

Exhibit A

Sec. 2. Repeal

Title 41, chapter 7, article 2, Arizona Revised Statutes, is repealed.

Approved by the Governor, April 27, 1991.

Filed in the Office of the Secretary of State, April 29, 1991.

ADMINISTRATIVE PROCEDURE ACT—EXEMPTIONS

CHAPTER 50

S.B. 1021

AN ACT AMENDING SECTION 41-1055, ARIZONA REVISED STATUTES; RELATING TO THE ADMINISTRATIVE PROCEDURE ACT.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-1055, Arizona Revised Statutes, is amended to read:

§ 41-1055. Exemptions

In addition to the exemptions stated in section 41-1005, this article does not apply to:

1. An agency which is a unit of state government headed by a single elected official.
2. The corporation commission, which shall adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business.
3. The state board of directors for community colleges.
4. The state board of education.
5. The industrial commission of Arizona when adopting by reference the federal occupational safety and health standards as published in 29 code of federal regulations parts 1910, 1926 and 1928.
6. The Arizona state lottery if adopting rules that relate only to the design, operation or prize structure of a lottery game.

Approved by the Governor, April 30, 1991.

Filed in the Office of the Secretary of State, April 30, 1991.

ELECTIONS—ABSENTEE VOTING

CHAPTER 51

S.B. 1320

AN ACT AMENDING SECTIONS 16-541, 16-544, 16-547, 16-548, 16-552 AND 16-594, ARIZONA REVISED STATUTES; RELATING TO ABSENTEE VOTING.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 16-541, Arizona Revised Statutes, is amended to read:

§ 16-541. Voting absentee; qualifications

A. Any election called pursuant to the laws of this state shall provide for absentee voting. Any qualified elector may vote by absentee ballot. ~~who meets the criteria established by this section shall be permitted to vote absentee at such election.~~

~~B. A person shall be permitted to vote absentee for any one of the following reasons:~~

- ~~1. The elector expects to be absent from his precinct at the time of holding the election.~~
- ~~2. The elector is physically unable to go to the polls.~~
- ~~3. The elector is sixty five years of age or older.~~
- ~~4. The elector's place of residence is more than fifteen road miles from the polling place for his precinct.~~
- ~~5. The elector cannot attend the polls on the day of the election because of the tenets of his religion.~~
- ~~6. The elector has a visual defect within the scope of those defined by section 41-1973, subsection C.~~

Sec. 2. Section 16-544, Arizona Revised Statutes, is amended to read:

§ 16-544. Form of application

A. Application for an absentee ballot shall be made in duplicate upon blanks furnished by the county recorder, or other officer in charge of elections of the political subdivision in which the election is to be held, and shall be in substantially the following form:

“Application for Absentee Ballot”

State of Arizona

County of _____

Other political subdivision (if applicable) _____

I, _____, do solemnly swear that I am the identical person whose name is signed to this application and that such name and signature are my true name and signature (or, if I did not personally sign, it was because of physical disability, viz: _____ and that I requested the attesting officer ~~another person~~ to sign); that I am an elector of the state of Arizona and the county of _____; that I am registered in _____ precinct in said county and reside at _____, where I resided at the date of my registration; and that I have not voted and will not vote in this election in any other state during the calendar year of this application. ~~Because I expect to be absent from my precinct, or other place of voting in an election of any other political subdivision, on the day of holding the next election or because of physical disability, or because I am sixty five years of age or older, or because my place of residence is more than fifteen road miles from the polling place in my precinct, or because I am legally blind, or because of the tenets of my religion, I will not be able to go to the polls on the day of the next election and~~ I hereby make application to the county recorder of _____ county, Arizona, or other officer in charge of elections of _____ (name of political subdivision) for an absentee ballot. ~~(Strike out any clause not applicable.)~~ I understand that knowingly voting more than once in any election is a class 5 felony. For the purpose of identification, I declare that I am more than eighteen years of age and that my post office address is _____ (address to which ballot is to be mailed). I am confined at _____, Arizona (hospital, residence or other place of confinement, if

applicable). If a challenge is filed against my absentee ballot, I understand that a copy of the challenge will be sent to me by first class mail and that I may have as little as forty-eight hours notice of an opportunity to appear. For purposes of notifying me of a ballot challenge between the time I return my ballot and a few days after election day, please use the following address: _____. (If no address is provided, notice will be mailed to the mailing address listed on the registration rolls.)

Elector

Subscribed and sworn to before me this _____ day of _____, 19____

~~Signature of registration officer or other officer empowered to administer oaths~~

Title or designation of officer

B. The county recorder or other officer in charge of elections shall supply printed instructions to absentee voters, worded substantially as follows:

1. ~~Subscribe to Sign~~ both copies of this application. ~~before any county recorder or other officer in charge of elections, justice of the peace, a deputy registrar, notary public or other officer authorized by law to administer oaths.~~

2. ~~Display ballot unmarked before the officer in his presence, but in such a manner that he cannot see your vote,~~ Mark your ballot and seal it in the white envelope marked "for absentee ballot only". Do not enclose the application with the ballot.

3. ~~Subscribe to Sign~~ the oath on the back of the white envelope marked "for absentee ballot only".

4. Place both copies of this application for ballot, complete with signature and ~~acknowledgement,~~ together with the white envelope containing your ballot, in the enclosed self-addressed envelope. Check to see that the application is not enclosed in the envelope marked "for absentee ballot only" and mail.

5. The ballot and application must be in the office of the recorder or other officer in charge of elections before seven o'clock p.m. on election day.

Name _____ (printed)

County recorder or other officer in charge of elections

C. Instructions to absentee voters who are overseas citizens, qualified electors absent from the United States or in the United States service, or the spouse or dependents of such a person, shall include information substantially as follows: If you are an overseas citizen, qualified elector absent from the United States or in the United States service, or the spouse or dependent of such a person, you may subscribe to sign the application and ballot affidavit. ~~before and obtain the signature and military identification number, or passport number if available, of any United States citizen eighteen years of age or older.~~

Sec. 3. Section 16-547, Arizona Revised Statutes, is amended to read:

§ 16-547. Ballot affidavit; form

A. The absentee ballot may be combined with the application form prescribed in section 16-544 and shall be accompanied by an envelope bearing upon the front the name, official title and post office address of the recorder or other officer in charge of elections and upon the other side a printed affidavit in substantially the following form:

State of Arizona

County of _____

I, _____, do solemnly swear that I am a qualified elector of the _____ precinct of the county of _____, state of Arizona. I further swear that I personally voted the enclosed ballot (or that it was marked according to my instructions because I was unable to do so).

Signature of elector

Subscribed and sworn to before me this _____ day of _____, 19____

~~I further certify that the affiant exhibited the enclosed ballot to me unmarked. Then, in my presence, the affiant personally and privately marked such ballot in such a manner that neither I, nor any other person, was able to see the affiant vote (or it was marked by me according to the affiant's instructions) and enclosed and sealed it in this envelope. The affiant was not solicited or advised by any person to vote for or against any candidate or measure.~~

Signature and title of officer

B. ~~There shall be printed across The face of each envelope in which a ballot is sent to a federal postcard applicant or in which a ballot is returned by such applicant to the recorder or other officer in charge of elections, two parallel horizontal red bars, each one fourth inch wide, extending from one side of the envelope to the other side, with an intervening space of one fourth inch. The top bar shall be one and one fourth inches from the top of the envelope and the words "Official election balloting material via air mail" or other similar language shall be printed between the bars. There shall also be printed in the upper right hand corner of each such envelope, in a box, the words "Free of U.S. postage, including air mail". All printing on the face of each such envelope shall be in red, and there shall be printed in the upper left hand corner of each ballot envelope an appropriate inscription or blanks for the return address of the sender. shall be in the form prescribed in accordance with the uniformed and overseas citizens absentee voting act of 1986 (42 USC 1973 ff, P.L. 99-410).~~ Otherwise, the envelopes shall be the same as those used to send ballots to, or receive ballots from, other absentee voters.

Sec. 4. Section 16-548, Arizona Revised Statutes, is amended to read:

§ 16-548. Preparation and transmission of ballot

A. ~~Except as provided in subsection B, The absentee voter shall make and subscribe to sign the application and ballot affidavit. before an officer authorized by law to administer oaths. In the presence of the officer, but no other person,~~ The absentee voter shall then mark his ballot in such a manner that his vote cannot be seen. The absentee voter shall fold the ballot, if a paper ballot, so as to conceal the vote then deposit the voted ballot in the envelope provided for that

purpose, which shall be securely sealed, ~~signed by the officer~~ and, together with the application, delivered or mailed to the county recorder or other officer in charge of elections of the political subdivision in which the elector is registered.

B. If the absentee voter is an overseas citizen, a qualified elector absent from the United States or in the United States service, or a spouse or dependent residing with the absentee voter, the absentee voter may subscribe to the application and ballot affidavit before and obtain the signature and military identification number or passport number, if available, of any person who is a United States citizen eighteen years of age or older.

Sec. 5. Section 16-552, Arizona Revised Statutes, is amended to read:

§ 16-552. Casting absentee ballot

A. The absentee election board, immediately upon receipt of the absentee ballots, shall, as provided by this section, cast separately for each precinct the absentee ballots which have been received.

B. The board shall check the voter's application and his affidavit on the envelope containing the absentee ballot. If these are found to be sufficient, the board shall check the voter's name on the precinct register. If the board then finds that the applicant is a duly qualified elector of the voting precinct, the vote shall be allowed. If the application or the affidavit is insufficient, or if the applicant is not a duly qualified elector of the voting precinct, the vote shall not be allowed.

C. The county chairman of each political party represented on the ballot may, by written appointment addressed to the absentee election board, designate party representatives and alternates to act as absentee ballot challengers for the party. No party may have more than the number of such representatives or alternates which were mutually agreed upon by each political party to be present at one time. If such agreement cannot be reached, the number of representatives shall be limited to one for each political party.

D. ~~An absentee ballot may be challenged on any grounds set forth in section 16-591 for challenging electors or for suspected fraudulent use of the absentee ballot or any other reasonable grounds. All challenges shall be made in writing with a brief statement of the grounds prior to the absentee ballot being placed in the ballot box. A record of all challenges and resulting proceedings shall be kept in substantially the same manner as provided in section 16-594. If an absentee ballot is challenged, it shall be set aside and retained in the possession of the absentee election board or other officer in charge of absentee ballot processing until all the remaining absentee ballots for that precinct have been properly processed a time that the absentee election board sets for determination of the challenge, subject to the procedure in subsection E of this section, at which time the absentee election board shall hear the grounds for the challenge and shall decide what disposition shall be made of the absentee ballot by majority vote. If the absentee ballot is not allowed, it shall be handled pursuant to subsection F G of this section. In the event a challenge is made in writing prior to the time such ballot is processed, the absentee election board shall give notice of the consideration of the challenge to the county chairman of each political party represented on the ballot prior to such hearing.~~

E. Within twenty-four hours of receipt of a challenge, the absentee election board or other officer in charge of absentee ballot processing shall mail, by first class mail, a notice of the challenge including a copy of the written challenge, and also including the time and place at which the voter may appear to defend the challenge, to the voter at the mailing address shown on the request for absentee ballot or, if none was provided, to the mailing address shown on the registration rolls. Notice shall also be mailed to the challenger at the address listed on the

written challenge and provided to the county chairman of each political party represented on the ballot. The board shall meet to determine the challenge at the time specified by the notice but, in any event, not earlier than ninety-six hours after the notice is mailed, or forty-eight hours if the notifying party chooses to deliver the notice by overnight or hand delivery, and not later than five o'clock p.m. on the Monday following the election. The board shall provide the voter with an informal opportunity to make, or to submit, brief statements regarding the challenge. The board may decline to permit comments, either in person or in writing, by anyone other than the voter, the challenger and the party representatives. The burden of proof is on the challenger to show why the voter should not be permitted to vote. The fact that the voter fails to appear shall not be deemed to be an admission of the validity of the challenge. The absentee elections board or other officer in charge of absentee ballot processing, is not required to provide the notices described in this subsection if the written challenge fails to set forth at least one of the grounds listed in section 16-591 as a basis for the challenge. In that event, the challenge will be summarily rejected at the meeting of the board. Except for election contests pursuant to section 16-672, the board's decision is final and may not be appealed.

E. F. If the vote is allowed, the board shall open the envelope containing the ballot in such a manner that the affidavit thereon is not destroyed, take out the ballot without unfolding it or permitting it to be opened or examined, endorse the stub in the same manner that the other ballots are endorsed, deposit the ballot and the write-in envelope in which it was enclosed in the ballot box, and show by the records of the election that the elector has voted.

F. G. If the vote is not allowed, the affidavit envelope containing the absentee ballot shall not be opened and the board shall mark across the face of such envelope the grounds for rejection. The affidavit envelope and its contents shall then be deposited with the opened affidavit envelopes and shall be preserved with official returns. If the voter does not enter an appearance, the board shall send the voter a notice stating whether the absentee ballot was disallowed and, if disallowed, providing the grounds for the determination. The notice shall be mailed, by first class mail, to the voter's mailing address as shown on the registration rolls within three days after the board's determination.

G. H. The processing of absentee ballots deposited in the ballot box by the absentee boards shall be as provided for regular precincts.

H. I. Party representatives and alternates may be appointed as provided in subsection C of this section to be present and to challenge the verification of questioned ballots pursuant to section 16-584 on any grounds permitted by this section. Questioned ballots which are challenged shall be presented to the absentee election board for decision under the provisions of this section.

Sec. 6. Section 16-594, Arizona Revised Statutes, is amended to read:

§ 16-594. List of challenges, grounds and rulings

The board shall require one of the clerks to keep a list of the names of all persons challenged, the grounds of the challenge and the determination of the board upon the challenge. Copies of the list shall be kept in the office of the county recorder or other officer in charge of absentee ballot processing as a public record. Affidavits of challenged voters, decisions of election officials and challenge lists shall be a part of the official returns and shall be delivered to the board of supervisors.

Approved by the Governor, April 30, 1991.

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