

ASSEMBLY BILL NO. 487—ASSEMBLYMEN CHOWNING, DE BRAGA, OHRENSCHALL, ANDERSON, BEERS, BERMAN, BROWN, CARPENTER, CEGAVSKE, CLABORN, DINI, FREEMAN, GIBBONS, GIUNCHIGLIANI, GOLDWATER, GUSTAVSON, HETTRICK, HUMKE, KOIVISTO, LESLIE, MANENDO, MARVEL, MCCLAIN, MORTENSON, NOLAN, PARKS, PARNELL, PERKINS, PRICE, SMITH AND TIFFANY

MARCH 19, 2001

Referred to Committee on Elections, Procedures, and Ethics

SUMMARY—Makes various changes concerning challenges of qualifications of certain candidates for office. (BDR 24-586)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to candidates for office; allowing an elector to challenge the legal qualifications of certain candidates for office; providing that a candidate for office is deemed to have designated the filing officer for his office as his agent for service of process for such challenges; revising the form for declaration or acceptance of candidacy; providing that a candidate who files certain false documents is removed from the ballot and disqualified from his office; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 293 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *After a person files a declaration of candidacy or an*
4 *acceptance of candidacy to be a candidate for an office, and not later*
5 *than 5 days after the last day the person may withdraw his candidacy*
6 *pursuant to NRS 293.202, an elector may file with the filing officer for*
7 *the office a written challenge of the person on the grounds that the*
8 *person fails to meet any qualification required for the office pursuant to*
9 *the constitution or a statute of this state, including, without limitation, a*
10 *requirement concerning age or residency. Before accepting the challenge*
11 *from the elector, the filing officer shall notify the elector that if the*
12 *challenge is found by a court to be frivolous, the elector may be required*



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1 *to pay the reasonable attorney's fees and court costs of the challenged*
2 *person.*
3 *2. A challenge filed pursuant to subsection 1 must:*
4 *(a) Indicate each qualification the person fails to meet;*
5 *(b) Have attached all documentation and evidence supporting the*
6 *challenge; and*
7 *(c) Be in the form of an affidavit, signed by the elector under penalty*
8 *of perjury.*
9 *3. Upon receipt of a challenge pursuant to subsection 1:*
10 *(a) The secretary of state shall immediately transmit the challenge to*
11 *the attorney general.*
12 *(b) A filing officer other than the secretary of state shall immediately*
13 *transmit the challenge to the district attorney.*
14 *4. If the attorney general or district attorney determines that*
15 *probable cause exists to support the challenge, the attorney general or*
16 *district attorney shall, not later than 5 working days after receiving the*
17 *challenge, petition a court of competent jurisdiction to order the person*
18 *to appear before the court. Upon receipt of such a petition, the court*
19 *shall enter an order directing the person to appear before the court at a*
20 *hearing, at a time and place to be fixed by the court in the order, to show*
21 *cause why the challenge is not valid. A certified copy of the order must be*
22 *served upon the person. The court shall give priority to such proceedings*
23 *over all other matters pending with the court, except for criminal*
24 *proceedings.*
25 *5. If, at the hearing, the court determines by a preponderance of the*
26 *evidence that the challenge is valid or that the person otherwise fails to*
27 *meet any qualification required for the office pursuant to the constitution*
28 *or a statute of this state, or if the person fails to appear at the hearing:*
29 *(a) The name of the person must not appear on any ballot for the*
30 *election for the office for which he filed the declaration of candidacy or*
31 *acceptance of candidacy; and*
32 *(b) The person is disqualified from entering upon the duties of the*
33 *office for which he filed the declaration of candidacy or acceptance of*
34 *candidacy.*
35 *6. If, at the hearing, the court determines that the challenge is*
36 *frivolous, the court may order the elector who filed the challenge to pay*
37 *the reasonable attorney's fees and court costs of the challenged person.*
38 **Sec. 3.** *In addition to any other penalty provided by law, if a person*
39 *knowingly and willfully files a declaration of candidacy or acceptance of*
40 *candidacy which contains a false statement:*
41 *1. The name of the person must not appear on any ballot for the*
42 *election for which he filed the declaration of candidacy or acceptance of*
43 *candidacy; and*
44 *2. The person is disqualified from entering upon the duties of the*
45 *office for which he was a candidate.*
46 **Sec. 4.** *NRS 293.175 is hereby amended to read as follows:*
47 *293.175 1. The primary election must be held on the first Tuesday of*
48 *September in each even-numbered year.*



1 2. Candidates for partisan office of a major political party and
2 candidates for nonpartisan office must be nominated at the primary
3 election.

4 3. Candidates for partisan office of a minor political party must be
5 nominated in the manner prescribed pursuant to NRS 293.171 to 293.174,
6 inclusive.

7 4. Independent candidates for partisan office must be nominated in the
8 manner provided in NRS 293.200.

9 5. The provisions of NRS 293.175 to 293.203, inclusive, *and sections*
10 *2 and 3 of this act* do not apply to:

- 11 (a) Special elections to fill vacancies.
12 (b) The nomination of the officers of incorporated cities.
13 (c) The nomination of district officers whose nomination is otherwise
14 provided for by statute.

15 **Sec. 5.** NRS 293.1755 is hereby amended to read as follows:

16 293.1755 1. In addition to any other requirement provided by law, no
17 person may be a candidate for any office unless, for at least the 30 days
18 immediately preceding the date of the close of filing of declarations of
19 candidacy or acceptances of candidacy for the office which he seeks, he
20 has, in accordance with NRS 281.050, actually, as opposed to
21 constructively, resided in the state, district, county, township or other area
22 prescribed by law to which the office pertains and, if elected, over which
23 he will have jurisdiction or which he will represent.

24 2. Any person who knowingly and willfully files an acceptance of
25 candidacy or declaration of candidacy which contains a false statement in
26 this respect is guilty of a gross misdemeanor.

27 3. ~~Any person convicted pursuant to the provisions of this section is~~
28 ~~disqualified from entering upon the duties of the office for which he was a~~
29 ~~candidate.~~

30 ~~4.~~ The provisions of this section do not apply to candidates for the
31 office of district attorney.

32 **Sec. 6.** NRS 293.177 is hereby amended to read as follows:

33 293.177 1. Except as otherwise provided in NRS 293.165, a name
34 may not be printed on a ballot to be used at a primary election unless the
35 person named has filed a declaration of candidacy or an acceptance of
36 candidacy, and paid the fee required by NRS 293.193 not earlier than the
37 first Monday in May of the year in which the election is to be held nor later
38 than 5 p.m. on the third Monday in May.

39 2. A declaration of candidacy or an acceptance of candidacy required
40 to be filed by this section must be in substantially the following form:

41 (a) For partisan office:

42
43 DECLARATION OF CANDIDACY OF FOR THE
44 OFFICE OF

45
46 State of Nevada

47
48 County of



1 For the purpose of having my name placed on the official ballot as a
2 candidate for the Party nomination for the office of, I, the
3 undersigned, do swear or affirm under penalty of perjury that I
4 actually, as opposed to constructively, reside at, in the City or Town
5 of, County of, State of Nevada; that my actual, as opposed to
6 constructive, residence in the state, district, county, township, city or other
7 area prescribed by law to which the office pertains began on a date at least
8 30 days immediately preceding the date of the close of filing of
9 declarations of candidacy for this office; *that my telephone number is*
10 *....., and the address at which I receive mail, if different than my*
11 *residence, is*; that I am registered as a member of the
12 Party; that I have not, in violation of the provisions of NRS 293.176,
13 changed the designation of my political party or political party affiliation
14 on an official application to register to vote in any state since September 1
15 before the closing filing date for this election; that I generally believe in
16 and intend to support the concepts found in the principles and policies of
17 that political party in the coming election; that if nominated as a candidate
18 of the Party at the ensuing election, I will accept that
19 nomination and not withdraw; that I will not knowingly violate any
20 election law or any law defining and prohibiting corrupt and fraudulent
21 practices in campaigns and elections in this state; that I will qualify for the
22 office if elected thereto, including, but not limited to, complying with any
23 limitation prescribed by the constitution and laws of this state concerning
24 the number of years or terms for which a person may hold the office; and
25 that I understand that my name will appear on all ballots as designated in
26 this declaration.

27
28 (Designation of name)

29
30 (Signature of candidate for office)

31
32 Subscribed and sworn to before
33 me this day of the month of of the year....

34
35 Notary Public or other person
36 authorized to administer an oath

37
38 (b) For nonpartisan office:

39
40 DECLARATION OF CANDIDACY OF FOR THE
41 OFFICE OF

42
43 State of Nevada

44
45 County of.....

46
47 For the purpose of having my name placed on the official ballot as a
48 candidate for the office of, I, the undersigned, do
49 swear or affirm under penalty of perjury that I actually, as opposed to



1 constructively, reside at, in the City or Town of, County of
2, State of Nevada; that my actual, as opposed to constructive,
3 residence in the state, district, county, township, city or other area
4 prescribed by law to which the office pertains began on a date at least 30
5 days immediately preceding the date of the close of filing of declarations of
6 candidacy for this office; *that my telephone number is, and the*
7 *address at which I receive mail, if different than my residence, is*
8 *.....*; that if nominated as a nonpartisan candidate at the ensuing
9 election, I will accept the nomination and not withdraw; that I will not
10 knowingly violate any election law or any law defining and prohibiting
11 corrupt and fraudulent practices in campaigns and elections in this state;
12 that I will qualify for the office if elected thereto, including, but not limited
13 to, complying with any limitation prescribed by the constitution and laws
14 of this state concerning the number of years or terms for which a person
15 may hold the office; and my name will appear on all ballots as designated
16 in this declaration.

17
18
19 (Designation of name)

20
21 (Signature of candidate for office)

22
23 Subscribed and sworn to before
24 me this day of the month of of the year

25
26 Notary Public or other person
27 authorized to administer an oath

28
29 3. A person may be a candidate under his given name and surname, a
30 contraction or familiar form of his given name followed by his surname or
31 the initial of his given name followed by his surname. A nickname of not
32 more than 10 letters may be incorporated into a candidate's name. The
33 nickname must be in quotation marks and appear immediately before the
34 candidate's surname. A nickname must not indicate any political,
35 economic, social or religious view or affiliation and must not be the name
36 of any person, living or dead, whose reputation is known on a statewide,
37 nationwide or worldwide basis, or in any other manner deceive a voter
38 regarding the person or principles for which he is voting.

39 4. The address of a candidate which must be included in the
40 declaration of candidacy or acceptance of candidacy pursuant to subsection
41 2 must be the street address of the residence where he actually, as opposed
42 to constructively, resides in accordance with NRS 281.050, if one has been
43 assigned. The declaration or acceptance of candidacy must not be accepted
44 for filing if the candidate's address is listed as a post office box unless a
45 street address has not been assigned to his residence.

46 5. *By filing the declaration or acceptance of candidacy, the candidate*
47 *shall be deemed to have appointed the filing officer for the office as his*
48 *agent for service of process for the purposes of a proceeding pursuant to*
49 *section 2 of this act. Service of such process must first be attempted at the*



1 appropriate address as specified by the candidate in the declaration or
2 acceptance of candidacy. If the candidate cannot be served at that
3 address, service must be made by personally delivering to and leaving
4 with the filing officer duplicate copies of the process. The filing officer
5 shall immediately send, by registered or certified mail, one of the copies
6 to the candidate at his specified address, unless the candidate has
7 designated in writing to the filing officer a different address for that
8 purpose, in which case the filing officer shall mail the copy to the last
9 address so designated.

10 **Sec. 7.** Chapter 293C of NRS is hereby amended by adding thereto
11 the provisions set forth as sections 8 and 9 of this act.

12 **Sec. 8. 1.** After a person files a declaration of candidacy or an
13 acceptance of candidacy to be a candidate for an office, and not later
14 than 5 working days after the last day the person may withdraw his
15 candidacy pursuant to NRS 293C.195, an elector may file with the city
16 clerk a written challenge of the person on the grounds that the person
17 fails to meet any qualification required for the office pursuant to the
18 constitution or a statute of this state, including, without limitation, a
19 requirement concerning age or residency. Before accepting the challenge
20 from the elector, the filing officer shall notify the elector that if the
21 challenge is found by a court to be frivolous, the elector may be required
22 to pay the reasonable attorney's fees and court costs of the challenged
23 person.

24 2. A challenge filed pursuant to subsection 1 must:
25 (a) Indicate each qualification the person fails to meet;
26 (b) Have attached all documentation and evidence supporting the
27 challenge; and
28 (c) Be in the form of an affidavit, signed by the elector under penalty
29 of perjury.

30 3. Upon receipt of a challenge pursuant to subsection 1, the city clerk
31 shall immediately transmit the challenge to the city attorney.

32 4. If the city attorney determines that probable cause exists to
33 support the challenge, the city attorney shall, not later than 5 days after
34 receiving the challenge, petition a court of competent jurisdiction to
35 order the person to appear before the court. Upon receipt of such a
36 petition, the court shall enter an order directing the person to appear
37 before the court at a hearing, at a time and place to be fixed by the court
38 in the order, to show cause why the challenge is not valid. A certified
39 copy of the order must be served upon the person. The court shall give
40 priority to such proceedings over all other matters pending with the
41 court, except for criminal proceedings.

42 5. If, at the hearing, the court determines by a preponderance of the
43 evidence that the challenge is valid or that the person otherwise fails to
44 meet any qualification required for the office pursuant to the constitution
45 or a statute of this state, or if the person fails to appear at the hearing:

46 (a) The name of the person must not appear on any ballot for the
47 election for the office for which he filed the declaration of candidacy or
48 acceptance of candidacy; and



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1 (b) The person is disqualified from entering upon the duties of the
2 office for which he filed the declaration of candidacy or acceptance of
3 candidacy.

4 6. If, at the hearing, the court determines that the challenge is
5 frivolous, the court may order the elector who filed the challenge to pay
6 the reasonable attorney's fees and court costs of the challenged person.

7 Sec. 9. In addition to any other penalty provided by law, if a person
8 knowingly and willfully files a declaration of candidacy or acceptance of
9 candidacy which contains a false statement:

10 1. The name of the person must not appear on any ballot for the
11 election for which he filed the declaration of candidacy or acceptance of
12 candidacy; and

13 2. The person is disqualified from entering upon the duties of the
14 office for which he was a candidate.

15 Sec. 10. NRS 293C.185 is hereby amended to read as follows:

16 293C.185 1. Except as otherwise provided in NRS 293C.190, a name
17 may not be printed on a ballot to be used at a primary city election, unless
18 the person named has filed a declaration of candidacy or an acceptance of
19 candidacy and paid the fee established by the governing body of the city
20 not earlier than 70 days before the primary city election and not later than 5
21 p.m. on the 60th day before the primary city election.

22 2. A declaration of candidacy required to be filed by this section must
23 be in substantially the following form:

24
25 DECLARATION OF CANDIDACY OF FOR THE
26 OFFICE OF

27
28 State of Nevada

29
30 City of

31
32 For the purpose of having my name placed on the official ballot as a
33 candidate for the office of, I, the undersigned, do
34 swear or affirm under penalty of perjury that I actually, as opposed to
35 constructively, reside at, in the City or Town of,
36 County of, State of Nevada; that my actual, as opposed to
37 constructive, residence in the city, township or other area prescribed by law
38 to which the office pertains began on a date at least 30 days immediately
39 preceding the date of the close of filing of declarations of candidacy for
40 this office; *that my telephone number is, and the address at which*
41 *I receive mail, if different than my residence, is*; that if
42 nominated as a candidate at the ensuing election I will accept the
43 nomination and not withdraw; that I will not knowingly violate any
44 election , law or any law defining and prohibiting corrupt and fraudulent
45 practices in campaigns and elections in this state; that I will qualify for the
46 office if elected thereto, including, but not limited to, complying with any
47 limitation prescribed by the constitution and laws of this state concerning
48 the number of years or terms for which a person may hold the office; and
49 my name will appear on all ballots as designated in this declaration.



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1
2 (Designation of name)
3
4 (Signature of candidate for office)
5

6 Subscribed and sworn to before
7 me this day of the month of of the year

8
9 Notary Public or other person
10 authorized to administer an oath
11

12 3. A person may be a candidate under his given name and surname, a
13 contraction or familiar form of his given name followed by his surname or
14 the initial of his given name followed by his surname. A nickname of not
15 more than 10 letters may be incorporated into a candidate's name. The
16 nickname must be in quotation marks and appear immediately before the
17 candidate's surname. A nickname must not indicate any political,
18 economic, social or religious view or affiliation and must not be the name
19 of any person, living or dead, whose reputation is known on a statewide,
20 nationwide or worldwide basis, or in any other manner deceive a voter
21 concerning the person or principles for which he is voting.

22 4. The address of a candidate that must be included in the declaration
23 or acceptance of candidacy pursuant to subsection 2 must be the street
24 address of the residence where he actually, as opposed to constructively,
25 resides in accordance with NRS 281.050, if one has been assigned. The
26 declaration or acceptance of candidacy must not be accepted for filing if
27 the candidate's address is listed as a post office box unless a street address
28 has not been assigned to his residence.

29 *5. By filing the declaration or acceptance of candidacy, the candidate*
30 *shall be deemed to have appointed the city clerk as his agent for service*
31 *of process for the purposes of a proceeding pursuant to section 8 of this*
32 *act. Service of such process must first be attempted at the appropriate*
33 *address as specified by the candidate in the declaration or acceptance of*
34 *candidacy. If the candidate cannot be served at that address, service must*
35 *be made by personally delivering to and leaving with the city clerk*
36 *duplicate copies of the process. The city clerk shall immediately send, by*
37 *registered or certified mail, one of the copies to the candidate at his*
38 *specified address, unless the candidate has designated in writing to the*
39 *city clerk a different address for that purpose, in which case the city clerk*
40 *shall mail the copy to the last address so designated.*

41 **Sec. 11.** NRS 293C.200 is hereby amended to read as follows:

42 293C.200 1. In addition to any other requirement provided by law,
43 no person may be a candidate for a city office unless, for at least the 30
44 days immediately preceding the date of the close of filing of declarations or
45 acceptances of candidacy for the office that he seeks, he has in accordance
46 with NRS 281.050, actually, as opposed to constructively, resided in the
47 city or other area prescribed by law to which the office pertains and, if
48 elected, over which he will have jurisdiction or which he will represent.



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2. Any person who knowingly and willfully files a declaration of candidacy or an acceptance of candidacy that contains a false statement in this respect is guilty of a gross misdemeanor.

~~{3. Any person convicted pursuant to the provisions of this section is disqualified from entering upon the duties of the office for which he was a candidate.}~~

Sec. 12. NRS 283.040 is hereby amended to read as follows:

283.040 1. Every office becomes vacant upon the occurring of any of the following events before the expiration of the term:

(a) The death or resignation of the incumbent.

(b) The removal of the incumbent from office.

(c) The confirmed insanity of the incumbent, found by a court of competent jurisdiction.

(d) A conviction of the incumbent of any felony or offense involving a violation of his official oath or bond or a violation of NRS 241.040, 293.1755 or 293C.200.

(e) A refusal or neglect of the person elected or appointed to take the oath of office, as prescribed in NRS 282.010, or, when a bond is required by law, his refusal or neglect to give the bond within the time prescribed by law.

(f) Except as otherwise provided in NRS 266.400, the ceasing of the incumbent to be an actual, as opposed to constructive, resident of the state, district, county, city, ward or other unit prescribed by law in which the duties of his office are to be exercised, or from which he was elected or appointed, or in which he was required to reside to be a candidate for office or appointed to office.

(g) The neglect or refusal of the incumbent to discharge the duties of his office for a period of 30 days, except when prevented by sickness or absence from the state or county, as provided by law. In a county whose population is less than 10,000, after an incumbent, other than a state officer, has been prevented by sickness from discharging the duties of his office for at least 6 months, the district attorney, either on his own volition or at the request of another person, may petition the district court to declare the office vacant. If the incumbent holds the office of district attorney, the attorney general, either on his own volition or at the request of another person, may petition the district court to declare the office vacant. The district court shall hold a hearing to determine whether to declare the office vacant and, in making its determination, shall consider evidence relating to:

(1) The medical condition of the incumbent;

(2) The extent to which illness, disease or physical weakness has rendered the incumbent unable to manage independently and perform the duties of his office; and

(3) The extent to which the absence of the incumbent has had a detrimental effect on the applicable governmental entity.

(h) The decision of a competent tribunal declaring the election or appointment void or the office vacant.

(i) A determination pursuant to section 2 or 8 of this act that the incumbent fails to meet any qualification required for the office.



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1 2. Upon the happening of any of the events described in subsection 1,
2 if the incumbent fails or refuses to relinquish his office, the attorney
3 general shall, if the office is a state office or concerns more than one
4 county, or the district attorney shall, if the office is a county office or
5 concerns territory within one county, commence and prosecute, in a court
6 of competent jurisdiction, any proceedings for judgment and decree
7 declaring that office vacant.

8 **Sec. 13.** The provisions of this act do not apply to conduct that
9 occurred before October 1, 2001.

