

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 435

Introduced by Hansen, B., 16.

Read first time January 15, 2021

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to elections; to amend sections 32-951,
2 32-953, and 32-957, Reissue Revised Statutes of Nebraska, and
3 sections 32-202, 32-939.02, and 32-1027, Revised Statutes Cumulative
4 Supplement, 2020; to provide duties for the Secretary of State; to
5 provide for the inclusion of an official watermark on ballots for
6 early voting and special elections; to change provisions relating to
7 the counting of ballots; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 32-202, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 32-202 In addition to any other duties prescribed by law, the
4 Secretary of State shall:

5 (1) Supervise the conduct of primary and general elections in this
6 state;

7 (2) Provide training for election commissioners, county clerks, and
8 other election officials in providing for registration of voters and the
9 conduct of elections;

10 (3) Enforce the Election Act;

11 (4) With the assistance and advice of the Attorney General, make
12 uniform interpretations of the act;

13 (5) Provide periodic training for the agencies and their agents and
14 contractors in carrying out their duties under sections 32-308 to 32-310;

15 (6) Develop and print forms for use as required by sections 32-308,
16 32-310, 32-320, 32-329, 32-947, 32-956, and 32-958;

17 (7) Contract with the Department of Administrative Services for
18 storage and distribution of the forms;

19 (8) Require reporting to ensure compliance with sections 32-308 to
20 32-310;

21 (9) Prepare and transmit reports as required by the National Voter
22 Registration Act of 1993, 52 U.S.C. 20501 et seq.;

23 (10) Develop and print a manual describing the requirements of the
24 initiative and referendum process and distribute the manual to election
25 commissioners and county clerks for distribution to the public upon
26 request;

27 (11) Develop and print pamphlets described in section 32-1405.01;

28 (12) Design an official watermark that is sufficient to prove the
29 authenticity of ballots as required in sections 32-939.02 and 32-953 and
30 as may be used by election commissioners and county clerks on other
31 ballots that do not require an official watermark;

1 ~~(13)~~ ~~(12)~~ Adopt and promulgate rules and regulations as necessary
2 for elections conducted under sections 32-952 to 32-959; and

3 ~~(14)~~ ~~(13)~~ Establish a free access system, such as a toll-free
4 telephone number or an Internet web site, that any voter who casts a
5 provisional ballot may access to discover whether the vote of that voter
6 was counted and, if the vote was not counted, the reason that the vote
7 was not counted. The Secretary of State shall establish and maintain
8 reasonable procedures necessary to protect the security, confidentiality,
9 and integrity of personal information collected, stored, or otherwise
10 used by the free access system. Access to information about an individual
11 provisional ballot shall be restricted to the individual who cast the
12 ballot.

13 Sec. 2. Section 32-939.02, Revised Statutes Cumulative Supplement,
14 2020, is amended to read:

15 32-939.02 (1) Upon request for a ballot, a ballot for early voting
16 containing the official watermark designed by the Secretary of State
17 shall be forwarded to each voter meeting the criteria of section 32-939
18 at least forty-five days prior to any election.

19 (2) An omission of required information, except the political party
20 affiliation of the applicant, may prevent the processing of an
21 application for and mailing of ballots. The request for any ballots and a
22 registration application shall be sent to the election commissioner or
23 county clerk of the county of the applicant's residence. The request may
24 be sent at any time in the same calendar year as the election, except
25 that the request shall be received by the election commissioner or county
26 clerk not later than the third Friday preceding an election to vote in
27 that election. If an applicant fails to indicate his or her political
28 party affiliation on the application, the applicant shall be registered
29 as nonpartisan.

30 (3) A person described in section 32-939 may register to vote
31 through the use of the Federal Post Card Application or a personal letter

1 which includes the same information as appears on the Federal Post Card
2 Application and may simultaneously make application for ballots for all
3 elections in a calendar year. The person may indicate a preference for
4 ballots and other election materials to be delivered via facsimile
5 transmission or electronic mail by indicating such preference on the
6 Federal Post Card Application. If the person indicates such a preference,
7 the election commissioner or county clerk shall accommodate the voter's
8 preference.

9 (4) If the ballot for early voting has not been printed in
10 sufficient time to meet the request and special requirements of a voter
11 meeting the criteria of section 32-939, the election commissioner or
12 county clerk may issue a special ballot at least sixty days prior to an
13 election to such a voter upon a written request by such voter requesting
14 the special ballot. For purposes of this subsection, a special ballot
15 means a ballot prescribed by the Secretary of State which contains the
16 official watermark designed by the Secretary of State and the titles of
17 all offices being contested at such election and permits the voter to
18 vote by writing in the names of the specific candidates or the decision
19 on any issue. The election commissioner or county clerk shall include
20 with the special ballot a complete list of the nominated candidates and
21 issues to be voted upon by the voter which are known at the time of the
22 voter's request.

23 (5) Any person meeting the criteria in section 32-939 may cast a
24 ballot by the use of the Federal Write-In Absentee Ballot. The Federal
25 Write-In Absentee Ballot may be used for all elections. If a person
26 casting a ballot using the Federal Write-In Absentee Ballot is not a
27 registered voter, the information submitted in the Federal Write-In
28 Absentee Ballot transmission envelope shall be treated as a voter
29 registration application.

30 (6)(a) Any person requesting a ballot under this section may receive
31 and return the ballot and the oath prescribed in subdivision (b) of this

1 subsection using any method of transmission authorized by the Secretary
2 of State.

3 (b) An oath shall be delivered with the ballot and shall be in a
4 form substantially as follows:

5 VOTER'S OATH

6 I, the undersigned voter, declare that the ballot or ballots
7 contained no voting marks of any kind when I received them, and I caused
8 the ballot or ballots to be marked.

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

11 (a) I,, am a registered voter
12 in County;

13 (b) I have voted the ballot and am returning it in compliance with
14 Nebraska law; and

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

17 ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION
18 IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS
19 IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY
20 FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO TWO YEARS AND TWELVE
21 MONTHS POST-RELEASE SUPERVISION OR A FINE NOT TO EXCEED TEN THOUSAND
22 DOLLARS, OR BOTH.

23 I also understand that failure to sign below will invalidate my
24 ballot.

25 Signature

26 (7) The Secretary of State shall develop a process for a person
27 casting a ballot under this section to check the status of his or her
28 ballot via the Internet or a toll-free telephone call.

29 Sec. 3. Section 32-951, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 32-951 No person shall:

1 (1) Impersonate or make a false representation in order to obtain a
2 ballot for early voting for his or her own use or for use by another;

3 (2) Knowingly connive to help a person to vote such a ballot
4 illegally;

5 (3) Destroy, steal, mark, or mutilate any such ballot after the same
6 has been voted or aid or abet another to do so;

7 (4) Forge or attempt to forge the official watermark designed by the
8 Secretary of State for inclusion on ballots for early voting;

9 (5) ~~(4)~~ Delay in delivering such a ballot to the election
10 commissioner or county clerk to prevent the ballot from arriving in time
11 to be counted;

12 (6) ~~(5)~~ In any manner aid or attempt to aid any person to vote such
13 a ballot unlawfully;

14 (7) ~~(6)~~ Hinder or attempt to hinder a registered voter from voting
15 any such ballot; or

16 (8) ~~(7)~~ Hinder or attempt to hinder any official from delivering or
17 counting any such ballot.

18 Sec. 4. Section 32-953, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 32-953 (1) Except as otherwise provided in subsection (2) of this
21 section, the election commissioner or county clerk shall mail the
22 official ballot to all registered voters of the political subdivision or
23 the district or ward of the political subdivision at the addresses
24 appearing on the voter registration register on the same day. Such
25 ballots shall contain the official watermark designed by the Secretary of
26 State. The ballots shall be mailed by nonforwardable first-class mail not
27 sooner than the twenty-second day before the date set for the election
28 and not later than the tenth day before the date set for the election.
29 The election commissioner or county clerk shall include with the ballot
30 an unsealed identification envelope meeting the requirements of
31 subsection (2) of section 32-947 and instructions sufficient to describe

1 the voting process.

2 (2) The election commissioner or county clerk may choose not to mail
3 a ballot to all registered voters who have been sent a notice pursuant to
4 section 32-329 and failed to respond to the notice. If the election
5 commissioner or county clerk chooses not to mail a ballot to such voters,
6 he or she shall mail a notice to all such registered voters explaining
7 how to obtain a ballot and stating the applicable deadlines.

8 Sec. 5. Section 32-957, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 32-957 An official ballot under section 32-953 shall be counted only
11 if it contains the official watermark designed by the Secretary of State,
12 is returned in the identification envelope, the envelope is signed by the
13 voter to whom it was issued, and the signature is verified by the
14 election commissioner or county clerk. The election commissioner or
15 county clerk shall verify the signature on each identification envelope
16 received in his or her office with the signature appearing on the voter
17 registration records. If the election commissioner or county clerk is
18 unable to verify a signature, the election commissioner or county clerk
19 shall contact the voter within two days after determining that he or she
20 is unable to verify the signature to ascertain whether the voter cast a
21 ballot. The election commissioner or county clerk may request that the
22 registered voter sign and submit a current signature card pursuant to
23 section 32-318. The election commissioner or county clerk may begin
24 verifying the signatures as the envelopes are received in his or her
25 office. If the election commissioner or county clerk determines that a
26 voter has voted more than once, no ballot cast by that voter in that
27 election shall be counted. The election commissioner or county clerk
28 shall make public any record or list of registered voters who have
29 returned their ballots.

30 Sec. 6. Section 32-1027, Revised Statutes Cumulative Supplement,
31 2020, is amended to read:

1 32-1027 (1) The election commissioner or county clerk shall appoint
2 two or more registered voters to the counting board for early voting. One
3 registered voter shall be appointed from the political party casting the
4 highest number of votes for Governor or for President of the United
5 States in the county in the immediately preceding general election, and
6 one registered voter shall be appointed from the political party casting
7 the next highest vote for such office. The election commissioner or
8 county clerk may appoint additional registered voters to serve on the
9 counting board and may appoint registered voters to serve in case of a
10 vacancy among any of the members of the counting board. Such appointees
11 shall be balanced between the political parties and may include
12 registered voters unaffiliated with any political party. The counting
13 board may begin carrying out its duties not earlier than the second
14 Friday before the election and shall meet as directed by the election
15 commissioner or county clerk.

16 (2) The counting board shall place all identification envelopes in
17 order and shall review each returned identification envelope pursuant to
18 verification procedures prescribed in subsections (3) and (4) of this
19 section.

20 (3) In its review, the counting board shall determine if:

21 (a) The voter has provided his or her name, residence address, and
22 signature on the voter identification envelope;

23 (b) The ballot has been received from the voter who requested it and
24 the residence address is the same address provided on the voter's request
25 for a ballot for early voting, by comparing the information provided on
26 the identification envelope with information recorded in the record of
27 early voters or the voter's request;

28 (c) A completed and signed registration application has been
29 received from the voter by the deadline in section 32-302, 32-321, or
30 32-325 or by the close of the polls pursuant to section 32-945;

31 (d) An identification document has been received from the voter not

1 later than the close of the polls on election day if required pursuant to
2 section 32-318.01; and

3 (e) A completed and signed registration application and oath has
4 been received from the voter by the close of the polls on election day if
5 required pursuant to section 32-946.

6 (4) On the basis of its review, the counting board shall determine
7 whether the ballot shall be counted or rejected as follows:

8 (a) A ballot received from a voter who was properly registered on or
9 prior to the deadline for registration pursuant to section 32-302 or
10 32-321 shall be accepted for counting without further review if:

11 (i) The name on the identification envelope appears to be that of a
12 registered voter to whom a ballot for early voting has been issued or
13 sent;

14 (ii) The residence address provided on the identification envelope
15 is the same residence address at which the voter is registered or is in
16 the same precinct and subdivision of a precinct, if any;~~and~~

17 (iii) The identification envelope has been signed by the voter;and

18 (iv) The ballot contains the official watermark designed by the
19 Secretary of State;

20 (b) In the case of a ballot received from a voter who was not
21 properly registered prior to the deadline for registration pursuant to
22 section 32-302 or 32-321, the ballot shall be accepted for counting if:

23 (i) A valid registration application completed and signed by the
24 voter has been received by the election commissioner or county clerk
25 prior to the close of the polls on election day;

26 (ii) The name on the identification envelope appears to be that of
27 the person who requested the ballot;

28 (iii) The residence address provided on the identification envelope
29 and on the registration application is the same as the residence address
30 as provided on the voter's request for a ballot for early voting;~~and~~

31 (iv) The identification envelope has been signed by the voter;and

1 (v) The ballot contains the official watermark designed by the
2 Secretary of State;

3 (c) In the case of a ballot received from a voter without a
4 residence address who requested a ballot pursuant to section 32-946, the
5 ballot shall be accepted for counting if:

6 (i) The name on the identification envelope appears to be that of a
7 registered voter to whom a ballot has been sent;

8 (ii) A valid registration application completed and signed by the
9 voter, for whom the residence address is deemed to be the address of the
10 office of the election commissioner or county clerk pursuant to section
11 32-946, has been received by the election commissioner or county clerk
12 prior to the close of the polls on election day;

13 (iii) The oath required pursuant to section 32-946 has been
14 completed and signed by the voter and received by the election
15 commissioner or county clerk by the close of the polls on election day;
16 ~~and~~

17 (iv) The identification envelope has been signed by the voter; and

18 (v) The ballot contains the official watermark designed by the
19 Secretary of State for inclusion on election ballots; and

20 (d) In the case of a ballot received from a registered voter
21 required to present identification before voting pursuant to section
22 32-318.01, the ballot shall be accepted for counting if:

23 (i) The name on the identification envelope appears to be that of a
24 registered voter to whom a ballot has been issued or sent;

25 (ii) The residence address provided on the identification envelope
26 is the same address at which the voter is registered or is in the same
27 precinct and subdivision of a precinct, if any;

28 (iii) A copy of an identification document authorized in section
29 32-318.01 has been received by the election commissioner or county clerk
30 prior to the close of the polls on election day;~~and~~

31 (iv) The identification envelope has been signed by the voter; and -

1 (v) The ballot contains the official watermark designed by the
2 Secretary of State.

3 (5) In opening the identification envelope or the return envelope to
4 determine if registration applications, oaths, or identification
5 documents have been enclosed by the voters from whom they are required,
6 the counting board shall make a good faith effort to ensure that the
7 ballot remains folded and that the secrecy of the vote is preserved.

8 (6) The counting board may, on the second Friday before the
9 election, open all identification envelopes which are approved, and if
10 the ballot contains the official watermark designed by the Secretary of
11 State and the signature of the election commissioner or county clerk or
12 his or her employee is on the ballot, the ballot shall be unfolded,
13 flattened for purposes of using the optical scanner, and placed in a
14 sealed container for counting as directed by the election commissioner or
15 county clerk. At the discretion of the election commissioner or county
16 clerk, the counting board may begin counting early ballots no earlier
17 than twenty-four hours prior to the opening of the polls on the day of
18 the election.

19 (7) If an identification envelope is rejected, the counting board
20 shall not open the identification envelope. The counting board shall
21 write Rejected on the identification envelope and the reason for the
22 rejection. If the ballot is rejected after opening the identification
23 envelope because of the absence of the official signature on the ballot,
24 the ballot shall be reinserted in the identification envelope which shall
25 be resealed and marked Rejected, no official signature. The counting
26 board shall place the rejected identification envelopes and ballots in a
27 container labeled Rejected Ballots and seal it.

28 (8) As soon as all ballots have been placed in the sealed container
29 and rejected identification envelopes or ballots have been sealed in the
30 Rejected Ballots container, the counting board shall count the ballots
31 the same as all other ballots and an unofficial count shall be reported

1 to the election commissioner or county clerk. No results shall be
2 released prior to the closing of the polls on election day.

3 Sec. 7. Original sections 32-951, 32-953, and 32-957, Reissue
4 Revised Statutes of Nebraska, and sections 32-202, 32-939.02, and
5 32-1027, Revised Statutes Cumulative Supplement, 2020, are repealed.