

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Secretary of State election authority.

Sponsored by: Joint Corporations, Elections & Political
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to elections; authorizing the secretary of
2 state to determine eligibility of persons running for office
3 as specified; creating procedures for eligibility challenges;
4 amending filing periods; providing additional authority to
5 the secretary of state; requiring rulemaking; and providing
6 for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 22-17-115 through 22-17-119 are created
11 to read:

12

1 22-17-115. Right to run for office.

2

3 All persons eligible for the office sought may run for office
4 in accordance with applicable law. This Election Code shall
5 be construed so that all legally eligible persons may run for
6 office and that those who are not eligible shall not run for
7 office, and that fraud and corruption shall be prevented.

8

9 22-17-116. Right to challenge eligibility for office;
10 grounds.

11 *****

12 STAFF COMMENT

13 "Qualified elector is defined in W.S. 22-1-102(a)(xxvi):
14 "Qualified elector" includes every citizen of the United
15 States who is a bona fide resident of Wyoming, has
16 registered to vote and will be at least eighteen (18) years
17 of age on the day of the election at which he may offer to
18 vote. No person is a qualified elector who is a currently
19 adjudicated mentally incompetent person, or who has been
20 convicted of a felony and his civil or voting rights have
21 not been restored. A literacy test shall not be imposed as
22 a condition to voting in any election;"

23 *****

24

25 (a) Pursuant to the requirements stated in W.S. 22-17-
26 118, a qualified elector may challenge the eligibility of a
27 person running for the office of governor, secretary of state,
28 state auditor, state treasurer or state superintendent of
29 public instruction on the grounds that the person running for
30 office:

1

2 (i) Has not been a resident of the state for the
3 required amount of time;

4

5 (ii) Has not attained the required age to be
6 elected to the office the person seeks;

7

8 (iii) Is not qualified to hold the office the
9 person seeks pursuant to the Wyoming Constitution or state
10 law.

11

12 **22-17-117. Right to challenge eligibility for office;**
13 **notification.**

14

15 Unless otherwise specified, required notification under W.S.
16 22-17-115 through 22-17-119 shall be delivered by United
17 States postal service or other generally accepted mail
18 delivery method to the last known address of the person to be
19 notified, by email or other electronic means.

20

21 **22-17-118. Right to challenge eligibility for office;**
22 **commencement; contents.**

23

1 (a) Eligibility challenges authorized by W.S. 22-17-
2 116 shall be in writing and filed with the secretary of state
3 not less than **XX** days prior to certification under W.S. 22-
4 5-209 for challenges before a primary election and not less
5 than **XX** days prior to certification under W.S. 22-6-101 for
6 challenges before a general election and shall include:

7 *****

8 **STAFF COMMENT**

9 **The Committee will need to determine this timeframe.**

10
11 **Currently there are 13 days between the end of the filing**
12 **period for applications for nomination and the date of**
13 **certification for the primary (May 29-June 11)**

14
15 **If this bill is passed, there will be 29 days between the**
16 **end of the filing period for applications for nomination**
17 **and the date of certification for the primary (May 13-June**
18 **11).**

19
20 **There are 16 days between the primary election and**
21 **candidate certification (August 18-September 3).**

22 *****

23
24 (i) The name of the challenger, the challenger's
25 voter information and the mailing and email address if any of
26 the challenger. As used in this paragraph, "voter
27 information" means information sufficient to allow the
28 secretary of state's office to verify the challenger is a
29 qualified elector;

30

1 (ii) The name of the person whose eligibility is
2 being challenged;

3

4 (iii) The office sought by the person whose
5 eligibility is being challenged;

6

7 (iv) The grounds for the challenge;

8

9 (v) Any documented evidence on which the
10 challenger relies for the challenge;

11

12 (vi) A statement that the challenger understands
13 that by filing the challenge the burden of proof is on the
14 challenger to prove that the challenged person is ineligible
15 for the office sought.

16

17 **22-17-119. Right to challenge eligibility for office;**
18 **conduct of suit; secretary of state authority.**

19

20 (a) If the secretary of state finds that the challenge
21 was filed by a qualified elector, has merit and the challenged
22 person may not be eligible for the office sought, the
23 secretary of state shall:

1

2 (i) Verify the filing is complete and timely and
3 that the challenger is a qualified elector;

4

5 (ii) Summarily dismiss any challenge that is
6 untimely, incomplete, without merit or not filed by a
7 qualified elector. The secretary of state may dismiss any
8 challenge that the secretary of state determines is unable to
9 be completed prior to certification pursuant to W.S. 22-5-
10 209 or W.S. 22-6-101 respectively. A dismissal shall be
11 without prejudice if there is insufficient time to complete
12 the challenge. For any challenge dismissed pursuant to this
13 paragraph the secretary of state's office shall notify the
14 challenger that the matter was dismissed and the grounds for
15 dismissal and shall notify the challenged person of the
16 challenge, dismissal and grounds for the dismissal. Any
17 dismissal pursuant to this paragraph is an immediately
18 appealable decision.

19

20 (b) If a challenge is not dismissed pursuant to
21 paragraph (a)(ii) of this section, the secretary of state
22 shall:

23

1 (i) Proceed with the challenge through a hearing in
2 accordance with this section or as an evaluation of the
3 documented evidence presented without a hearing. A challenge
4 conducted as a hearing shall proceed in accordance with the
5 Wyoming Administrative Procedure Act except that the hearing
6 shall not be bound by the time limitations of the act. The
7 secretary of state shall schedule the timeline of the
8 challenge. The secretary of state shall consider the
9 complexity of the challenge, whether a hearing may be
10 completed prior to certification and any other factors the
11 secretary of state deems necessary in requiring the challenge
12 to proceed as a hearing or as a review of the documented
13 evidence without a hearing;

14

15 (ii) Notify the challenged person that the person's
16 eligibility to run for office is being challenged and that
17 the burden of proving the person is not eligible is on the
18 qualified elector bringing the challenge;

19

20 (iii) Notify the challenged person and challenger
21 whether the challenge will proceed as a hearing or as an
22 evaluation of documented evidence without a hearing;

23

(iv) Create a schedule for the presentation of evidence, hearing if applicable and consideration of the challenge that allows the challenge to conclude before the secretary of state must certify the list of names pursuant to W.S. 22-5-209 or W.S. 22-6-101 respectively;

(v) Notify the challenged person and challenger of the schedule of proceedings;

(vi) Provide the challenged person with the evidence on which the challenge rests and provide an opportunity for the person to respond;

(vii) Review all relevant and reliable information presented during the challenge process, determine if the challenger proved by **XXStandard of proofXX** that the challenged person is ineligible for the office sought and recite the determination of the person's eligibility on the record;

STAFF COMMENT
Please note the standard of proof above, this is a question
for the Committee.

The Committee request included requiring a lower standard
of proof for candidacy challenges compared to election

1 contests. Pursuant to W.S. 22-17-103 election contests are
2 conducted as civil actions. The standard of proof applied
3 in civil actions is the preponderance of the evidence. In
4 reviewing an agency decision the Wyoming Supreme Court
5 looks at whether the agency decision was supported by
6 substantial evidence (W.S. 16-3-114(c)(ii)(E)), which is a
7 lower standard than that used for election contests.
8

9 However, the Wyoming Supreme Court has ruled in *Maxfield v.*
10 *State* (294 P.3d 895, 899 (Wyo. 2013)) "the right to seek
11 election for a public office for which one has proper
12 qualifications . . . is a valuable and fundamental
13 right..." Because the right to run for office is a
14 fundamental right, a court would review any challenges with
15 "strict scrutiny", which "is the standard applied when it
16 becomes necessary to balance a fundamental right against a
17 compelling state interest. It requires the establishment of
18 the compelling state interest and the showing that the
19 method of achieving such is the least intrusive of those
20 methods by which such can be accomplished." (*State in*
21 *Interest of C.*, 638 P.2d 165, 173 (Wyo. 1981)).
22

23 For that reason the Committee may wish to consider using
24 the clear and convincing evidence standard.
25

26 The standards of proof are:

27 1) Substantial evidence (such relevant evidence as a
28 reasonable mind may accept as adequate to support a
29 conclusion)

30 2) Preponderance of the evidence (civil actions, proof
31 which leads the trier of fact to find that the existence of
32 the contested fact is more probable than its non-existence)

33 3) Clear and convincing evidence (proof that would
34 persuade a trier of fact that the truth of the contention
35 is highly probable)

36 4) Beyond a reasonable doubt (criminal case standard,
37 not beyond unreasonable doubt, but truly that there are not
38 reasonable doubts about the case).
39

40 *****
41
42

1 (viii) Notify the challenger and challenged person
2 of the secretary of state's determination on the person's
3 eligibility without delay;

4

5 (ix) Not include in the certified list the name of
6 any person that has been determined to be ineligible for the
7 office sought in accordance with paragraph (vii) of this
8 section unless an appeal is filed.

9

10 (c) The secretary of state may compel the challenger and
11 the challenged person to provide evidence, appear before the
12 secretary of state or take other action necessary to fulfill
13 the requirements of W.S. 22-17-115 through W.S. 22-17-119.

14

15 (d) A dismissal by the secretary of state under
16 paragraph (a)(ii) of this section and the determination by
17 the secretary of state of the person's eligibility under
18 paragraph (b)(vii) of this section shall be appealable
19 decisions pursuant to the Wyoming Administrative Procedure
20 Act. Whether the secretary of state requires the challenge to
21 proceed as a hearing or as a review of the evidence without
22 a hearing as set forth in paragraph (b)(i) of this section
23 shall not be an appealable decision.

1

2 (e) The secretary of state may, on his own accord, raise
3 the issue of the eligibility of a person running for the
4 office of governor, secretary of state, state auditor, state
5 treasurer or state superintendent of public instruction. The
6 secretary of state shall:

7

8 (i) Notify the challenged person of the
9 challenge;

10

11 (ii) Provide the evidence relied on to raise the
12 issue of eligibility to the challenged person;

13

14 (iii) Provide an opportunity for the challenged
15 person to respond;

16

17 (iv) Review all relevant and reliable information
18 of record;

19

20 (v) Declare a person ineligible for the office the
21 person seeks if according to **XXStandard of proofXX** the
22 evidence proves that the person is ineligible for the office
23 sought. A decision by the secretary of state under this

subsection is appealable under the Wyoming Administrative Procedure Act.

(vi) Not include in the certified list the name of any person that has been determined to be ineligible for the office sought in accordance with paragraph (v) of this section unless an appeal is filed.

Section 2. W.S. 22-2-121 by creating a new subsection (h), 22-5-204 by creating a new subsection (d), 22-5-209 and 22-6-101 are amended to read:

22-2-121. Chief election officer to prepare forms; rules; advice.

(h) Pursuant to W.S. 22-17-115 through 22-17-119 the secretary of state shall adopt rules specifying the procedure to be used for eligibility challenges and shall have the authority to make a determination on the eligibility of a person running for office with or without a hearing.

22-5-204. Application for nomination or election; party registration; form.

1

2 (d) The secretary of state may reject an application
3 for nomination for an election if, by ~~XX~~Standard of proof~~XX~~,
4 the person does not meet the requirements of paragraphs (b)(i)
5 and (ii) of this section.

6

7 **22-5-209. Time for filing nomination applications;**
8 **certified list.**

9

10 An application for nomination shall be filed not more than
11 ~~ninety-six (96)~~ one hundred twelve (112) days and not later
12 than ~~eighty-one (81)~~ ninety-seven (97) days next preceding
13 the primary election. Not later than sixty-eight (68) days
14 before a primary election the secretary of state shall
15 transmit to each county clerk a certified list of persons
16 whose applications have been filed in the office of the
17 secretary of state stating as to each his name, age, address,
18 office sought and party affiliation. If a person has been
19 found unqualified pursuant to W.S. 22-17-115 through 22-17-
20 119, the secretary of state shall not include that person's
21 name in the certified list unless an appeal is filed. If an
22 appeal is filed prior to certification the secretary of state

1 shall certify the person's name unless otherwise ordered by
2 a court of competent jurisdiction.

3
4 **22-6-101. Certification of candidates nominated;**
5 **printing of names.**

6
7 Not less than sixty (60) days before each general election
8 the secretary of state shall transmit to each county clerk
9 under party headings a certified list of the name and address
10 of each person nominated by primary election as indicated by
11 the state canvass, the name of each person nominated by
12 provisional or minor party convention, the name of each
13 independent candidate qualifying for nomination by petition,
14 and the office sought. The names of these candidates shall
15 be printed on the official ballot of the general election. If
16 a person has been found unqualified pursuant to W.S. 22-17-
17 115 through 22-17-119, the secretary of state shall not
18 include that person's name in the certified list unless an
19 appeal is filed. If an appeal is filed prior to certification
20 the secretary of state shall certify the person's name unless
21 otherwise ordered by a court of competent jurisdiction.

22
23 **Section 3.**

1

2 (a) Except as provided in subsection (b) of this
3 section, this act is effective April 1, 2020.

4

5 (b) This section and W.S. 22-2-121(h) as created by
6 section 2 of this act are effective immediately upon
7 completion of all acts necessary for a bill to become law as
8 provided by Article 4, Section 8 of the Wyoming Constitution.

9

10

(END)