

**RULES
FOR
~~VOTER IDENTIFICATION~~
(Effective January 1, 2014)**



**State Board of Election Commissioners
501 Woodlane, Suite 401N
Little Rock, AR 72201
(501) 682-1834 or (800) 411-6996
www.arkansas.gov/sbec**

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Scope of Rules

These rules will set forth the procedures for processing and administering voter identification requirements. These rules are in addition to and not a substitute for the laws of the State of Arkansas and rules promulgated by the Secretary of State.

§800 Definitions

- ~~(a) Additional Identification Requirement—documentary identification in addition to proof of identity that certain first-time voters who register by mail must show to cast a regular ballot during early voting or at the polls on election day. Acceptable identification documents include a copy of current and valid photo identification, or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter.⁺~~
- ~~(b) Administrator—the administrative head of a long-term care or residential care facility licensed by the state.~~
- ~~(c) Proof of Identity:
 - ~~(1) A voter identification card issued by the county clerk pursuant to Act 595 of 2013; OR~~
 - ~~(2) A document or identification card that meets all of the following conditions:
 - ~~(a) Shows the name of the person to whom the document was issued;~~
 - ~~(b) Shows a photograph of the person to whom the document was issued;~~
 - ~~(c) Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and~~
 - ~~(d) If displaying an expiration date, the document or card is not expired or expired no more than four (4) years before the date of the election in which the person seeks to vote.~~~~
 - ~~(3) Documents or Identification cards that comply with the above requirements for proof of identity may include, without limitation, the following:
 - ~~(a) A driver's license;~~
 - ~~(b) A photo identification card;~~
 - ~~(c) A concealed handgun carry license;~~
 - ~~(d) A United States passport;~~
 - ~~(e) An employee badge or identification document;~~
 - ~~(f) A United States Military identification document;~~
 - ~~(g) A student identification card issued by an accredited postsecondary educational institution in the State of Arkansas;~~~~~~

⁺ A.C.A. § 7-5-201(c) as amended by Act 595 of 2013

- ~~(h) A public assistance identification card; and~~
- ~~(i) A voter identification card as provided under Act 595 of 2013 and rules propounded by the Secretary of State²~~

~~(e) Documentation from the Administrator—a letter on facility letterhead, dated and signed by the administrator which specifically identifies the full name of the resident in the body of the letter and is valid for one year after the date it is signed and issued. The letter issued by the administrator can be used by a resident of a long-term care facility during early voting, on election day at a polling location, and when voting by absentee ballot.³~~

~~§ 801 Proof of Identity Required When Voting at the Polls~~

~~All voters except those who reside in a long-term care or residential care facility licensed by the state must present “proof of identity” to cast a regular ballot at the polls during early voting and on election day.~~

~~A person who resides in a long-term care or residential care facility licensed by the state may instead provide documentation from the administrator of the facility attesting that the person is a resident of the facility in lieu of the requirement to present proof of identity before voting⁴.~~

~~§ 802 Poll Worker Assessment of Validity of Proof of Identity~~

~~The proof of identity shall be used to verify the name and appearance of the voter, except that when a voter presents a voter identification card issued by the county clerk pursuant to Act 595 of 2013, the card shall also be used to verify the voter’s identification number. The Precinct Voter Registration List shall be used to verify the address of the voter by comparing the voter’s address in the list to the address stated by the voter.~~

~~The poll worker to whom proof of identity is presented shall:~~

- ~~(1) Verify that the name on the proof of identity is consistent with the name in the Precinct Voter registration list, allowing for abbreviations and nicknames;~~
- ~~(2) If the voter presents a voter identification card issued by the county clerk pursuant to Act 595 of 2013 and rules propounded by the Secretary of State, verify that the registrant identification number on the card is the same as the registrant identification number on the Precinct Voter Registration List.~~

² ~~A.C.A. § 7-1-101 as amended by Act 595 of 2013~~

³ ~~A.C.A. § 7-5-201(d)(2) as amended by Act 595 of 2013 and §16.0 of the Arkansas Secretary of State’s Rules on Voter Identification~~

⁴ ~~A.C.A. § 7-5-201(d) as amended by Act 595 of 2013~~

- ~~(3) If the name is consistent, compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, considering hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics;~~
- ~~(4) If the poll worker is satisfied that the voter is the person depicted in the photograph and the name is consistent with the name in the Precinct Voter Registration List, then issue the voter a regular ballot;~~
- ~~(5) If the voter's name is different from the name in the Precinct Voter Registration List or the name as stated by the voter but the poll worker is satisfied that the voter is the person depicted in the photograph, issue the person a regular ballot after the voter completes a voter registration application form for the purpose of updating the voter's information; and~~
- ~~(6) If the poll worker determines that the proof of identity does not depict the voter, then the poll worker shall offer the voter a provisional ballot.~~

~~§ 803 Additional Identification Requirement for Certain First-Time Voters~~

~~Certain first-time voters who register by mail and who, when registering to vote do not provide statutorily required identification documentation, will be flagged on the Precinct Voter Registration List for possible additional identification documentation when voting at the polls during early voting or on election day or by absentee ballot. These first-time voters, like all other voters, are required to present proof of identity in order to vote at the polls during early voting or on election day. A flagged voter who presents a valid proof of identity that is also current (not expired) may vote without presenting an additional identification document. However, if a flagged voter presents a valid proof of identity that is not current (i.e., is expired) and valid for the purpose for which it was issued, the flagged voter must also must also show a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.⁵~~

~~§ 804 Failure to Present Proof of Identity or Other Required Documentation at the Polls~~

~~A person voting at the polls during early voting or on election day who did not present proof of identity, or, if a resident of a long-term care or residential care facility licensed by the state, who did not provide either proof of identity or documentation from the administrator of the facility attesting that the person is a resident of the facility, shall be offered a provisional ballot.⁶~~

⁵ ~~A.C.A. § 7-5-201 (e) as amended by Act 595 of 2013~~

⁶ ~~A.C.A. § 7-5-321 as amended by Act 595 of 2013~~

~~A first-time voter who registered by mail who did not present the additional identification, if required under §803, shall be offered a provisional ballot.⁷~~

~~§ 805 Postelection Submission of Proof of Identity or Affidavit of Indigence or Religious Objection~~

~~A provisional ballot cast because a voter failed to present proof of identity when voting at the polls during early voting or on election day shall be counted and included in the certified results of the election if:~~

- ~~(1) The voter's ballot is not successfully challenged for any other reason; and~~
- ~~(2) The voter provides to either the county clerk or the county board of election commissioners by noon on the Monday following the election either the voter's proof of identity or an affidavit that the voter cannot provide proof of identity because of indigence or a religious objection to being photographed.~~

~~The voter may provide his or her proof of identity or his or her affidavit of indigence or religious objection to the county board by presenting the proof of identity or the affidavit at any meeting of the county board held before noon on the Monday following the election.~~

~~The voter may provide his or her proof of identity or his or her affidavit of indigence or religious objection to the county clerk by presenting the proof of identity or the affidavit to the county clerk before noon on the Monday following the election.~~

~~The voter shall present the proof of identity or deliver the affidavit of indigence or religious objection in person.⁸~~

~~§ 806 Assessment of Validity of Proof of Identity Submitted Postelection~~

~~The county clerk or county board shall compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, considering hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics.~~

~~The county clerk or the county board receiving a proof of identity shall make a photocopy of the proof of identity and retain the copy with the voter's provisional ballot envelope. The county clerk or the county board shall provide a receipt to the voter containing the following information:~~

⁷ ~~A.C.A. § 7-5-305(a)(8)(B)(iii)~~

⁸ ~~A.C.A. § 7-5-321(c) as provided in Act 595 of 2013~~

- ~~(1) The name of the county clerk, or each county board member present at the meeting where the proof of identity was presented;~~
- ~~(2) The name of the voter who presented the proof of identity;~~
- ~~(3) The date and time the proof of identity was presented to the clerk or county board;~~
- ~~(4) If it is determined that the photograph on the proof of identity depicts the voter, then a declaration of that finding;~~
- ~~(5) If it is determined that the photograph on the proof of identity does not depict the voter, then a declaration of that finding including the reason for that finding; and~~
- ~~(6) Any additional information the clerk or county board deems relevant.~~

~~The county clerk or county board shall retain a copy of the receipt.~~⁹

~~§ 807 Postelection Submission of Affidavit of Indigence or Religious Objection~~

~~The county clerk or county board receiving an affidavit of indigence or religious objection shall make a photocopy of the affidavit, provide the copy to the voter and retain the original affidavit with the voter's provisional ballot envelope. The county clerk or the county board shall provide a receipt to the voter containing the following information:~~

- ~~(1) The name of the county clerk, or each county board member present at the meeting where the affidavit was delivered;~~
- ~~(2) The name of the voter who delivered the affidavit;~~
- ~~(3) The date and time the affidavit was delivered to the clerk or county board; and~~
- ~~(4) Any additional information the clerk or county board deems relevant.~~

~~The county clerk or county board shall retain a copy of the receipt.~~¹⁰

⁹ A.C.A. § 7-5-321(e) as provided in Act 595 of 2013

¹⁰ A.C.A. § 7-5-321(e) as provided in Act 595 of 2013

~~§808 County Clerk to Provide Voter's Proof of Identity or Affidavit to Election Commission~~

~~The county clerk who receives proof of identity or an affidavit of indigence or religious objection shall provide the copy of the voter's proof of identity or the original affidavit and a copy of the voter's receipt to the county board.¹¹~~

~~§809 Vote Counted When Proof of Identity or Affidavit Properly Submitted~~

~~The county board shall count the vote and include it in the certified returns upon receipt of a copy of a voter's valid and timely delivered proof of identity or affidavit of indigence or religious objection.¹²~~

~~§810 Identification Required When Voting Absentee~~

~~In order for an absentee ballot to be counted, the absentee voter must submit with the ballot a copy of current and valid photo identification, or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter.¹³~~

~~Military and merchant marine voters and their spouses and dependents who are away from the county because of the active duty status of a military or merchant marine member are exempt from the identification requirement for absentee ballots.¹⁴~~

~~A resident of a long term or residential care facility licensed by the State of Arkansas is not required to provide Proof of Identity before voting. In lieu of the Proof of Identity, a resident is required to provide documentation from the administrator of the facility attesting that the person is a resident of the facility.~~

~~The letter issued by the administrator can be used by a resident of a long term care facility during early voting, on election day at a polling location, and when voting by absentee ballot.¹⁵~~

~~§811 Effective Date~~

~~These Rules are effective beginning January 1, 2014.¹⁶~~

¹¹ A.C.A. § 7-5-321(e) as provided in Act 595 of 2013

¹² A.C.A. § 7-5-321(e) as provided in Act 595 of 2013

¹³ A.C.A. § 7-5-201(d)(1)(B) as amended by Act 595 of 2013

¹⁴ A.C.A. § 7-5-201(d)(1)(B) as amended by Act 595 of 2013

¹⁵ Arkansas Secretary of State's Rules on Voter Identification §16.0

¹⁶ A.C.A. § Act 595 of 2013, Section 7

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY State Board of Election Commissioners

DIVISION _____

DIVISION DIRECTOR Justin Clay

CONTACT PERSON Justin Clay

ADDRESS 501 Woodlane, Suite 401N, Little Rock, AR 72201

PHONE NO. 501-682-1834 FAX NO. 501-682-1782 E-MAIL clay.sbec@sos.arkansas.gov

NAME OF PRESENTER AT COMMITTEE MEETING Justin Clay

PRESENTER E-MAIL clay.sbec@sos.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Rules for Voter Identification 108.00.08
2. What is the subject of the proposed rule? General procedures for processing and administering voter identification requirements
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒
If yes, what is the effective date of the emergency rule? N/A
- When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐

No ☐

5. Is this a new rule? Yes ☐ No ☒

If yes, please provide a brief summary explaining the regulation. N/A

Does this repeal an existing rule? Yes ☒ No ☐

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule?

Yes ☐

No ☒

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. 7-4-101(f)(5)

7. What is the purpose of this proposed rule? Why is it necessary? The repeal of this rule is necessary due to the 2014 Arkansas Supreme Court ruling that found Act 595 of 2013 (the Voter ID Act) to be unconstitutional. This rule was originally implemented in 2014 to address legislative changes from Act 595 of 2013 by establishing the procedures for processing and administering voter identification requirements.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.arkansas.gov/sbec

9. Will a public hearing be held on this proposed rule? Yes ☐ No ☒

If yes, please complete the following:

Date: N/A

Time: N/A

Place: N/A

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

August 10, 2015

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

October 4, 2015

12. Do you expect this rule to be controversial? Yes ☐ No ☒

If yes, please explain.

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules?
Please provide their position (for or against) if known.
-

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT State Board of Election Commissioners

DIVISION _____

PERSON COMPLETING THIS STATEMENT Justin Clay

TELEPHONE NO. 501-682-1834 **FAX NO.** 501-682-1782 **EMAIL:** clay.sbec@sos.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rules for Voter Identification 108.00.08

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
N/A
- (b) The reason for adoption of the more costly rule;
N/A
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A
- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>

Next Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>

Total 0.00

Total 0.00

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>
Total	<u>0.00</u>

Next Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>
Total	<u>0.00</u>

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0.00

N/A

Next Fiscal Year

\$ 0.00

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0.00

N/A

Next Fiscal Year

\$ 0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.