

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0609.01 Bob Lackner x4350

HOUSE BILL 15-1193

HOUSE SPONSORSHIP

Windholz,

SENATE SPONSORSHIP

(None),

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE RIGHTS OF WATCHERS IN CONNECTION WITH THE
102 CONDUCT OF ELECTIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Section 2 of the bill clarifies existing statutory provisions governing the conduct and rights of watchers in elections. The bill further clarifies that watchers may witness and verify all activities in the conduct of the election from the registration of electors and the printing and issuance of ballots through the completion of canvassing, certification of results, recounts, challenges to ineligible electors, and decisions of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

election judges. The permitted activities include assisting in the correction of discrepancies and errors.

Section 2 of the bill further authorizes watchers to inspect and review all election records used by any official in the conduct of the election; except that watchers are prohibited from retaining copies of partial or interim election results prior to 7 p.m. on election day. Copies of all such records must be available to a watcher in the regular format used for records, and the bill prohibits an election official from charging a watcher a fee for obtaining copies of records that exceed the official's direct incremental cost of reproducing the record. The bill prohibits a watcher from being issued copies of records he or she has inspected that may either disclose the manner in which any individual elector has cast a ballot or that include an elector's social security number, driver's license number, or protected confidential voter information.

The election records that a watcher may inspect and review under the bill include all voter registration records and signature verification records available to an election official; except that the bill prohibits copies of electors' signatures from being issued to watchers for removal from the offices of the election official. Watchers may inspect and review signature verification records in a timely and fully accessible manner to permit deliberation over and consideration of a challenge to the validity of the elector's signature prior to the final acceptance or rejection of the elector's signature.

The bill permits an authorized appointing individual to appoint one watcher for each team of election judges performing election activities, and in the case of a single election official performing an activity, the bill permits each appointing individual to appoint one watcher to observe that activity.

The bill permits watchers to inspect and review election records or copies of records used in the conduct of the election at any time after the record is created; except that inspection and review is not permitted during the time that such inspection would prevent the unobstructed access by an election official to a record required for use by the official. The bill permits watchers to make audio, photographic, and video recordings of all election activities, but are prohibited from recording information that may reveal how any elector cast his or her ballot, should the watcher obtain such information. The bill also prohibits a watcher from maliciously delaying the conduct of election activities.

For purposes of the verification of information, or to consider a challenge to a decision made by an election official, the bill permits a watcher to make reasonable inquiries of election officials regarding the decisions they have made or the election procedures being undertaken. The bill prohibits a watcher from maliciously interfering with, or deliberately delaying, the activities of an election official.

The bill prohibits an election official from obstructing or

interfering with the rights of a watcher to timely witness and verify each activity or any documentary evidence used in the conduct of the election.

The bill requires that any unresolved disputes or controversies arising from application of the requirements of the bill must be timely resolved by the secretary of state upon receiving a complaint from an election official, a watcher, or a watcher's certifying individual.

This section of the bill also specifies when the rights of an individual watcher in connection with a particular election terminate.

Section 4 of the bill repeals an existing statutory section addressing watchers at voter service and polling centers.

Section 3 of the bill modifies the existing definition of "watcher" to require that a watcher be an elector of the state.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds, determines, and declares that:

4 (a) The intent of this act is to promote maximum practical
5 transparency in the electoral process by clarifying the critical role of
6 authorized watchers throughout all aspects of the election. Through this
7 act, all interested parties will be provided with sufficient oversight over
8 the conduct of elections through the appointment of authorized watchers
9 who are empowered to witness and verify all aspects of the election.

10 (b) The right of the people to self-government through the
11 electoral process carries more legitimacy and is better accepted when
12 election transparency and citizen oversight constitute fundamental
13 elements of the conduct of elections; and

14 (c) The need for complete, meaningful, and consistent
15 transparency and oversight in connection with the conduct of all elections
16 in the state make the matters addressed in this act those of statewide
17 concern.

18 **SECTION 2.** In Colorado Revised Statutes, 1-7-108, **amend** (3);
19 and **add** (4), (5), (6), (7), (8), (9), (10), and (11) as follows:

1 **1-7-108. Requirements of watchers.** (3) Each watcher ~~shall~~
2 ~~have~~ HAS the right to maintain a list of ~~eligible~~ REGISTERED ELECTORS,
3 AND ALL electors who have voted, AND to witness and verify each step
4 AND ALL ACTIVITIES in the conduct of the election from ~~prior to the~~
5 ~~opening of the polls~~ THE REGISTRATION OF ELECTORS AND THE PRINTING
6 AND ISSUANCE OF BALLOTS through the completion of ~~the count and~~
7 ~~announcement of the results, to challenge~~ CANVASSING, CERTIFICATION
8 OF RESULTS, AND RECOUNTS. EACH WATCHER HAS THE RIGHT TO
9 CHALLENGE ineligible electors AND DECISIONS OF ELECTION JUDGES MADE
10 DURING THEIR PERFORMANCE OF ANY ACTIVITY AUTHORIZED BY THIS
11 CODE, and to assist in the correction of discrepancies AND ERRORS.

12 (4) EACH WATCHER MAY INSPECT AND REVIEW ALL ELECTION
13 RECORDS USED BY ANY OFFICIAL IN THE CONDUCT OF THE ELECTION;
14 EXCEPT THAT COPIES OF PARTIAL OR INTERIM ELECTION RESULTS SHALL
15 NOT BE REMOVED FROM THE PREMISES BY A WATCHER PRIOR TO 7 P.M. ON
16 ELECTION DAY. COPIES OF ALL SUCH RECORDS MUST BE AVAILABLE TO A
17 WATCHER IN THE REGULAR FORMAT USED FOR RECORDS AND,
18 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ELECTION OFFICIAL
19 SHALL NOT CHARGE A WATCHER A FEE FOR INSPECTING AND REVIEWING
20 RECORDS. WATCHERS MAY OBTAIN COPIES OF SUCH RECORDS BUT ANY
21 FEES CHARGED FOR OBTAINING SUCH COPIES SHALL NOT EXCEED THE
22 OFFICIAL'S DIRECT INCREMENTAL COST OF REPRODUCING THE RECORD. A
23 WATCHER SHALL NOT BE ISSUED A COPY OF A RECORD HE OR SHE HAS
24 INSPECTED THAT MAY EITHER DISCLOSE THE MANNER IN WHICH ANY
25 INDIVIDUAL ELECTOR HAS CAST A BALLOT OR THAT INCLUDE AN ELECTOR'S
26 SOCIAL SECURITY NUMBER, DRIVER'S LICENSE NUMBER, OR CONFIDENTIAL
27 VOTER INFORMATION PROTECTED UNDER SECTION 24-72-204 (3.5), C.R.S.

1 (5) THE ELECTION RECORDS THAT A WATCHER MAY INSPECT AND
2 REVIEW UNDER SUBSECTION (4) OF THIS SECTION ARE ALL VOTER
3 REGISTRATION AND SIGNATURE VERIFICATION RECORDS AVAILABLE TO AN
4 ELECTION OFFICIAL; EXCEPT THAT COPIES OF ELECTORS' SIGNATURES
5 SHALL NOT BE ISSUED TO WATCHERS FOR REMOVAL FROM THE OFFICES OF
6 THE ELECTION OFFICIAL. WATCHERS MAY INSPECT AND REVIEW
7 SIGNATURE VERIFICATION RECORDS IN A TIMELY AND FULLY ACCESSIBLE
8 MANNER TO PERMIT DELIBERATION OVER AND CONSIDERATION OF A
9 CHALLENGE TO THE VALIDITY OF AN ELECTOR'S SIGNATURE PRIOR TO THE
10 FINAL ACCEPTANCE OR REJECTION OF THE ELECTOR'S SIGNATURE.

11 (6) EACH INDIVIDUAL AUTHORIZED TO APPOINT A WATCHER UNDER
12 THIS ARTICLE MAY APPOINT ONE WATCHER FOR EACH TEAM OF ELECTION
13 JUDGES PERFORMING ELECTION ACTIVITIES, AND, IN THE CASE OF A SINGLE
14 ELECTION OFFICIAL PERFORMING AN ACTIVITY, EACH APPOINTING
15 INDIVIDUAL MAY APPOINT ONE WATCHER TO OBSERVE THAT ACTIVITY.

16 (7) EACH WATCHER MAY INSPECT AND REVIEW ELECTION RECORDS
17 OR COPIES OF SUCH RECORDS USED IN THE CONDUCT OF THE ELECTION AT
18 ANY TIME AFTER THE RECORD IS CREATED; EXCEPT THAT SUCH INSPECTION
19 AND REVIEW SHALL NOT BE PERMITTED DURING THE TIME THAT SUCH
20 INSPECTION WOULD PREVENT THE UNOBSTRUCTED ACCESS BY AN
21 ELECTION OFFICIAL TO A RECORD REQUIRED FOR USE BY THE OFFICIAL.
22 WATCHERS MAY MAKE AUDIO, PHOTOGRAPHIC, AND VIDEO RECORDINGS
23 OF ALL ELECTION ACTIVITIES, BUT SHALL NOT RECORD INFORMATION THAT
24 MAY REVEAL HOW ANY ELECTOR CAST HIS OR HER BALLOT, SHOULD THE
25 WATCHER OBTAIN SUCH INFORMATION. NOR SHALL ANY WATCHER IN
26 CONNECTION WITH ANY AUTHORIZED RECORDING UNDER THIS SUBSECTION
27 (7) MALICIOUSLY DELAY THE CONDUCT OF ELECTION ACTIVITIES.

1 (8) FOR PURPOSES OF THE VERIFICATION OF INFORMATION, OR TO
2 CONSIDER MAKING A CHALLENGE TO A DECISION MADE BY AN ELECTION
3 OFFICIAL, A WATCHER MAY MAKE REASONABLE INQUIRIES OF ELECTION
4 OFFICIALS REGARDING THE DECISIONS THEY HAVE MADE OR THE ELECTION
5 PROCEDURES BEING UNDERTAKEN. A WATCHER SHALL NOT MALICIOUSLY
6 INTERFERE WITH, OR DELIBERATELY DELAY, THE ACTIVITIES OF AN
7 ELECTION OFFICIAL.

8 (9) AN ELECTION OFFICIAL SHALL NOT OBSTRUCT OR INTERFERE
9 WITH THE RIGHTS OF A WATCHER UNDER THIS SECTION TO TIMELY WITNESS
10 AND VERIFY EACH ACTIVITY OR DOCUMENTARY EVIDENCE USED IN THE
11 CONDUCT OF THE ELECTION.

12 (10) ANY UNRESOLVED DISPUTES OR CONTROVERSIES ARISING
13 FROM APPLICATION OF THE REQUIREMENTS OF THIS SECTION MUST BE
14 TIMELY RESOLVED BY THE SECRETARY OF STATE UPON RECEIVING A
15 COMPLAINT FROM AN ELECTION OFFICIAL, A WATCHER, OR A WATCHER'S
16 APPOINTING INDIVIDUAL UNDER SUBSECTION (6) OF THIS SECTION. THE
17 SECRETARY'S RESOLUTION OF THE DISPUTE OR CONTROVERSY MUST BE
18 MADE IN A MANNER THAT IS MOST FAVORABLE TO SUPPORTING THE
19 STATE'S FUNDAMENTAL INTERESTS IN TRANSPARENCY AND CITIZEN
20 OVERSIGHT OF THE CONDUCT OF ELECTIONS. THIS SUBSECTION (10) IS NOT
21 INTENDED TO CONSTITUTE THE EXCLUSIVE REMEDY FOR SUCH DISPUTES OR
22 CONTROVERSIES.

23 (11) THE RIGHTS OF AN INDIVIDUAL WATCHER IN CONNECTION
24 WITH A PARTICULAR ELECTION UNDER THIS SECTION TERMINATE UPON THE
25 FINAL DETERMINATION AND CERTIFICATION OF AN ELECTION AFTER ALL
26 RECOUNTS AND ELECTION CONTESTS HAVE BEEN RESOLVED, INCLUDING
27 ANY FINAL JUDGMENT COMPRISING, WITHOUT LIMITATION, ANY CIVIL OR

1 CRIMINAL APPEAL ARISING OUT OF THE ELECTION.

2 **SECTION 3.** In Colorado Revised Statutes, 1-1-104, **amend** (51)
3 as follows:

4 **1-1-104. Definitions.** As used in this code, unless the context
5 otherwise requires:

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

16 **SECTION 4.** In Colorado Revised Statutes, **repeal** 1-7.5-114.

17 **SECTION 5. Applicability.** This act applies to elections
18 conducted on or after the effective date of this act.

19 **SECTION 6. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.