, that have been implemented to avoid future acts that would violate this article.

(4) The secretary of state shall issue a decision on any application for a new or reinstated license within ten business days after a petition entity files an application, which application shall be on a form prescribed by the secretary. No license shall be issued without payment of a nonrefundable license fee to the secretary of state, which license fee shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., to cover the cost of administering this section.

(5) (a) A licensed petition entity shall register with the secretary of state by providing to the secretary of state:

(I) The ballot title of any proposed measure for which a petition will be circulated by circulators coordinated or paid by the petition entity;

(II) The current name, address, telephone number, and electronic mail address of the petition entity; and

(III) The name and signature of the designated agent of the petition entity for the proposed measure.

(b) A petition entity shall notify the secretary of state within twenty days of any change in the information submitted pursuant to paragraph (a) of this subsection (5).

Source: L. 2009: Entire section added, (HB 09-1326), ch. 258, p. 1179, § 18, effective May 15.

Editor's note: Section 22 of chapter 258, Session Laws of Colorado 2009, provides that the act adding this section applies to any ballot issue that has a ballot title fixed and determined by the title board on or after May 15, 2009.

ODD-YEAR ELECTIONS

ARTICLE 41

Odd-year Elections

1-41-101. Legislative declaration.
1-41-102. State ballot issue elections in odd-numbered years.
1-41-103. Local ballot issue elections in odd-numbered years.

1-41-101. Legislative declaration. The general assembly hereby finds, determines, and declares that section 20 of article X of the state constitution requires that a ballot issue election be held on the first Tuesday in November of odd-numbered years; that the provisions of section 20 (2) and 20 (3) of said article X are unclear as to what issues can be submitted to a vote in the odd-year election; that section 20 of article X did not amend preexisting provisions of the state constitution on the initiative, the referendum, and the submission of constitutional amendments by the general assembly, and repeal or amendment of such provisions by implication is not presumed; that this legislation implements section 20 of article X of the state constitution, which article is entitled "Revenue" and concerns exclusively government revenue raising and appropriations; that section 20 of article X requires public votes on additional government taxes, spending, or debt; that the language of section 20 of article X evinces the public's desire to have more opportunity to vote on government tax, spending, and debt proposals; that a construction of section 20 of article X that limits local government electors' opportunities to vote on tax, spending, debt, or other proposals would be inconsistent with the ballot title of and the voters' intention in adopting said amendment; that state and local election officials need guidance as to how to administer the November 1993 election; and that, in view of the issues set out in this section, the general assembly should exercise its legislative power to resolve the ambiguities in section 20 of article X in a manner consistent with its terms.

Source: L. 93: Entire article added, p. 1993, § 1, effective June 8.

ANNOTATION

Interpretations of § 20 of article X of the state constitution which would limit the right of the electorate to vote on tax, spending, debt, or other proposals are not favored. Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

1-41-102. State ballot issue elections in odd-numbered years. (1) At the statewide election to be held on the first Tuesday of November in 1993, and in each odd-numbered year thereafter, the following issues shall appear on the ballot if they concern state matters arising under section 20 of article X of the state constitution and if they are submitted in accordance with applicable law:

(a) Amendments to the state constitution submitted by the general assembly in accordance with article XIX of the state constitution;

(b) State legislation and amendments to the state constitution initiated in accordance with section 1 of article V of the state constitution and article 40 of this title;

(c) Measures referred to the people by the general assembly in accordance with section 1 of article V of the state constitution;

(d) Measures referred to the people pursuant to petitions filed against an act or item, section, or part of an act of the general assembly in accordance with section 1 of article V of the state constitution;

(e) Questions which are referred to the people by the general assembly in accordance with the law prescribing procedures therefor;

(f) Questions which are initiated by the people in accordance with the law prescribing procedures therefor.

(2) If no questions concerning state matters arising under section 20 of article X of the state constitution are referred or initiated as provided in subsection (1) of this section, no statewide election shall be held on the first Tuesday of November in 1993, or on the first Tuesday in November of any subsequent odd-numbered year.

(3) As used in this section, a "question" means a proposition which is in the form of a question meeting the requirements of section 20 (3) (c) of article X of the state constitution and which is submitted in accordance with the law prescribing procedures therefor without reference to specific state legislation or a specific amendment to the state constitution.

(4) As used in this section, "state matters arising under section 20 of article X of the state constitution" includes:

(a) Approval of a new tax, tax rate increase, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain pursuant to section 20 (4) (a) of article X of the state constitution;

(b) Approval of the creation of any multiple-fiscal year direct or indirect state debt or other financial obligation without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years pursuant to section 20 (4) (b) of article X of the state constitution;

(c) Approval of emergency taxes pursuant to section 20 (6) of article X of the state constitution;

(d) Approval of revenue changes pursuant to section 20 (7) of article X of the state constitution;

(e) Approval of a delay in voting on ballot issues pursuant to section 20 (3) (a) of article X of the state constitution;

(f) Approval of the weakening of a state limit on revenue, spending, and debt pursuant to section 20 (1) of article X of the state constitution.

Source: L. 93: Entire article added, p. 1994, § 1, effective June 8.

ANNOTATION

Board had the authority to set a title, ballot title and submission clause, and summary for the proposed constitutional amendment at issue, but the question of the board's jurisdiction to set titles for a ballot issue in an odd-numbered year was premature, as the secretary of state, not the board, has the authority to place measures on the ballot. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

1-41-103. Local ballot issue elections in odd-numbered years. (1) At the local election to be held on the first Tuesday of November in 1993, and in each odd-numbered year thereafter, the following issues shall appear on the ballot if they concern local government matters arising under section 20 of article X of the state constitution and if they are submitted in accordance with applicable law:

(a) Amendments to the charter of any home rule city or home rule county initiated by the voters or submitted by the legislative body of the home rule city or county in accordance with said charter;

(b) Ordinances, resolutions, or franchises proposed in accordance with section 1 of article V of the state constitution and section 31-11-104, C.R.S.;

(c) Measures referred to the people pursuant to petitions filed against an ordinance, resolution, or franchise passed by the legislative body of any local government in accordance with section 1 of article V of the state constitution and section 31-11-105, C.R.S.;

(d) Questions which are referred to the people by the governing body of the local government in accordance with the law prescribing procedures therefor;

(e) Questions which are initiated by the people in accordance with the law prescribing procedures therefor.

(2) As used in this section, "local government" means a county, a municipality as defined in section 31-1-101 (6), C.R.S., a school district, or a special district as defined in sections 32-1-103 (20) and 35-70-109, C.R.S.

(3) As used in this section, a "question" means a proposition which is in the form of a question meeting the requirements of section 20 (3) (c) of article X of the state constitution and which is submitted in accordance with the law prescribing procedures therefor without reference to a specific ordinance, resolution, franchise, or other local legislation or a specific amendment to the charter of a home rule city or home rule county.

(4) As used in this section, "local government matters arising under section 20 of article X of the state constitution" includes:

(a) Approval of a new tax, tax rate increase, mill levy above that for the prior year, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain pursuant to section 20 (4) (a) of article X of the state constitution;

(b) Approval of the creation of any multiple-fiscal year direct or indirect debt or other financial obligation without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years pursuant to section 20 (4) (b) of article X of the state constitution;

(c) Approval of emergency taxes pursuant to section 20 (6) of article X of the state constitution;

(d) Approval of revenue changes pursuant to section 20 (7) of article X of the state constitution;

(e) Approval of a delay in voting on ballot issues pursuant to section 20 (3) (a) of article X of the state constitution;

(f) Approval of the weakening of a local limit on revenue, spending, and debt pursuant to section 20 (1) of article X of the state constitution.

(5) The submission of issues at elections in November of odd-numbered years in accordance with this section, or at other elections as provided in section 20 (3) (a) of article X of the state constitution, shall not be deemed the exclusive method of submitting local issues to a vote of the people, and nothing in this section shall be construed to repeal, diminish, or otherwise affect in any way the authority of local governments to hold issue elections in accordance with other provisions of law.

(6) As the city of Broomfield will become the city and county of Broomfield on November 15, 2001, and the citizens of the city and county of Broomfield will no longer be located in Adams, Boulder, Jefferson, and Weld counties and will not be directly affected by the election results of ballot issues in those counties, the ballot for the registered voters of the city of Broomfield for the odd-year election to be held on November 6, 2001, shall exclude any local ballot issue pertaining to Adams, Boulder, Jefferson, and Weld counties that, by the terms of such ballot issue or as mandated by law, takes effect on or after November 15, 2001, so long as such ballot issue does not directly or indirectly impose any burden, obligation, or limitation upon the city and county of Broomfield or its citizens.

(7) As the city of Broomfield will become the city and county of Broomfield on November 15, 2001, the ballot for the registered voters of the city of Broomfield for the odd-year election to be held on November 6, 2001, may include any local ballot issue pertaining to the city and county of Broomfield that, by the terms of such ballot issue or as mandated by law, takes effect on or after November 15, 2001.

Source: L. 93: Entire article added, p. 1995, § 1, effective June 8. **L. 94:** (1)(b) and (1)(c) amended, p. 1622, § 6, effective May 31. **L. 95:** (1)(b) and (1)(c) amended, p. 439, § 24, effective May 8. **L. 2001:** (6) and (7) added, p. 273, § 31, effective March 30.

ANNOTATION

Proposed amendments to home-rule charters and local initiated or referred measures concerning issues arising under the provisions of article X, § 20, of the state constitution may be submitted to the people for a

vote at a local election held on the first Tuesday of November in odd-numbered years. The provisions of article X, § 20 (3), apply only to issues of government financing, spending, and taxation governed by article X, § 20. Zaner v. City of Brighton, 917 P.2d 280 (Colo. 1996).

Legislation that furthers the purpose of self-executing constitutional provisions or that facilitates their enforcement is permissible. The general assembly did not exceed its authority by enacting legislation to resolve the ambiguity in article X, § 20, of the state constitution. Zaner v. City of Brighton, 917 P.2d 280 (Colo. 1996).

The term "referred measure" is defined in § 1-1-104 (34.5) to include any ballot question or ballot issue submitted to its eligible electors by any local governmental entity. Such referred measures encompass approval of revenue changes pursuant to § 20 (7) of article X of the state constitution referenced in subsection (4)(d). Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

ELECTION CAMPAIGN REGULATIONS

ARTICLE 45

Fair Campaign Practices Act

Editor's note: (1) This article was added in 1974. This article was repealed and reenacted by initiative in 1996, resulting in the addition, relocation, and elimination of sections as well as subject matter. The vote count on the measure at the general election held November 5, 1996, was as follows:

FOR:	928,148
AGAINST:	482,551

(2) For amendments to this article prior to 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

Cross references: For public official disclosure law, see part 2 of article 6 of title 24.

Law reviews: For article, "Fair Campaign Practices Act: Killing Trees for Good Government", see 26 Colo. Law. 101 (September 1997). For article, "Public Moneys and Ballot Issues Under the Fair Campaign Practices Act", see 34 Colo. Law. 81 (September 2005).

1-45-101. Short title.
1-45-102. Legislative declaration.
1-45-103. Definitions.
1-45-103.7. Contribution limits - contributions from limited liability companies - definitions.
1-45-104. Contribution limits. (Repealed)
1-45-105. Voluntary campaign spending limits. (Repealed)
1-45-105.3. Contribution limits. (Repealed)
1-45-105.5. Contributions to members of general assembly and governor during consideration of legislation.
1-45-106. Unexpended campaign contributions.
1-45-107. Independent expenditures. (Repealed)
1-45-108. Disclosure.
1-45-108.5. Political organizations - disclosure.
1-45-109. Filing - where to file - timeliness - repeal.
1-45-110. Candidate affidavit - disclosure statement.
1-45-111. Duties of the secretary of state - enforcement. (Repealed)
1-45-111.5. Duties of the secretary of state – enforcement - sanctions.
1-45-112. Duties of municipal clerk.
1-45-112.5. Immunity from liability for fine or penalty.
1-45-113. Sanctions. (Repealed)
1-45-114. Expenditures - political advertising - rates and charges.
1-45-115. Encouraging withdrawal from campaign prohibited.
1-45-116. Home rule counties and municipalities.
1-45-117. State and political subdivisions - limitations on contributions.
1-45-118. Severability.

1-45-101. Short title. This article shall be known and may be cited as the "Fair Campaign Practices Act".

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-101 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-102. Legislative declaration. The people of the state of Colorado hereby find and declare that large campaign contributions to political candidates allow wealthy contributors and special interest groups to exercise a disproportionate level of influence over the political process; that large campaign contributions create the potential for corruption and the appearance of corruption; that the rising costs of campaigning for political office prevent qualified citizens from running for political office; and that the interests of the public are best served by limiting campaign contributions, encouraging voluntary campaign spending limits, full and timely disclosure of campaign contributions, and strong enforcement of campaign laws.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-102 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Appropriate officer" shall have the same meaning as set forth in section 2 (1) of article XXVIII of the state constitution.

(1.3) "Ballot issue" shall have the same meaning as set forth in section 1-1-104 (2.3); except that, for purposes of section 1-45-117, "ballot issue" shall mean both a ballot issue as defined in this subsection (1.3) and a ballot question.

(1.5) "Ballot question" shall have the same meaning as set forth in section 1-1-104 (2.7).

(2) "Candidate" shall have the same meaning as set forth in section 2 (2) of article XXVIII of the state constitution.

(3) "Candidate committee" shall have the same meaning as set forth in section 2 (3) of article XXVIII of the state constitution.

(4) "Candidate committee account" shall mean the account established by a candidate committee with a financial institution pursuant to section 3 (9) of article XXVIII of the state constitution.

(5) "Conduit" shall have the same meaning as set forth in section 2 (4) of article XXVIII of the state constitution.

(6) (a) "Contribution" shall have the same meaning as set forth in section 2 (5) of article XXVIII of the state constitution.

(b) "Contribution" includes, with regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited to, items of perishable or nonpermanent value, goods, supplies, services, or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee.

(c) "Contribution" also includes:

(I) Any payment, loan, pledge, gift, advance of money, or guarantee of a loan made to any political organization;

(II) Any payment made to a third party on behalf of and with the knowledge of the political organization; or

(III) The fair market value of any gift or loan of property made to any political organization.

(7) "Corporation" means a domestic corporation incorporated under and subject to the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., a domestic nonprofit corporation incorporated under and subject to the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., or any corporation incorporated under and subject to the laws of another state or foreign country. For purposes of this article, "domestic corporation" shall mean a for-profit or nonprofit corporation incorporated under and subject to the laws of this state, and "foreign corporation" shall mean a corporation incorporated under and subject to the laws of another state or foreign country.

(8) "Election cycle" shall have the same meaning as set forth in section 2 (6) of article XXVIII of the state constitution.

(9) "Electioneering communication" shall have the same meaning as set forth in section 2 (7) of article XXVIII of the state constitution.

(10) "Expenditure" shall have the same meaning as set forth in section 2 (8) of article XXVIII of the state constitution.

(11) "Independent expenditure" shall have the same meaning as set forth in section 2 (9) of article XXVIII of the state constitution.

(12) "Issue committee" shall have the same meaning as set forth in section 2 (10) of article XXVIII of the state constitution.

(13) "Person" shall have the same meaning as set forth in section 2 (11) of article XXVIII of the state constitution.

(14) "Political committee" shall have the same meaning as set forth in section 2 (12) of article XXVIII of the state constitution.

(14.5) "Political organization" means a political organization defined in section 527 (e) (1) of the federal "Internal Revenue Code of 1986", as amended, that is engaged in influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and that is exempt, or intends to seek any exemption, from taxation pursuant to section 527 of the internal revenue code. "Political organization" shall not be construed to have the same meaning as "political organization" as defined in section 1-1-104 (24) for purposes of the "Uniform Election Code of 1992", articles 1 to 13 of this title.

(15) "Political party" shall have the same meaning as set forth in section 2 (13) of article XXVIII of the state constitution.

(16) "Small donor committee" shall have the same meaning as set forth in section 2 (14) of article XXVIII of the state constitution.

(16.5) "Spending" means funds expended influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and includes, without limitation, any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything else of value by any political organization, a contract, promise, or agreement to expend funds made or entered into by any political organization, or any electioneering communication by any political organization.

(17) "Subsidiary" means a business entity having more than half of its stock owned by another entity or person, or a business entity of which a majority interest is controlled by another person or entity.

(18) "Unexpended campaign contributions"shall have the same meaning as set forth in section 2 (15) of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1) added and (8) amended, p. 223, § 1, effective April 10; (1.5) amended and (14) added, p. 954, § 1, effective May 27. **L. 99:** (5) amended, p. 1390, § 12, effective June 4. **L. 2000:** (1.3), (4)(a)(V), and (4.5) added and (4)(a)(III), (10)(b), and (12) amended,

pp. 122, 123, §§ 2, 3, effective March 15; (8) amended, p. 1724, § 1, effective June 1. **L. 2002:** (8)(a)(I) amended and (8)(a)(III) added, p. 198, § 1, effective April 3; (1.5) and (2) amended, p. 1576, § 1, effective July 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002. **L. 2003:** Entire section RC&RE, p. 2156, § 1, effective June 3. **L. 2007:** (7) amended, p. 1766, § 1, effective June 1; (6)(c), (14.5), and (16.5) added, pp. 1225, 1224, §§ 2, 1, effective July 1. **L. 2009:** (1.3) and (1.5) added, (HB 09-1153), ch. 174, p. 774, § 1, effective September 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in § 1-45-103 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

(3) Subsections (1.3) and (1.5) were added in a 2009 act that was passed without a safety clause. The act establishes an effective date of September 1, 2009, for these provisions. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

ANNOTATION

Annotator's note. Since § 1-45-103 is similar to § 1-45-103 as it existed prior to its repeal in 2002, relevant cases construing that provision and its predecessors have been included in the annotations to this section.

It is apparent from the plain language of subsection (2) that a candidate committee may be comprised of one person only and that the candidate acting alone may be a candidate committee. Thus, a candidate committee who acts alone for the purpose of receiving campaign contributions or making campaign expenditures is a candidate committee subject to the disclosure requirements of this article. Therefore, the expenditures made by a candidate from the candidate's personal funds before certification of his or her committee were either contributions to the ultimately certified candidate committee or expenditures by a separate campaign committee composed of the candidate alone. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

Court's interpretation of the term "candidate committee" to include expenditures of personal money by the candidate on his or her campaign does not limit the amount of money a candidate could personally spend on his or her campaign in violation of the first amendment. The act does not specifically address whether a candidate's personal expenditures are contributions. However, in light of Buckley v. Valeo, 424 U.S. 1 (1976), the court holds that the definition of "contribution" contained in subsection (4) does not include a candidate's expenditures of personal funds and contributions made by the candidate to his or her own candidate committee. Accordingly, the court rejected candidate's first amendment argument. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

Phrases unconstitutional. The phrase in subsection (7), "which unambiguously refer to any specific public office or candidate for such office, but does not include expenditures made by persons, other than political parties and political committees, in the regular course and scope of their business and political messages sent solely to their members[,]" is unconstitutional under the first amendment. Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

The phrase in subsection (11), "or which unambiguously refers to such candidate[,]" is unconstitutional under the first amendment. Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

The court concluded that the unconstitutional phrases were severable and declared subsections (7) and (11) invalid only insofar as they reach beyond that which may constitutionally be regulated. Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

Term "independent expenditure" in subsection (7) permits the regulation of only those expenditures that are used for communications that expressly advocate the election or defeat of a clearly identified candidate. This standard includes the words and phrases listed in Buckley v. Valeo, 424 U.S. 1 (1976), and other substantially similar or synonymous words. This approach remains focused on actual words, as contrasted with images, symbols, or other contextual factors, provides adequate notice in light of due process concerns, and strikes an appropriate balance between trying to preserve the goals of campaign finance reform and protecting political speech. League of Women Voters v. Davidson, 23 P.3d 1266 (Colo. App. 2001).

None of the advertisements of so-called educational

committee at issue amounted to "express advocacy" as that term is applied in Buckley and progeny and, therefore, so-called educational committee was not subject to the requirements of the Fair Campaign Practices Act. League of Women Voters v. Davidson, 23 P.3d 1266 (Colo. App. 2001).

The term "issue" in subsection (8) includes an initiative that has gone through the title-setting process, but has not been formally certified for the election ballot. To construe the term to include only measures actually placed on the ballot would frustrate the purposes of the Campaign Reform Act by allowing groups to raise and spend money, without limit and without disclosure to the public, to convince electors to sign or not to sign a particular petition, thus significantly influencing its success or failure. Colo. for Family Values v. Meyer, 936 P.2d 631 (Colo. App. 1997).

Telephone opinion poll was not "electioneering" and thus did not constitute an "electioneering communication" within the meaning of subsection (9) of this section and § 6 of article XXVIII of the state constitution. In giving effect to the intent of the electorate, court gives term "communication" its plain and ordinary meaning. Court relies upon dictionary definitions of "communication" that contemplate imparting a message to, rather than having mere contact with, another party. In reviewing scripts used by telephone opinion pollster, "communication" occurred because "facts, information, thoughts, or opinions" were "imparted, transmitted, interchanged, expressed, or exchanged" by pollster to those it called. Telephone opinion pollster, therefore, communicated information to members of the electorate during its opinion poll. Harwood v. Senate Majority Fund, LLC, 141 P.3d 962 (Colo. App. 2006).

Telephone opinion poll, however, did not satisfy meaning of electioneering. Colorado electorate intended article XXVIII to regulate communication that expresses "electorate advocacy" and tends to "influence the outcome of Colorado elections". This conclusion is reinforced by plain and ordinary meaning of term "electioneering". Court relies upon dictionary definitions suggesting that "electioneering" is defined by such activities as taking an active part in an election campaign, campaigning for one's own election, or trying to sway public opinion especially by the use of propaganda and that "campaigning" means influencing the public to support a particular candidate, ticket, or measure. Here, telephone opinion poll did not seek to influence voters or sway public opinion but instead merely asked neutral questions to collect data and measure public opinion. Accordingly, telephone opinion poll did not constitute an "electioneering communication" under subsection (9) of this section and article XXVIII of the state constitution. Harwood v. Senate Majority Fund, LLC, 141 P.3d 962 (Colo. App. 2006).

The term "issue committee" covers only those issue committees that were formed for the purpose of supporting or opposing a ballot initiative. An association that was formed and operated for purposes other than "accepting contributions or making expenditures to support or oppose any ballot issue or ballot question" does not become an "issue committee" as defined in this section if, at a future point in time, it engages in those activities with regard to a specific ballot issue or ballot question. Common Sense Alliance v. Davidson, 995 P.2d 748 (Colo. 2000).

A "political committee" is formed when two or more persons associate themselves with the original purpose of making independent expenditures. Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

The term "political committee" in subsection (10) includes a for-profit corporation which makes contributions, contributions in kind, or expenditures to or on behalf of state political campaigns out of its ordinary corporate treasury. Therefore, such corporation is required to file a statement of organization, to report its contributions, contributions in kind, and expenditures, and otherwise to comply with any filing and reporting requirements of the "Campaign Reform Act of 1974". Colo. Common Cause v. Meyer, 758 P.2d 153 (Colo. 1988) (decided prior to 1988 amendment to subsection (10)).

While the stated purposes for the formation of an organization may be one criterion upon which to determine whether it is a "political committee", such purposes are not conclusive. To so hold would permit regulable conduct to escape regulation merely because the stated purposes were misleading, ambiguous, fraudulent, or all three. In addition, such a holding would exalt form over substance and would almost entirely eviscerate the Fair Campaign Practices Act and make a mockery of legitimate attempts at campaign finance reform. League of Women Voters v. Davidson, 23 P.3d 1266 (Colo. App. 2001).

The use of the disjunctive term "or" in subsection (11) renders the definition of "political message" applicable to messages that "unambiguously refer to a candidate", even if such messages do not also "advocate the election or defeat" of that candidate. Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

To qualify as a political message under subsection (11), a message need only: (1) Be delivered by telephone, any print or electronic media, or other written material, and (2) either (a) advocate the election or defeat of any candidate or (b) unambiguously refer to such candidate. Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

Voter guides that unambiguously refer to specific candidates but do not expressly advocate the election or defeat of any candidate constitute "political messages" as defined in subsection (11). Therefore, the funds expended to produce and disseminate the voter guides are subject to regulation as "independent expenditures" as the term is defined in subsection (7). Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

Administrative law judge (ALJ) did not err in concluding that definition of "expenditures" did not apply to metropolitan district boards. Respondents had argued that the metropolitan districts qualified as "persons"

that could expend payments on behalf of issue committee supporting ballot issue. Even if the definition of "person" could be stretched to cover political subdivisions of the state such as metropolitan districts, respondents failed to explain how the payments at issue were "made with the prior knowledge and consent of an agent" of the issue committee that was not yet formed in order to bring such payments within the definition of "expenditure". Skruch v. Highlands Ranch Metro. Dists., 107 P.3d 1140 (Colo. App. 2004).

ALJ did not err by interpreting "expenditure" to occur when a payment is made and when there is a contractual agreement and the amount is determined. The use of the disjunctive "or" in the definition of "expenditure" indicates that an expenditure is made if either criterion is met after the ballot title is submitted. Skruch v. Highlands Ranch Metro. Dists., 107 P.3d 1140 (Colo. App. 2004).

Order by ALJ assessing penalty against nonprofit association engaging in political advocacy based upon determination by ALJ that association was a political committee is vacated and case remanded. Under controlling precedent, regulation under campaign finance laws should be tied to groups controlled by candidates or which have a "major purpose" of electing candidates. Here, record does not permit a determination of whether major purpose test satisfied as to association. On remand, ALJ instructed to determine whether association's "major purpose" in 2004 was the nomination or election of candidates. Alliance for Colorado's Families v. Gilbert, 172 P.3d 964 (Colo. App. 2007).

Court rejects interpretation of § 2(5)(a)(IV) of article XXVIII of state constitution and subsection (6)(a) of this section under which a city employee would be barred from providing to a candidate for elected office anything of value that had the effect of promoting the candidate's election. ALJ correctly construed the relevant phrase "for the purpose of" § 2(5)(a)(IV) of article XXVIII of state constitution in accordance with its plain meaning to indicate an anticipated result that is intended or desired. Court rejects construction under which phrase would mean "with the effect of". Such a construction would improperly conflate the distinct concepts of purpose and effect. Such an interpretation would also lead to unintended consequences far beyond the scope of issues presented in the case. Colo. Ethics Watch v. City & County of Broomfield, __ P.3d __ (Colo. App. 2009).

Since effect of city employees' actions, rather than their intent, is to be examined, court further rejects argument that intent is to be gauged by objective rather than subjective criteria. Inquiry into purpose requires examination of the intent of the person alleged to have made a campaign contribution. ALJ considered evidence concerning the city employees' intent and determined, on the basis of substantial evidence in the record, that organization bringing campaign finance complaint had not met its burden of proving that the employees provided services for the purpose of promoting a campaign even though employees knew information would be helpful to the candidates to whom the information was provided. Organization's interpretation improperly equates knowledge of the possible effects of one's actions with an intent to achieve a particular result. Accordingly, ALJ correctly determined that city's contribution of staff time was not "for the purpose of" promoting a political campaign. Colo. Ethics Watch v. City & County of Broomfield, __ P.3d __ (Colo. App. 2009).

Payment by unions of staff salaries for time spent organizing walks to distribute political literature and payments of other costs associated with related political activities did not constitute prohibited expenditures in violation of § 3(4)(a) of article XXVIII of the state constitution. Whether payments made by the union are prohibited as "expenditures" depends upon whether they are exempt from regulation by the membership communication exception in § 2(8)(b)(III) of article XXVIII of the state constitution as payments for "any communication solely to members and their families". The membership communication exception must be construed broadly to reflect the plain language of this constitutional provision and to satisfy the demands of the first amendment. The membership communication exception as construed applies to most of the union's activities in this case. To the extent that the challenged union activities are not embraced by the membership communication exception, the administrative law judge correctly held that person filing campaign finance complaint failed to prove facts demonstrating that an expenditure was made. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

The membership communication exception found in § 2(8)(b)(III) of article XXVIII of the state constitution must be extended to and embraced within the definition of "contribution". To hold otherwise nullifies the exception. The same conduct may not be protected by the membership communication exception to expenditures, that is, treated as an exempt expenditure, yet, at the same time, be prohibited as a nonexempt contribution. Such a result would be contrary to the intent of the electorate and constitute an unreasonable and disharmonious application of this article. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

Unions' challenged conduct does not meet the pertinent definitions of a contribution under § 2(5)(a)(II) and (5)(a)(IV) of article XXVIII of the state constitution and subsection (6) of this section. Facts may reasonably be viewed in two contradictory ways: One advancing the union's argument that the payment of union staff salaries for organizing political events were paid for the benefit of the unions and their members and thus exempt from regulation; the other that the payments constituted payments made to a third party for the benefit of the candidate or anything of value given indirectly to the candidate and, thus, were prohibited contributions. When the first amendment is at stake, the tie goes to the speaker rather than to censorship and regulation. On the facts of this case, the unions did not make any prohibited contributions in violation of § 3(4)(a) of article XXVIII of the state constitution. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

Because coordination, as a concept or as a matter of

law, is not required to protect the rights of the maker of a contribution under the circumstances of this case, court declines to impose a requirement of coordination on the definition of contribution to satisfy first amendment requirements. While a finding of coordination may be necessary to protect the recipient of an indirect contribution from unwittingly violating this article, that issue is not raised by this case. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

Television advertisements urging voters to oppose incumbent member met the definition of electioneering communications under § 2(7)(a) of article XXVIII of state constitution. Unambiguous reference to "any communication" in definition does not distinguish between express advocacy and advocacy that is not express. Further, subsection (7)(a) is triggered when a communication is made within 30 days before a primary election or 60 days before a general election, without regard to the communication's purpose. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

Regular business exception in § 2(7)(b)(III) of article XXVIII is limited to persons whose business is to broadcast, print, publicly display, directly mail, or hand deliver candidate-specific communications within the named candidate's district as a service rather than to influence elections. Wording of exception shows that the phrase "in the regular course and scope of their business" does not apply to political committees. Accordingly, political committee does not come within the regular business exception. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

1-45-103.7. Contribution limits - contributions from limited liability companies - definitions. (1) Nothing in article XXVIII of the state constitution or this article shall be construed to prohibit a corporation or labor organization from making a contribution to a political committee.

(2) A political committee may receive and accept moneys contributed to such committee by a corporation or labor organization pursuant to subsection (1) of this section for disbursement to a candidate committee or political party without depositing such moneys in an account separate from the account required to be established for the receipt and acceptance of all contributions by all committees or political parties in accordance with section 3 (9) of article XXVIII of the state constitution.

(3) A candidate committee may accept:

(a) The aggregate contribution limit specified in section 3 (1) of article XXVIII of the state constitution for a primary election at any time after the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot; or

(b) The aggregate contribution limit specified in section 3 (1) of article XXVIII of the state constitution for a general election at any time prior to the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot.

(4) A candidate committee may expend contributions received and accepted for a general election prior to the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot. A candidate committee established in the name of a candidate who wins the primary election may expend contributions received and accepted for a primary election in the general election.

(5) (a) No limited liability company shall make any contribution to a candidate committee or political party if one or more of the individual members of the limited liability company is:

(I) A corporation;

(II) A labor organization;

(III) A natural person who is not a citizen of the United States;

(IV) A foreign government;

(V) A professional lobbyist, volunteer lobbyist, or the principal of a professional or volunteer lobbyist, and the contribution is prohibited under section 1-45-105.5 (1); or

(VI) Otherwise prohibited by law from making the contribution.

(b) No limited liability company shall make any contribution to a political committee if one or more of the individual members of the limited liability company is:

(I) An entity formed under and subject to the laws of a foreign country;

(II) A natural person who is not a citizen of the United States; or

(III) A foreign government.

(c) Notwithstanding any other provision of this subsection (5), no limited liability company shall make any contribution to a candidate committee or political party if either the limited liability company has elected to be treated as a corporation by the internal revenue service pursuant to 26 CFR 301.7701-3 or any successor provision or the shares of the limited liability company are publicly traded. A contribution by a limited liability company with a single natural person member that does not elect to be treated as a corporation by the internal revenue service pursuant to 26 CFR 301.7701-3 shall be attributed only to the single natural person member.

(d) (I) Any limited liability company that is authorized to make a contribution shall, in writing, affirm to the candidate committee, political committee, or political party to which it has made a contribution, as applicable, that it is authorized to make a contribution, which affirmation shall also state the names and addresses of all of the individual members of the limited liability company. No candidate committee, political committee, or political party shall accept a contribution from a limited liability company unless the written affirmation satisfying the requirements of this paragraph (d) is provided before the contribution is deposited by the candidate committee, political committee, or political party. The candidate committee, political committee, or political party receiving the contribution shall retain the written affirmation for not less than one year following the date of the end of the election cycle during which the contribution is received.

(II) Any contribution by a limited liability company, and the aggregate amount of contributions from multiple limited liability companies attributed to a single member of any such company under this subparagraph (II), shall be subject to the limits governing such contributions under section 3 of article XXVIII of the state constitution. A limited liability company that makes any contribution to a candidate committee, political committee, or political party shall, at the time it makes the contribution, provide information to the recipient committee or political party as to the amount of the total contribution attributed to each member of the limited liability company. The attribution shall reflect the capital each member of the limited liability company has invested in the company relative to the total amount of capital invested in the company as of the date the company makes the campaign contribution, and for a single member limited liability company, the contribution shall be attributed to that single member. The limited liability company shall then deduct the amount of the contribution attributed to each of its members from the aggregate contribution limit applicable to multiple limited liability companies under this subparagraph (II) for purposes of ensuring that the aggregate amount of contributions from multiple limited liability companies attributed to a single member does not exceed the contribution limits in section 3 of article XXVIII of the state constitution. Nothing in this subparagraph (II) shall be construed to restrict a natural person from making a contribution in his or her own name to any committee or political party to the extent authorized by law.

(6) No foreign corporation shall be permitted to make any contribution under article XXVIII of the state constitution or this article that a domestic corporation is prohibited from making under article XXVIII of the state constitution or this article.

(7) (a) Any person who believes that a violation of subsection (5) or (6) of this section has occurred may file a written complaint with the secretary of state no later than one hundred eighty days after the date of the alleged violation. The complaint shall be subject to all applicable procedures specified in section 9 (2) of article XXVIII of the state constitution.

(b) Any person who has violated any of the provisions of paragraph (a), (b), or (c) of subsection (5) or subsection (6) of this section shall be subject to a civil penalty of at least double and up to five times the amount contributed or received in violation of the applicable provision.

(c) Any person who has violated any of the provisions of subparagraph (I) of paragraph (d) of subsection (5) of this section shall be subject to a civil penalty of fifty dollars per day for each day that

the written affirmation regarding the membership of a limited liability company has not been filed with or retained by the candidate committee, political committee, or political party to which a contribution has been made.

(8) As used in this section, "limited liability company" includes any form of domestic entity as defined in section 7-90-102 (13), C.R.S., or foreign entity as defined in section 7-90-102 (23), C.R.S.; except that, as used in this section, "limited liability company" shall not include a domestic corporation, a domestic cooperative, a domestic nonprofit association, a domestic nonprofit corporation, a foreign corporation, a foreign cooperative, a foreign nonprofit association, or a foreign nonprofit corporation, as those terms are defined in section 7-90-102, C.R.S.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3. **L. 2004:** Entire section amended, p. 863, § 1, effective May 21. **L. 2007:** (5), (6), (7), and (8) added, p. 1766, § 2, effective June 1. **L. 2008:** (5)(d)(II) amended, p. 440, § 1, effective April 14.

1-45-104. Contribution limits. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (13)(a)(II) amended, p. 632, § 2, effective May 6; (13)(c) amended, p. 950, § 1, effective May 27; (14) added, p. 955, § 2, effective May 27. **L. 99:** IP(2) amended, p. 1391, § 13, effective June 4. **L. 2000:** Entire section repealed, p. 129, § 12, effective March 15.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-111 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-105. Voluntary campaign spending limits. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (3) amended, p. 951, § 2, effective May 27. **L. 2000:** Entire section repealed, p. 129, § 12, effective March 15.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-112 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-105.3. Contribution limits. (Repealed)

Source: L. 2000: Entire section added with relocations, p. 118, § 1, effective March 15. **L. 2002:** (4)(a.5) added, p. 1929, § 1, effective June 7. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) Subsections (7), (8), (9), (10), and (11) were formerly numbered as 1-45-104 (9), (10), (11), (12), and (14) respectively.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

Court's interpretation of the term "candidate committee" to include expenditures of personal money by the candidate on his or her campaign does not limit the amount of money a candidate could personally spend on his or her campaign in violation of the first amendment. The act does not specifically address whether a candidate's personal expenditures are contributions. However, in light of Buckley v. Valeo, 424 U.S. 1 (1976), the court holds that the definition of "contribution" does not include a candidate's expenditures of personal funds and contributions made by the candidate to his or her own candidate committee. Accordingly, the court rejected candidate's first amendment argument. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

1-45-105.5. Contributions to members of general assembly and governor during consideration of legislation. (1) (a) No professional lobbyist, volunteer lobbyist, or principal of a professional lobbyist or volunteer lobbyist shall make or promise to make a contribution to, or solicit or promise to solicit a contribution for:

(I) A member of the general assembly or candidate for the general assembly, when the general assembly is in regular session;

(II) (A) The governor or a candidate for governor when the general assembly is in regular session or when any measure adopted by the general assembly in a regular session is pending before the governor for approval or disapproval; or

(B) The lieutenant governor, the secretary of state, the state treasurer, the attorney general, or a candidate for any of such offices when the general assembly is in regular session.

(b) As used in this subsection (1):

(I) "Principal" means any person that employs, retains, engages, or uses, with or without compensation, a professional or volunteer lobbyist. One does not become a principal, nor may one be considered a principal, merely by belonging to an organization or owning stock in a corporation that employs a lobbyist.

(II) The terms "professional lobbyist" and "volunteer lobbyist" shall have the meanings ascribed to them in section 24-6-301, C.R.S.

(c) (I) Nothing contained in this subsection (1) shall be construed to prohibit lobbyists and their principals from raising money when the general assembly is in regular session or when regular session legislation is pending before the governor, except as specifically prohibited in paragraph (a) of this subsection (1).

(II) Nothing contained in this subsection (1) shall be construed to prohibit a lobbyist or principal of a lobbyist from participating in a fund-raising event of a political party when the general assembly is in regular session or when regular session legislation is pending before the governor, so long as the purpose of the event is not to raise money for specifically designated members of the general assembly, specifically designated candidates for the general assembly, the governor, or specifically designated candidates for governor.

(III) A payment by a lobbyist or a principal of a lobbyist to a political party to participate in such a fund-raising event shall be reported as a contribution to the political party pursuant to section 1-45-108; except that, if the lobbyist or principal of a lobbyist receives a meal in return for a portion of the payment, only the amount of the payment in excess of the value of the meal shall be considered a contribution to the political party. The political party shall determine the value of the meal received for such payment, which shall approximate the actual value of the meal.

(IV) A gift of a meal described in subparagraph (III) of this paragraph (c) by a lobbyist or a principal of a lobbyist to an incumbent in or a candidate elected to any office described in paragraph (a) of this subsection (1) shall be reported as follows:

(A) The lobbyist shall report the value of the meal in the lobbyist disclosure statement filed pursuant to section 24-6-302, C.R.S.

(B) The incumbent or candidate shall report the value of the meal in the public official disclosure statement filed pursuant to section 24-6-203, C.R.S.

Source: L. 2000: Entire section added with relocations, p. 118, § 1, effective March 15.

Editor's note: This section was formerly numbered as 1-45-104 (13).

1-45-106. Unexpended campaign contributions. (1) (a) (I) Subject to the requirements of section 3 (3) (e) of article XXVIII of the state constitution, unexpended campaign contributions to a candidate committee may be:

(A) Contributed to a political party;

(B) Contributed to a candidate committee established by the same candidate for a different public office, subject to the limitations set forth in section 1-45-105.3 (4) (b) and (c), if the candidate committee making such a contribution is affirmatively closed by the candidate no later than ten days after the date such a contribution is made;

(C) Donated to a charitable organization recognized by the internal revenue service;

(D) Returned to the contributors, or retained by the committee for use by the candidate in a subsequent campaign.

(II) In no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election of the candidate.

(III) A candidate committee for a former officeholder or a person not elected to office shall expend all of the unexpended campaign contributions retained by such candidate committee, for the purposes specified in this subsection (1), no later than nine years from the date such officeholder's term expired or from the date of the election at which such person was a candidate for office, whichever is later.

(b) In addition to any use described in paragraph (a) of this subsection (1), a person elected to a public office may use unexpended campaign contributions held by the person's candidate committee for any of the following purposes:

(I) Voter registration;

(II) Political issue education, which includes obtaining information from or providing information to the electorate;

(III) Postsecondary educational scholarships;

(IV) To defray reasonable and necessary expenses related to mailings and similar communications to constituents;

(V) Any expenses that are directly related to such person's official duties as an elected official, including, but not limited to, expenses for the purchase or lease of office equipment and supplies, room rental for public meetings, necessary travel and lodging expenses for legislative education such as seminars, conferences, and meetings on legislative issues, and telephone and pager expenses.

(2) (Deleted by amendment, L. 2000, p. 123, § 4, effective March 15, 2000.)

(3) Unexpended contributions to an issue committee may be donated to any charitable organization recognized by the Internal Revenue Service or returned to the contributor.

(4) This section shall apply to unexpended campaign contributions transferred from a political committee formed prior to January 15, 1997, to a candidate committee registering after January 15, 1997, pursuant to section 1-45-108.

(5) Notwithstanding any other provision of law, any unexpended campaign contributions retained by a candidate committee for use in a subsequent election cycle shall be counted and reported as contributions from a political party in any subsequent election in accordance with the requirements of section 3 (3) (e) of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1) amended, p. 955, § 3, effective May 27. **L. 2000:** (1)(a) and (2) amended, p. 123, § 4, effective March 15. **L. 2003:** IP(1)(a)(I) amended and (5) added, p. 2157, § 2, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-109 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

ANNOTATION

Subsection (2) is constitutional. The state's interest in preventing avoidance of valid contribution limits by use of funds carried over from prior campaigns is both compelling and served by the restriction set forth in subsection (2). This provision is narrowly tailored to accomplish the state's legitimate interest. Citizens for Responsible Gov't State Political Action Comm. v. Buckley, 60 F. Supp.2d 1066 (D. Colo. 1999).

Candidate's disclosure report not required to report unexpended campaign funds at the end of an election cycle as contributions from a political party. To accomplish the purpose of subsection (5), it is necessary only that a candidate committee report the amount of unexpended campaign funds on hand at the end of an election cycle. To report money already on hand as a fictional, new contribution from an unidentified political party would artificially inflate the amount of funds reportedly available to a candidate committee and would be confusing to those who read the report. Williams v. Teck, 113 P.3d 1255 (Colo. App. 2005).

Candidate committee permitted to use unexpended contributions to pay elected state senator's legal fees. Although legal fees are not specifically mentioned as permissible expenses under subsection (1)(b)(V), the words "including, but not limited to," indicate that the statute merely illustrates the kinds of expenses that may be regarded as directly related to an elected official's duties. Here, the legal fees may properly be characterized as directly related to official duties of elected state senator. The senator's duties include filing periodic reports with the secretary of state, and the fees were reasonably necessary to demonstrate that senator and his or her committee had properly performed this duty. Williams v. Teck, 113 P.3d 1255 (Colo. App. 2005).

1-45-107. Independent expenditures. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-110.5 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-108. Disclosure. (1) (a) (I) All candidate committees, political committees, issue committees, small donor committees, and political parties shall report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made, and obligations entered into by the committee or party.

(II) In the case of contributions made to a candidate committee, political committee, issue committee, and political party, the disclosure required by this section shall also include the occupation and employer of each person who has made a contribution of one hundred dollars or more to such committee or party.

(III) Any person who expends one thousand dollars or more per calendar year on electioneering communications shall report to the secretary of state, in accordance with the disclosure required by this

section, the amount expended on the communications and the name and address of any person that contributes more than two hundred fifty dollars per year to the person expending one thousand dollars or more on the communications. If the person making such contribution of two hundred fifty dollars or more is a natural person, the disclosure required by this section shall also include the person's occupation and employer.

(IV) In the case of a limited liability company, the disclosure required by this section shall include, in addition to any other information required to be disclosed, each contribution from the limited liability company regardless of the dollar amount of the contribution.

(b) (Deleted by amendment, L. 2003, p. 2158, § 3, effective June 3, 2003.)

(c) A candidate committee in a special district election shall not be required to file reports under this section until the committee has received contributions or made expenditures exceeding twenty dollars in the aggregate.

(d) For purposes of this section, a political party shall be treated as a separate entity at the state, county, district, and local levels.

(e) A candidate's candidate committee may reimburse the candidate for expenditures the candidate has made on behalf of the candidate committee. Any such expenditures may be reimbursed at any time. Notwithstanding any other provision of law, any expenditure reimbursed to the candidate by the candidate's candidate committee within the election cycle during which the expenditure is made shall be treated only as an expenditure and not as a contribution to and an expenditure by the candidate's candidate committee. Notwithstanding the date on which any such expenditure is reimbursed, the expenditure shall be reported at the time it is made in accordance with the requirements of this section.

(2) (a) (I) Except as provided in subsections (2.5), (2.7), and (6) of this section, such reports that are required to be filed with the secretary of state shall be filed:

(A) Quarterly in off-election years no later than the fifteenth calendar day following the end of the applicable quarter;

(B) On the first Monday in July and on each Monday every two weeks thereafter before the primary election;

(C) On the first day of each month beginning the sixth full month before the major election; except that no monthly report shall be required on the first day of the month in which the major election is held;

(D) On the first Monday in September and on each Monday every two weeks thereafter before the major election;

(E) Thirty days after the major election in election years; and

(F) Fourteen days before and thirty days after a special legislative election held in an off-election year.

(II) Such reports that are required to be filed with the municipal clerk and such reports required to be filed pursuant to section 1-45-109 (1) (a) (II) and (1) (c) shall be filed on the twenty-first day and on the Friday before and thirty days after the primary election, where applicable, and the major election in election years and annually in off-election years on the first day of the month in which the anniversary of the major election occurs.

(III) For purposes of this section, "election year" means every even numbered year for political parties and political committees and each year in which the particular candidate committee's candidate, or issue committee's issue, appears on the ballot; and "major election" means the election that decides an issue committee's issue and the election that elects a person to the public office sought by the candidate committee's candidate.

(IV) If the reporting day falls on a weekend or legal holiday, the report shall be filed by the close of the next business day.

(b) The reports required by this section shall also include the balance of funds at the beginning of the reporting period, the total of contributions received, the total of expenditures made during the reporting period, and the name and address of the financial institution used by the committee or party.

(c) All reports filed with the secretary of state pursuant to this subsection (2) shall be for the reporting periods established pursuant to rules promulgated by the secretary of state in accordance with article 4 of title 24, C.R.S.

(d) A candidate committee for a former officeholder or a person not elected to office that has no change in the balance of funds maintained by such committee, receives no contributions, makes no expenditures, and enters into no obligations during a reporting period shall not be required to file a report under this section for such period.

(e) The reporting period for all reports required to be filed with the municipal clerk and such reports required to be filed pursuant to section 1-45-109 (1) (a) (II) and (1) (c) shall close five calendar days prior to the effective date of filing.

(2.3) Repealed.

(2.5) In addition to any report required to be filed with the secretary of state or municipal clerk under this section, all candidate committees, political committees, issue committees, and political parties shall file a report with the secretary of state of any contribution of one thousand dollars or more at any time within thirty days preceding the date of the primary election or general election. This report shall be filed with the secretary of state no later than twenty-four hours after receipt of said contribution.

(2.7) Any candidate or candidate committee supporting any candidate, including an incumbent, in a recall election, shall file reports of contributions and expenditures with the appropriate officer fourteen and seven days before the recall election and thirty days after the recall election.

(3) Except as otherwise provided in subsection (3.5) of this section, all candidate committees, political committees, small donor committees, and political parties shall register with the appropriate officer before accepting or making any contributions. Registration shall include a statement listing:

(a) The organization's full name, spelling out any acronyms used therein;

(b) A natural person authorized to act as a registered agent;

(c) A street address and telephone number for the principle place of operations;

(d) All affiliated candidates and committees;

(e) The purpose or nature of interest of the committee or party;

(f) Any intent of the candidate committee, political committee, small donor committee, or political party to electronically file reports required by this article that may be filed electronically on a web site operated and maintained by the secretary of state pursuant to section 1-45-109.

(3.3) Subject to the provisions of subsection (7) of this section, each issue committee shall register with the appropriate officer within ten calendar days of accepting or making contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question. If required to register under the requirements of this subsection (3.3), the registration of the issue committee shall include a statement containing the items listed in paragraphs (a) to (f) of subsection (3) of this section in connection with other committees and a political party.

(3.5) Any political committee that has registered with the federal election commission may file with the appropriate officer a copy of the registration filed with the federal election commission and, insofar as such registration contains substantially the same information required by subsection (3) of this section, the political committee shall be considered to have registered with the appropriate officer for purposes of subsection (3) of this section and, therefore, shall be authorized to accept or make contributions as permitted by law. Any political committee that satisfies the requirements of this subsection (3.5) shall be subject to all other legal requirements pertaining to contributions and disclosure that are applicable to political committees.

(4) For purposes of subsection (3) of this section, a political committee in existence on January 1, 1997, shall register with the secretary of state on or before April 1, 1997, pursuant to the requirements of this act.

(5) The registration and reporting requirements of this section shall not apply to that part of the organizational structure of a political party which is responsible for only the day-to-day operations of

such political party at the national level if copies of the reports required to filed with the Federal Election Commission pursuant to the "Federal Election Commission Act of 1971", as amended, are filed with the secretary of state and include the information required by this section.

(6) Any issue committee whose purpose is the recall of any elected official shall file a committee registration with the appropriate officer within ten business days of receiving its first contribution. Reports of contributions and expenditures shall be filed with the appropriate officer within fifteen days of the filing of the committee registration and every thirty days thereafter until the date of the recall election has been established and then fourteen days and seven days before the recall election and thirty days following the recall election.

(7) (a) Notwithstanding any other provision of law, and subject to the provisions of paragraph (b) of this subsection (7), a matter shall be considered to be a ballot issue or ballot question for the purpose of determining whether an issue committee has been formally established, thereby necessitating compliance with any disclosure and reporting requirements of this article and article XXVIII of the state constitution, at the earliest of the following:

(I) A title for the matter has been designated and fixed in accordance with law;

(II) The matter has been referred to the voters by the general assembly or the governing body of any political subdivision of the state with authorization to refer matters to the voters;

(III) In the case of a citizen referendum petition, the matter has been submitted for format approval in accordance with law;

(IV) A petition concerning the matter has been circulated and signed by at least one person; except that, where a matter becomes a ballot issue or ballot question upon such signing, any person opposing the matter shall not be considered to be an issue committee for purposes of this article and article XXVIII of the state constitution until one such person knows or has reason to know of the circulation; or

(V) A signed petition has been submitted to the appropriate officer in accordance with law.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (7), where a matter concerns a municipal annexation brought pursuant to article 12 of title 31, C.R.S., the matter shall not be considered to be a ballot issue or ballot question for the purpose of determining whether an issue committee has been formally established, thereby necessitating compliance with any disclosure and reporting requirements of this article and article XXVIII of the state constitution, unless and until the first notice of the annexation election has been published in accordance with the requirements of section 31-12-112 (6), C.R.S.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1), (2)(a), and IP(3) amended, p. 223, § 2, effective April 10; (2)(c) added, p. 951, § 3, effective May 27. **L. 99:** (2)(a) amended and (2)(c)(V) and (2)(c)(VI) added, p. 1391, §§ 14, 15, effective June 4. **L. 2000:** (2)(a) and (2)(c) amended and (2)(d), (2.3), and (2.5) added, pp. 124, 125, §§ 5, 6, effective March 15; (1) amended, p. 1725, § 2, effective June 1; (2)(e) added, p. 791, § 2, effective August 2. **L. 2001:** (3)(f) added, p. 808, § 1, effective August 8; (2.3) amended, p. 1111, § 2, effective September 1. **L. 2002:** IP(2)(a)(I) and (6) amended and (2.7) added, p. 198, § 2, effective April 3; (1)(c) added, p. 1640, § 33, effective June 7. **L. 2003:** (1)(a), (1)(b), (2.3)(a), (2.5), IP(3), and (3)(f) amended and (1)(d) added, p. 2158, § 3, effective June 3. **L. 2004:** (1)(e) and (3.5) added and IP(3) amended, p. 864, §§ 2, 3, effective May 21. **L. 2007:** IP(2)(a)(I) amended, p. 2017, § 2, effective June 1; IP(2)(a)(I) and (2)(a)(I)(B) amended, p. 1299, § 2, effective July 1. **L. 2008:** (1)(a)(IV) added, p. 441, § 2, effective April 14. **L. 2009:** (2)(a)(II), (2)(e), and (2.5) amended, (HB 09-1357), ch. 361, p. 1871, § 1, effective July 1; IP(3) and (3)(f) amended and (3.3) and (7) added, (HB 09-1153), ch. 174, p. 774, § 2, effective September 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in § 1-45-108 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) Subsections (2)(a)(I) and (2)(a)(II) as they existed prior to March 15, 2000, were renumbered on revision as (2)(a)(III) and (2)(a)(IV).

(3) Subsection (2.3)(b) provided for the repeal of subsection (2.3), effective January 1, 2007. (See L. 2001, p. 1111.)

(4) Section 5 of chapter 361, Session Laws of Colorado 2009, provides that the act amending subsections (2)(a)(II), (2)(e), and (2.5) applies to campaign finance reports required to be filed on or after January 1, 2010.

(5) The introductory portion to subsection (3) and subsection (3)(f) were amended and subsections (3.3) and (7) were added

in a 2009 act that was passed without a safety clause. The act establishes an effective date of September 1, 2009, for these provisions. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

ANNOTATION

Law reviews. For article, "Campaign Finance and 527 Organizations: Keeping Big Money in Politics", see 34 Colo. Law. 71 (July 2005).

Act is neither unconstitutionally vague nor unconstitutionally overbroad. As to candidate's vagueness argument, court finds that act provides sufficient notice to persons of ordinary intelligence that expenditures, regardless of the source of the funds, must be reported. As to candidate's arguments that act is unconstitutionally overbroad and inhibits basic first amendment freedoms, court finds that, construed to preserve its constitutionality, the act does not inhibit a candidate's expenditures of personal funds so long as those expenditures are made through a candidate committee and reported in accordance with this section. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002).

The disclosure requirements contained in this section do not violate the right to engage in anonymous speech and association. Disclosure of the contributors to ballot measures may constitutionally be required under the standards specified in Buckley v. Valeo, 424 U.S. 1 (1976). Challengers to disclosure requirements must show a reasonable probability that the compelled disclosure of contributors' names would subject them to threats, harassment, or reprisals from either government officials or private parties. Independence Inst. v. Coffman, __ P.3d __ (Colo. App. 2008).

Under subsection (1)(a), candidate committees must disclose all expenditures and obligations, even if no contributions are received. Thus, if a candidate runs without a separate committee and finances the campaign from personal funds, the candidate is a candidate committee and must disclose expenditures and obligations as required by subsection (1)(a). Nothing in subsection (1)(a) indicates that expenditures must be reported only if drawn on outside contributions. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002).

Here, both candidate and the candidate committee made expenditures under the authority of the candidate. Thus, both the candidate and the committee were candidate committees or the candidate was acting through the formed committee. In either instance, the expenditures were subject to the disclosure requirements of subsection (1)(a). Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002).

Candidate's disclosure report not required to report unexpended campaign funds at the end of an election cycle as contributions from a political party. It is necessary only that a candidate committee report the amount of unexpended campaign funds on hand at the end of an election cycle. To report money already on hand as a fictional, new contribution from an unidentified political party would artificially inflate the amount of funds reportedly available to a candidate committee and would be confusing to those who read the report. Williams v. Teck, 113 P.3d 1255 (Colo. App. 2005).

Order by administrative law judge (ALJ) assessing penalty against nonprofit association engaging in political advocacy based upon determination by ALJ that association was a political committee is vacated and case remanded. Under controlling precedent, regulation under campaign finance laws should be tied to groups controlled by candidates or which have a "major purpose" of electing candidates. Here, record does not permit a determination of whether major purpose test satisfied as to association. On remand, ALJ instructed to determine whether association's "major purpose" in 2004 was the nomination or election of candidates. Alliance for Colorado's Families v. Gilbert, 172 P.3d 964 (Colo. App. 2007).

Adoption of Rule 9.3 of the Colorado secretary of state's rules concerning campaign and political finance requiring the name of the candidate unambiguously referred to in the electioneering communication to be included in the electioneering report was within the rulemaking authority of the secretary of state under § 9(1)(b) of article XXVIII of the state constitution and §§ 1-1-107 (2)(a) and 1-45-111.5 (1). Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

1-45-108.5. Political organizations - disclosure. (1) Any political organization shall report to the appropriate officer in accordance with the requirements of sections 1-45-108 and 1-45-109:

(a) Any contributions it receives, including the name and address of each person who has contributed twenty dollars or more to the political organization in the reporting period, and the occupation and employer of each natural person who has made a contribution of one hundred dollars or more to the political organization; and

(b) Any spending by the political organization that exceeds twenty dollars in any one reporting period.

(2) No political organization shall accept a contribution, or undertake spending, in currency or coin exceeding one hundred dollars.

(3) Nothing in this section shall be construed to:

(a) Require any political organization to make any additional disclosure pursuant to this section to the extent the political organization is already providing disclosure as a committee or political party in a manner that satisfies the requirements of sections 1-45-108 and 1-45-109; or

(b) Authorize the secretary of state to require disclosure of the name of any natural person that is a member of an entity unless the natural person has made a contribution to a political organization in the amount of twenty dollars or more in a reporting period.

Source: L. 2007: Entire section added, p. 1225, § 3, effective July 1.

1-45-109. Filing - where to file - timeliness - repeal. (1) For the purpose of meeting the filing and reporting requirements of this article:

(a) The following shall file with the secretary of state:

(I) Candidates for statewide office, the general assembly, district attorney, district court judge, or any office representing more than one county; the candidate committees for such candidates; political committees in support of or in opposition to such candidates; issue committees in support of or in opposition to an issue on the ballot in more than one county; small donor committees making contributions to such candidates; and persons expending one thousand dollars or more per calendar year on electioneering communications.

(II) Candidates in special district elections; the candidate committees of such candidates; political committees in support of or in opposition to such candidates; issue committees supporting or opposing a special district ballot issue; and small donor committees making contributions to such candidates.

(b) Candidates in municipal elections, their candidate committees, any political committee in support of or in opposition to such candidate, an issue committee supporting or opposing a municipal ballot issue, and small donor committees making contributions to such candidates shall file with the municipal clerk.

(c) All other candidates, candidate committees, issue committees, political committees, and small donor committees shall file with the secretary of state.

(2) (a) Reports required to be filed by this article are timely if received by the appropriate officer not later than the close of business on the due date. Reports may be filed by fax and are timely if received by the appropriate officer not later than the close of business on the due date only if an original of the report is received by the appropriate officer within seven days of the due date.

(b) A person upon whom a penalty has been imposed for failure to file a statement or other information required to be filed pursuant to section 5, 6, or 7 of article XXVIII of the state constitution or section 1-45-108, this section, or section 1-45-110 by the due date may appeal the penalty by filing a written appeal with the appropriate officer no later than thirty days after the date on which notification of the imposition of the penalty was mailed to the person's last-known address. Upon receipt of an appeal pursuant to this paragraph (b), the appropriate officer shall set aside or reduce the penalty upon a showing of good cause.

(3) In addition to any other reporting requirements of this article, every incumbent in public office and every candidate elected to public office is subject to the reporting requirements of section 24-6-203 C.R.S.

(4) (a) All reports required to be filed by this article are public records and shall be open to inspection by the public during regular business hours. A copy of the report shall be kept by the appropriate officer and a copy shall be made available immediately in a file for public inspection.

(b) Any report that is deemed to be incomplete by the appropriate officer shall be accepted on a conditional basis and the committee or party treasurer shall be notified by mail as to any deficiencies found. If an electronic mail address is on file with the secretary of state, the secretary of state may also provide such notification by electronic mail. The committee or party treasurer shall have seven business days from the date of mailing such notice to file an addendum that cures the deficiencies.

(5) (a) The secretary of state shall operate and maintain a web site so as to allow any person who wishes to review reports filed with the secretary of state's office pursuant to this article electronic read-only access to such reports free of charge.

(b) All reports required to be filed by this article that are electronically filed pursuant to subsection (6) of this section shall be made available immediately on the web site.

(c) The web site shall enable a user to produce summary reports based on search criteria that shall include, but not be limited to the reporting period, date, name of the person making a contribution or expenditure, candidate, and committee.

(d) At the earliest practicable date, the secretary of state shall develop and implement improvements to the web site's design and structure to improve the public's ability to navigate, search, browse, download, and analyze information. Such improvements shall include but need not be limited to:

(I) Enhanced searching and summary reporting, including additional search fields such as zip code, employer, and vendor, the ability to search across multiple committees and all filers, the ability to filter or limit searches, such as by election cycle or candidate, the inclusion of smart-search features such as "name sounds like" or "name contains", and numerical totaling of amounts shown on search results;

(II) Features that facilitate the ability to download raw data and search results in one or more common formats to enable offline sorting and analyzing;

(III) Detailed, technical instructions for users;

(IV) Information to help users determine the scope of candidates' and committees' reports and campaign data available online, including explanations of which types of reports are available, the period covered by the online data, and which specific reports can be viewed for each campaign committee; and

(V) Resources that give the public comparative context when viewing campaign finance data, such as compilations of the total amounts of money raised and spent by individual candidates, lists of total amounts raised and spent by all statewide and legislative candidates, and compilations of fundraising and spending across candidates and election cycles.

(e) The secretary of state may promulgate rules necessary for the implementation of this subsection (5). Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(6) (a) The secretary of state shall establish, operate, and maintain a system that enables electronic filing using the internet of the reports required by this article to be filed with the secretary of state's office. The rules for use of the electronic filing system shall be promulgated by the secretary of state in accordance with article 4 of title 24, C.R.S.

(b) In addition to any other method of filing, any person required to file with the secretary of state's office may use the electronic filing system described in paragraph (a) of this subsection (6) in order to meet the filing requirements of this article. Where a person uses such electronic filing system to meet the filing requirements of this article, the secretary of state shall acknowledge by electronic means the receipt of such filing.

(7) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(8) (a) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(b) (I) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(II) and (III) (Deleted by amendment, L. 2009, (HB 09-1357), ch. 361, p. 1872, § 2, effective July 1, 2009.)

(c) (I) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(II) (Deleted by amendment, L. 2009, (HB 09-1357), ch. 361, p. 1872, § 2, effective July 1, 2009.)

(9) Subsection (1) of this section shall not be construed to require the secretary of state to review

reports electronically filed by persons beyond the duties specified in section 9 of article XXVIII of the state constitution.

(10) (a) Each county clerk and recorder shall transmit any report required by this article filed on or before December 15, 2009, to the secretary of state using the electronic filing system established in paragraph (a) of subsection (6) of this section not later than December 23, 2009. Any such report submitted to a county clerk and recorder on or after December 16, 2009, shall be transferred immediately to the secretary of state.

(b) Each county clerk and recorder shall, within ten days from the date of a request for data submitted by the secretary of state, certify that the data contained in the electronic filing system is complete and accurate. The certification required by this paragraph (b) shall occur not later than December 23, 2009.

(c) Each county clerk and recorder shall, to the extent feasible, take all appropriate measures to assist the secretary of state in transferring data contained in the electronic filing system from the control of the county clerk and recorder to the control of the secretary of state.

(d) Each county clerk and recorder shall maintain a copy of any report or statement filed with his or her office in accordance with the requirements of this article for a period of one year from the date on which the report is filed. In the case of a candidate for public office who is elected to such office, the county clerk and recorder shall maintain reports and filings pertaining to the candidate for a period of one year from the date the candidate leaves public office.

(e) This subsection (10) is repealed, effective January 1, 2011.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** (4), (5), and (6) amended, p. 125, § 7, effective March 15. **L. 2001:** (1) amended and (7), (8), and (9) added, p. 808, § 2, effective August 8; (6)(b) amended, p. 1111, § 3, effective September 1. **L. 2002:** (1) and (4)(a) amended, p. 1640, § 34, effective June 7. **L. 2003:** (1) and (7)(b) amended, p. 2159, § 4, effective June 3. **L. 2005:** (9) amended, p. 760, § 7, effective June 1. **L. 2007:** (5), (6), (7), (8), and (9) amended, p. 1296, § 1, effective July 1; (2) amended, p. 1983, § 37, effective August 3. **L. 2009:** (1), (5)(a), (6), (8)(b)(II), (8)(b)(III), (8)(c)(II), and (9) amended and (10) added, (HB 09-1357), ch. 361, p. 1872, § 2, effective July 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in § 1-45-104 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) Section 5 of chapter 361, Session Laws of Colorado 2009, provides that the act amending subsections (1), (5)(a), (6), (8)(b)(II), (8)(b)(III), (8)(c)(II), and (9) applies to campaign finance reports required to be filed on or after January 1, 2010, and that the act adding subsection (10) applies to campaign finance reports required to be filed on or after July 1, 2009.

ANNOTATION

Administrative law judge (ALJ) correctly dismissed appellants' agency appeal under § 10 (2)(b)(I) of article XXVIII of the state constitution for lack of subject matter jurisdiction. No question that appellants were required to file reports with secretary of state under subsection (1) of this section once appellant-candidate became a candidate for the general assembly. This does not mean, however, appellants acquired right to appeal penalty to secretary of state. Report at issue was filed not in connection with appellant-candidate's candidacy for the general assembly but solely in connection with position as a county commissioner. Thus, ALJ correctly determined that, for purposes of report and penalty at issue, appellants were persons required to file appeal with county clerk and recorder, not with secretary of state. Sullivan v. Bucknam, 140 P.3d 330 (Colo. App. 2006).

Although appellants could have been required to file a report with the secretary of state in certain circumstances, those circumstances were not present in instant case. Appellants do not qualify as persons required to file with secretary of state under § 10 (2)(b)(I) of article XXVIII of the state constitution for purposes of underlying action merely because they could have been required to so file in other circumstances. Sullivan v. Bucknam, 140 P.3d 330 (Colo. App. 2006).

ALJ had jurisdiction to impose penalty for violation of Rule 9.3 and did not err by imposing a $1,000 penalty on political committee. Section (2)(a) of article XXVIII of the state constitution grants an ALJ authority to conduct hearings on alleged violations of the article and the "Fair Campaign Practices Act" and to impose penalties if a violation has occurred. Rule 9.3 is necessary to implement former § 1-45-109 (5), and, under subsection (2)(a) of this section, sanctions can be imposed for violations of this section. Colo. Citizens for Ethics in

Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

1-45-110. Candidate affidavit - disclosure statement. (1) When any individual becomes a candidate, such individual shall certify, by affidavit filed with the appropriate officer within ten days, that the candidate is familiar with the provisions of this article; except that an individual who is a candidate in a special legislative election that filed a candidate affidavit for the preceding general election shall not be required to comply with the provisions of this section, and except that a candidate in a special district election shall file the candidate affidavit or, alternatively, a copy of the candidate's self-nomination and acceptance form or letter submitted in accordance with section 32-1-804.3, C.R.S., if such form or letter contains a statement that the candidate is familiar with the provisions of this article, no later than the date established for certification of the special district's ballot pursuant to section 1-5-203 (3) (a). A candidate in a municipal election may comply with this section by filing a candidate affidavit pursuant to section 31-10-302 (6), C.R.S., if such affidavit contains a statement that the candidate is familiar with the provisions of this article.

(2) (a) Except as provided in paragraph (b) of this subsection, each candidate for the general assembly, governor, lieutenant governor, attorney general, state treasurer, secretary of state, state board of education, regent of the University of Colorado, and district attorney shall file a statement disclosing the information required by section 24-6-202 (2) with the appropriate officer, on a form approved by the secretary of state, within ten days of filing the affidavit required by subsection (1) of this section.

(b) No candidate listed in paragraph (a) of this subsection shall be required to file another disclosure statement if the candidate had already filed such a statement less than ninety days prior to filing the affidavit required by subsection (1) of this section.

(3) Failure of any person to file the affidavit or disclosure statement required under this section shall result in the disqualification of such person as a candidate for the office being sought. Disqualification shall occur only after the appropriate officer has sent a notice to the person by certified mail, return receipt requested, addressed to the person's residence address. The notice shall state that the person will be disqualified as a candidate if the person fails to file the appropriate document within five business days of receipt of the notice.

(4) Any disclosure statement required by subsection (2) of this section shall be amended no more than thirty days after any termination or acquisition of interests as to which disclosure is required.

(5) If a person is defeated as a candidate or withdraws from the candidacy, that person shall not be required to comply with the provisions of this section after the withdrawal or defeat.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 99:** (1) amended, p. 1392, § 16, effective June 4. **L. 2002:** (1) amended, p. 1641, § 35, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-105 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-111. Duties of the secretary of state - enforcement. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** (1)(a.5) added and (1)(b) and (2) amended, p. 126, § 8, effective March 15; (2)(d) added, p. 1725, § 3, effective June 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however, section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-113 and 1-45-114 as said sections existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall

take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3597.

1-45-111.5. Duties of the secretary of state - enforcement - sanctions. (1) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to enforce and administer any provision of this article.

(1.5) (a) Any person who believes that a violation of either the secretary of state's rules concerning campaign and political finance or this article has occurred may file a written complaint with the secretary of state not later than one hundred eighty days after the date of the occurrence of the alleged violation. The complaint shall be subject to all applicable procedures specified in section 9 (2) of article XXVIII of the state constitution.

(b) Any person who commits a violation of either the secretary of state's rules concerning campaign and political finance or this article that is not specifically listed in section 9 (2) (a) of article XXVIII of the state constitution shall be subject to any of the sanctions specified in section 10 of article XXVIII of the state constitution or in this section.

(2) A party in any action brought to enforce the provisions of article XXVIII of the state constitution or of this article shall be entitled to the recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, upon a determination by the office of administrative courts that the action, or any part thereof, lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure. Notwithstanding any other provision of this subsection (2), no attorney fees may be awarded under this subsection (2) unless the court or administrative law judge, as applicable, has first considered the provisions of section 13-17-102 (5) and (6), C.R.S. For purposes of this subsection (2), "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3. **L. 2005:** (2) amended, p. 852, § 4, effective June 1. **L. 2008:** (1.5) added and (2) amended, p. 349, § 1, effective April 10.

ANNOTATION

District court did not abuse its discretion by entering preliminary injunction against secretary of state enjoining implementation of administrative rule defining "member" for purposes of constitutional provisions governing small donor committees. Proposed rule would force labor and other covered organizations to get written permission before using an individual's dues or contributions to fund political campaigns. Plaintiffs demonstrated reasonable probability of success on the merits in challenging secretary's authority to enact proposed rule. Secretary's "definition" of term "member" in proposed rule is much more than an effort to define term. It can be read effectively to add, modify, and conflict with constitutional provision by imposing new condition not found in text of article XXVIII. Secretary's stated purpose in enacting proposed rule not furthered by "definition" contained in proposed rule. Proposed rule does not further secretary's stated goal of achieving transparency of political contributions. Sanger v. Dennis, 148 P.3d 404 (Colo. App. 2006).

Plaintiffs demonstrated reasonable probability of success on the merits in alleging that administrative rule promulgated by secretary of state violated their constitutional rights to freedom of association as applied to them. Secretary's immediate enforcement of administrative rule forcing labor and other covered organizations to get written permission before using an individual's dues or contributions to fund political campaigns would have effectively prevented plaintiffs from exercising their first amendment rights in general election. Administrative rule was not narrowly tailored. Rationale

justifying administrative rule was based upon speculation there would be dissenters, thereby impermissibly penalizing constitutional rights of the many for the speculative rights of the few. Accordingly, district court did not abuse its discretion by entering preliminary injunction against implementation of administrative rule. Sanger v. Dennis, 148 P.3d 404 (Colo. App. 2006).

Adoption of Rule 9.3 of the Colorado secretary of state's rules concerning campaign and political finance requiring the name of the candidate unambiguously referred to in the electioneering communication to be included in the electioneering report, was within the rulemaking authority of the secretary of state under § 9(1)(b) of article XXVIII of the state constitution and subsection (1) of this section. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

ALJ had jurisdiction to impose penalty for violation of Rule 9.3 and did not err by imposing a $1,000 penalty on political committee. Section (2)(a) of article XXVIII of the state constitution grants an ALJ authority to conduct hearings on alleged violations of the article and the "Fair Campaign Practices Act" and to impose penalties if a violation has occurred. Rule 9.3 is necessary to implement former § 1-45-109 (5), and, under § 10(2)(a) of article XXVIII of the state constitution, sanctions can be imposed for violations of § 1-45-109. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

ALJ did not err in determining that membership contribution claim was groundless and in awarding attorney fees against litigant. ALJ did not misinterpret subsection (2) by rejecting litigant's defense based on voluntary dismissal of its membership contributions claim under § 13-17-102 (5). Although § 1-45-111.5 (2) contains the same operative language and definitions as § 13-17-102 (4), at the time of the action, the FCPA did not incorporate § 13-17-102 (5) and contained no exception for dismissal of a groundless claim prior to hearing. Moreover, although § 13-17-102 applies to any civil action commenced or appealed in any court of record, "court of record" does not include administrative courts. Finally, the record showed that the ALJ considered litigant's arguments about the efforts it made after the filing of the action to reduce or dismiss claims it found to be invalid. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

1-45-112. Duties of municipal clerk. (1) The municipal clerk shall:

(a) Develop a filing and indexing system for their offices consistent with the purposes of this article;

(b) Keep a copy of any report or statement required to be filed by this article for a period of one year from the date of filing. In the case of candidates who were elected, those candidate's reports and filings shall be kept for one year after the candidate leaves office;

(c) Make reports and statements filed under this article available to the public for inspection and copying no later than the end of the next business day after the date of filing. No information copied from such reports and statements shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.

(d) Upon request by the secretary of state, transmit records and statements filed under this article to the secretary of state;

(e) Notify any person under their jurisdiction who has failed to fully comply with the provisions of this article and notify any person if a complaint has been filed with the secretary of state alleging a violation of this article.

(f) Repealed.

(2) The secretary of state shall reimburse the municipal clerk of each municipality at the rate of two dollars per candidate per election to help defray the cost of implementing this article.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2008:** (1)(f) repealed, p. 350, § 2, effective April 10. **L. 2009:** IP(1) and (2) amended, (HB 09-1357), ch. 361, p. 1874, § 3, effective July 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in § 1-45-115 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) Section 5 of chapter 361, Session Laws of Colorado 2009, provides that the act amending the introductory portion to subsection (1) and subsection (2) applies to campaign finance reports required to be filed on or after January 1, 2010.

1-45-112.5. Immunity from liability for fine or penalty. (1) Any individual volunteering his or her time on behalf of a candidate or candidate committee shall be immune from any liability for a fine or

penalty imposed pursuant to section 10 (1) of article XXVIII of the state constitution in any proceeding that is based on an act or omission of such volunteer if:

(a) The volunteer was acting in good faith and within the scope of such volunteer's official functions and duties for the candidate or candidate committee; and

(b) The violation was not caused by willful and intentional misconduct by such volunteer.

(2) Subsection (1) of this section shall be administered in a manner that is consistent with section 1 of article XXVIII of the state constitution and with the legislative declaration set forth in section 1-45-102.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3.

1-45-113. Sanctions. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (6) added, p. 633, § 3, effective May 6; (6) added, p. 952, § 4, effective May 27. **L. 2000:** (1), (2), (3), and (4) amended, p. 127, § 9, effective March 15. **L. 2001:** (4) amended, p. 1110, § 1, effective September 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however, section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-121 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-114. Expenditures - political advertising - rates and charges. (1) No candidate shall pay to any radio or television station, newspaper, periodical, or other supplier of materials or services a higher charge than that normally required for local commercial customers for comparable use of space, materials, or services. Any such rate shall not be rebated, directly or indirectly.

(2) Any radio or television station, newspaper, or periodical that charges a candidate committee a lower rate for use of space, materials, or services than the rate such station, newspaper, periodical, or supplier charges another candidate committee for the same public office for comparable use of space, materials, or services shall report the difference in such rate as a contribution to the candidate committee that is charged such lower rate pursuant to section 1-45-108.

(3) Nothing in this article shall be construed to prevent an adjustment in rates related to frequency, volume, production costs, and agency fees if such adjustments are offered consistently to other advertisers.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** Entire section amended, p. 128, § 10, effective March 15. **L. 2003:** (2) amended, p. 2160, § 5, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-118 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-115. Encouraging withdrawal from campaign prohibited. No person shall offer or give any candidate or candidate committee any money or any other thing of value for the purpose of encouraging

the withdrawal of the candidate's candidacy, nor shall any candidate offer to withdraw a candidacy in return for money or any other thing of value.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-119 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-116. Home rule counties and municipalities. Any home rule county or municipality may adopt ordinances or charter provisions with respect to its local elections that are more stringent than any of the provisions contained in this act. Any home rule county or municipality which adopts such ordinances or charter provisions shall not be entitled to reimbursement pursuant to subsection 1-45-112 (2). The requirements of article XXVIII of the state constitution and of this article shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by article XXVIII and this article.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2003:** Entire section amended, p. 2161, § 7, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-120(1) as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-117. State and political subdivisions - limitations on contributions. (1) (a) (I) No agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity expend any public moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:

(A) State-wide ballot issue that has been submitted for the purpose of having a title designated and fixed pursuant to section 1-40-106 (1) or that has had a title designated and fixed pursuant to that section;

(B) Local ballot issue that has been submitted for the purpose of having a title fixed pursuant to section 31-11-111 or that has had a title fixed pursuant to that section;

(C) Referred measure, as defined in section 1-1-104 (34.5);

(D) Measure for the recall of any officer that has been certified by the appropriate election official for submission to the electors for their approval or rejection.

(II) However, a member or employee of any such agency, department, board, division, bureau, commission, or council may respond to questions about any such issue described in subparagraph (I) of this paragraph (a) if the member, employee, or public entity has not solicited the question. A member or employee of any such agency, department, board, division, bureau, commission, or council who has policy-making responsibilities may expend not more than fifty dollars of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on any such issue described in subparagraph (I) of this paragraph (a).

(b) (I) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state, or any political subdivision thereof from expending public moneys or making contributions to dispense a factual summary, which shall include arguments both for and against the proposal, on any issue of official concern before the electorate in the jurisdiction. Such summary shall not contain a conclusion or opinion in favor of or against any particular issue. As used herein, an issue of official concern shall be limited to issues that will appear on an election ballot in the jurisdiction.

(II) Nothing in this subsection (1) shall be construed to prevent an elected official from expressing a personal opinion on any issue.

(III) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from:

(A) Passing a resolution or taking a position of advocacy on any issue described in subparagraph (I) of paragraph (a) of this subsection (1); or

(B) Reporting the passage of or distributing such resolution through established, customary means, other than paid advertising, by which information about other proceedings of such agency, department, board, division, bureau, or council of the state or any political subdivision thereof is regularly provided to the public.

(C) Nothing in this subsection (1) shall be construed as prohibiting a member or an employee of an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from expending personal funds, making contributions, or using personal time to urge electors to vote in favor of or against any issue described in subparagraph (I) of paragraph (a) of this subsection (1).

(2) The provisions of subsection (1) of this section shall not apply to:

(a) An official residence furnished or paid for by the state or a political subdivision;

(b) Security officers who are required to accompany a candidate or the candidate's family;

(c) Publicly owned motor vehicles provided for the use of the chief executive of the state or a political subdivision;

(d) Publicly owned aircraft provided for the use of the chief executive of the state or of a political subdivision or the executive's family for security purposes; except that, if such use is, in whole or in part, for campaign purposes, the expenses relating to the campaign shall be reported and reimbursed pursuant to subsection (3) of this section.

(3) If any candidate who is also an incumbent inadvertently or unavoidably makes any expenditure which involves campaign expenses and official expenses, such expenditures shall be deemed a campaign expense only, unless the candidate, not more than ten working days after the such expenditure, files with the appropriate officer such information as the secretary of state may by rule require in order to differentiate between campaign expenses and official expenses. Such information shall be set forth on a form provided by the appropriate officer. In the event that public moneys have been expended for campaign expenses and for official expenses, the candidate shall reimburse the state or political subdivision for the amount of money spent on campaign expenses.

(4) Any violation of this section shall be subject to the provisions of sections 9 (2) and 10 (1) of article XXVIII of the state constitution or any appropriate order or relief, including an order directing the person making a contribution or expenditure in violation of this section to reimburse the fund of the state or political subdivision, as applicable, from which such moneys were diverted for the amount of the contribution or expenditure, injunctive relief, or a restraining order to enjoin the continuance of the violation.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2002:** (4) added, p. 280, § 1, effective August 7. **L. 2008:** (4) amended, p. 350, § 3, effective April 10.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in § 1-45-116 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

ANNOTATION

Annotator's note. Since § 1-45-117 is similar to § 1-45-116 as it existed prior to the 1997 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

The purpose of this section is to prohibit the state

government and its officials from spending public funds to influence the outcome of campaigns for political office or ballot issues. Colo. Common Cause v. Coffman, 85 P.3d 551 (Colo. App. 2003), aff'd, 102 P.3d 999 (Colo. 2004).

This section must be strictly construed. It is an established principle that statutes regarding the use of public funds to influence the outcome of elections are strictly construed. Coffman v. Colo. Common Cause, 102 P.3d 999 (Colo. 2004).

Moneys in fund administered by the Colorado compensation insurance authority that consisted primarily of premiums paid into the fund by employers constituted "public moneys" for purposes of this section. Denver Area Labor Fed'n v. Buckley, 924 P.2d 524 (Colo. 1996).

While the term "public moneys" is not defined, the all-inclusive language "from any source" indicates that the general assembly intended an expansive definition of the phrase. Thus, the term "public moneys" may not be construed to refer only to sums realized from the imposition of taxes. Denver Area Labor Fed'n v. Buckley, 924 P.2d 524 (Colo. 1996).

Although moneys collected by the political subdivision were not derived from state-imposed sales, use, property, or income taxes, those moneys may be spent by the political subdivision only for authorized public purposes. The general assembly has in essence declared that the expenditure of moneys in the fund for purposes prohibited by this section are not authorized expenditures for public purposes. Denver Area Labor Fed'n v. Buckley, 924 P.2d 524 (Colo. 1996).

This section prohibits the use of "public moneys from any source," not the use of "public funds". The general assembly thus selected a phrase not previously construed in seeking to limit the expenditure of funds by various governmental entities for certain purposes. Denver Area Labor Fed'n v. Buckley, 924 P.2d 524 (Colo. 1996).

This section tends to promote public confidence in government by prohibiting the use of moneys authorized for expenditure by political subdivisions for specified public purposes to advance the personal viewpoint of one group over another. A political subdivision's use of moneys that were authorized for expenditure for the benefit of an insured to oppose the passage of an amendment proposed by an insured is the type of conduct the general assembly intended to prohibit by the enactment of this section. Denver Area Labor Fed'n v. Buckley, 924 P.2d 524 (Colo. 1996).

What is of "official concern" to school district board of education is to be determined by reference to the official powers and duties delegated by the general assembly in the school laws. Mountain States Legal Found. v. Denver Sch. Dist. No. 1, 459 F. Supp. 357 (D. Colo. 1978).

A matter of official concern is one which at the very least involves questions which come before the officials for an official decision. Campbell v. Joint Dist. 28-J, 704 F.2d 501 (10th Cir. 1983).

Proposed constitutional amendment not of official concern. A proposed amendment to the state constitution on a general election ballot is not a matter of official concern. Campbell v. Joint Dist. 28-J, 704 F.2d 501 (10th Cir. 1983).

Not determined solely by board. The characterization of a campaign issue as being of "official concern" is not a judgment which can be made solely by the board of education; such an interpretation of this section would give unlimited discretion to the school board to use school funds and school facilities whenever it suited the personal preference of the majority of the members. Mountain States Legal Found. v. Denver Sch. Dist. No. 1, 459 F. Supp. 357 (D. Colo. 1978).

This section allows an employee with policy-making responsibility to expend public funds up to the $50 limit in expressing an opinion about a pending ballot issue. Regents of the Univ. of Colo. v. Meyer, 899 P.2d 316 (Colo. App. 1995).

Paid staff time is a contribution in kind for purposes of this section. Time spent by the state treasurer's staff during work hours on a non-volunteer basis preparing and disseminating press releases expressing the state treasurer's opposition to a statewide ballot issue therefore violated this section to the extent that the value of that time exceeded $50. Coffman v. Colo. Common Cause, 102 P.3d 999 (Colo. 2004).

State treasurer's press conference and press releases opposing a statewide ballot issue violated this section. The press releases were not balanced factual summaries of the ballot issue and were not resolutions because they were not formal expressions of a voting body. The state treasurer expended more than $50 in preparing the press releases and was not permitted to expend more than that to take a position of advocacy. Colo. Common Cause v. Coffman, 85 P.3d 551 (Colo. App. 2003), aff'd, 102 P.3d 999 (Colo. 2004).

Public school payroll deduction system for teachers' union dues, a portion of which was given by the union to a political action committee, did not constitute a "contribution in kind" because it did not support a specific "issue" or "candidate" that the political action committee supported or opposed during the time that the district made the payroll deductions. Mountain States v. Secretary of State, 946 P.2d 586 (Colo. App. 1997) (decided under law in effect prior to 1997 amendment).

Brochure mailed by metropolitan districts explaining proposed improvements violated this section. The brochure, when read in its entirety, did not present arguments for and against the issue. In fact, it took a position exclusively in favor of the issue, presented no contrary arguments, and expressly advocated the passage of the bond initiative that was titled only days after the mailing of the brochure. Thus, it urged voters to vote for the initiative. Skruch v. Highlands Ranch Metro. Dists., 107 P.3d 1140 (Colo. App. 2004).

Although brochure did not mention ballot initiative by name, administrative law judge appropriately concluded that the language of this section does not require that level of specificity. The section prohibits "the urging of electors

to vote a certain way." Skruch v. Highlands Ranch Metro. Dists., 107 P.3d 1140 (Colo. App. 2004).

1-45-118. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.