

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



Secretary of State  
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500 Woodlane Street, Suite 026  
Little Rock, Arkansas 72201-1094  
(501) 682-5070  
[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



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Name of Department \_\_\_\_\_

Agency or Division Name \_\_\_\_\_

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person \_\_\_\_\_

Contact E-mail \_\_\_\_\_

Contact Phone \_\_\_\_\_

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Name of Rule \_\_\_\_\_

Newspaper Name \_\_\_\_\_

Date of Publishing \_\_\_\_\_

Final Date for Public Comment \_\_\_\_\_

Location and Time of Public Meeting \_\_\_\_\_



## **REQUEST FOR GOVERNOR'S APPROVAL OF PROPOSED RULES**

Please submit this form and all required documents in the checklist as a single pdf document. Failure to comply will result in the rule being denied.

Rules identified as mandatory promulgations in Form 2021A must be submitted to the Governor's Office for approval no later than December 31, 2021.

**Cabinet Department:** Independent Non-Cabinet Level Department

**Division/Commission/Board/Agency:** State Board of Election Commissioners

**Rule Number:** \_\_\_\_ **Short Title of Rule:** Rules for the Verification of Voter Registration

**New Rule:** ☐ Yes ☒ No **Rule Amendment:** ☒ Yes ☐ No **Rule Repeal:** ☐ Yes ☒ No

**Proposed Effective Date:** January 25, 2021 **Date Rule Submitted:** October 12, 2021

**Emergency Rule:** ☐ Yes ☒ No **Expedited Request:** ☐ Yes ☒ No **Reason:** \_\_\_\_\_

**Drafted in Code of Rules Format** ☐ Yes ☒ No **If not, explain:** The new provisions of the rule are principally drafted in the format of the Code; however, the BLR advised not to preemptively modify the existing rules into the new format but rather allow their process to update the format of the existing provision. The SBEC has followed this advice.

**Please explain the need for an Emergency/Expedited Rule:** \_\_\_\_\_

\_\_\_\_\_

### **AUTHORITY TO PROMULGATE**

**State Mandate:** ☒ Yes ☐ No **Federal Mandate:** ☐ Yes ☒ No **Act No.:** Act 249 of 2021

**Statutory Authority to Promulgate the Rule:** Ark. Const. Amend. 51 §13(b)(7) (Authorizes the SBEC to conduct rulemaking related to the Photo ID portion of this section to the constitution.); A.C.A. §7-4-101(f)(5) (Authorizes the SBEC to promulgate rules for "even and consistent application of the voter registration laws and fair and orderly election procedures.")

**Department/Agency Legislation from Legislative Session:** ☐ Yes ☒ No **Act No.:** \_\_\_\_\_

**House Sponsor:** \_\_\_\_\_ **Senate Sponsor:** \_\_\_\_\_

**Cabinet Review:** ☐ Yes ☒ No **Secretary's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## **RULE SUMMARY**

**Purpose of Rule:** The sole purpose of this amendment is to update the current rule to reflect the changes made by Act 249 of 2021.

**Reason for Creating or Amending the Rule:** Act 249 eliminated the optional identity affirmation which allows a voter to sign a second statement requiring the CBEC to count these provisional ballots cast without showing a photo ID so long as no issue unrelated to the failure to show photo ID when voting required the CBEC to reject the ballot. The amendment to the rule is necessary to eliminate references to the optional identify affirmation and to ensure the rule correctly articulates the standard of review which the CBEC must apply when considering provisional ballots cast for failure to provide a qualifying photo ID.

**How does the Rule deviate from the Act:** There is no deviation whatsoever in this amended portion of the rule. This amendment only involves deletions of existing text.

**Rule Based on a Rule From Different Jurisdictions:** ☐ Yes ☒ No **Jurisdictions:** \_\_\_\_\_

**Short Summary of New Rule or Rule Changes:** (explain in greater detail in your executive summary)

The Rule governs the process of presenting a Photo ID when voting in order to verify that the voter is the individual who is registered to vote. Act 249 modifies the constitutional requirements related to this process by eliminating an alternative procedure that allowed a voter to vote provisionally and have their ballot counted without showing a Photo ID. While amending Ark. Const. Amend. 51 §13, the Act leaves unchanged the requirement that the SBEC promulgate rules necessary to implement the relevant subsection.

**Applicable Federal Regulations:** ☐ Yes ☒ No **C.F.R. No:** \_\_\_\_\_

**Proposed Rule the Least Restrictive Alternative:** ☒ Yes ☐ No. **If not, why?** \_\_\_\_\_

**Does it Mirror Federal Regulations or Impose Additional Requirements:** ☐ Yes ☒ No

**Explain:** \_\_\_\_\_

**Note:** In addition to these explanations, the Department/Agency seeking to promulgate this rule shall submit the attached executive summary. Failure to include the summary will result in the rule being denied.

## **CONTROVERSY**

**Rule Controversial:** ☐ Yes ☒ No **Act Controversial in Legislative Session:** ☒ Yes ☐ No

**Known Interested Parties:** The League of Women Voters has filed a lawsuit challenging Act 249 of 2021. Other interested parties include local election officials and voters generally.

**Comments Made at Legislative Session:** The comments and corresponding controversy which would be affected by this rule relate only to the Act and would not cause this technical amendment to be controversial separately from the substantive debate over the Act.

Comments in favor of the Act argue that these changes are necessary in order to ensure the election process has a high degree of integrity and that it also has the appearance of a high degree of integrity. It was also argued that these changes are necessary to fulfill the intent and expectation of voters who adopted Amendment 99 to the Arkansas Constitution. Comments against cite a low incidence of voter impersonation fraud and an argument that some Arkansans may have difficulty presenting a qualifying photo ID.

**Public Hearing:** ☒ Yes ☐ No **Expect public comment from:** The SBEC's practice is to always schedule a public hearing; however, we do not expect public comment on this rule.

### **FINANCIAL IMPACT**

**Financial Impact:** ☐ Yes ☒ No **Total Impact: FY2020:** \_\_\_\_\_ **FY2021:** \_\_\_\_\_

**Impact Mitigated by Federal Funding:** ☐ Yes ☐ No **FY2020:** \_\_\_\_\_ **FY2021:** \_\_\_\_\_

**Reasons for Financial Impact:** \_\_\_\_\_

\_\_\_\_\_

### **FINAL CHECKLIST**

**Please note that the Governor's office will not begin the approval process of the foregoing rule if any of the following applicable documents are not enclosed in the order listed in a single PDF file.**

- ☐ Rule Request Form
- ☐ Executive Summary
- ☐ Mark-Up Version of the Proposed Rule
- ☐ Clean Version of the Proposed Rule
- ☐ BLR Questionnaire
- ☐ BLR Financial Impact Statement
- ☐ Copy of Act or Regulation

# STATE BOARD OF ELECTION COMMISSIONERS

501 Woodlane Street – Suite 122 South  
Little Rock, Arkansas 72201  
(501)682-1834 or (800)411-6996

Secretary of State  
**John Thurston**  
Chairman

**Sharon Brooks**  
**Jamie Clemmer**  
**Bilenda Harris-Ritter**  
**William Luther**  
**Wendy Brandon**  
**J. Harmon Smith**  
Commissioners



**Daniel J. Shults**  
Director

**Chris Madison**  
Legal Counsel

**Jon Davidson**  
Educational Services Manager

**Tena Arnold**  
Business Operations Manager

## **Executive Summary of the 2021 Proposed Amendment to the RULES FOR THE VERIFICATION OF VOTER REGISTRATION**

The State Board of Election Commissioners met on September 29, 2021 and approved changes to the “Rules for the Verification of Voter Registration.” This proposed amendment is being promulgated to update the existing rule which reflect changes made to the Voter ID laws during the 93<sup>rd</sup> General Assembly.

### **PURPOSE**

This update is required by Act 249 of 2021 which eliminated the optional identity affirmation from the process of verifying a voter's registration with a photo ID.

### **BACKGROUND**

Prior to the Act, a voter who could not satisfy the photo ID requirement was able to sign a more tightly worded affirmation in addition to the standard voter statement affirming, under penalty of perjury, that the voter was registered and eligible to vote using the information provided. The CBEC was then required to find that the voter's provisional ballot satisfied the voter ID requirements and, unless an issue unrelated to the ID requirement arose, the ballot would be automatically counted.

### **SUMMARY OF KEY CHANGES**

Because Act 249 of 2021 eliminated the optional affirmation process from the Code and from Amendment 51, the proposed amendment is being promulgated in order to eliminate these provisions from the Rule governing this process. The required changes are made in §806.

### **ADDITIONAL DISCUSSION**

This is the only substantive change to the rule; however, the amendment does include some updating of the identification of subsections to better comply with the codification of rules by the Bureau of Legislative Research.

**RULES  
FOR  
THE VERIFICATION OF VOTER  
REGISTRATION**

(Effective October 28, 2017; Revised **January 22, 2022**)



State Board of Election Commissioners  
501 Woodlane, Suite 401N  
Little Rock, AR 72201  
(501) 682-1834 or (800) 411-6996  
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# DRAFT – MARKUP COPY

## TABLE OF CONTENTS

Scope of Rules .....	3
§ <del>800</del> <u>801</u> Definitions.....	3
§ <del>801</del> <u>802</u> Verification of Voter Registration Required When Voting at the Polls .....	4
§ <del>802</del> <u>803</u> Poll Worker Verification of Voter Registration.....	5
§ <del>803</del> <u>804</u> Additional Identification Requirement for Certain First-Time Voters .....	6
§ <del>804</del> <u>805</u> Failure to Verify Voter Registration or Present Required Documentation at the Polls..	6
§ <del>805</del> <u>806</u> Identification Required When Voting Absentee.....	6
§ <del>806</del> <u>807</u> Curing Provisional Ballots Created by the Failure to Verify the Voter’s Registration ..	7
§ <del>807</del> <u>808</u> Assessment of Validity of Photo Identification Submitted Postelection .....	8
§ <del>808</del> <u>809</u> County Clerk to Provide Verification of Voter Registration to Election Commission ..	8

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## Scope of Rules

These rules will set forth the procedures for processing and administering the requirement that voters verify their voter registration before they are permitted to vote. 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~~ 801 Definitions

- (a) Additional Identification Requirement – documentary identification separate from that which is required to verify voter registration 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.<sup>1</sup>
- (b) Administrator – the administrative head of a long-term care or residential care facility licensed by the state.
- (c) Documentation of Residency – a statement by the administrator of a residential care facility or long-term care facility 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. This documentation shall only be accepted if it is on the form provided by the Secretary of State<sup>2</sup>
- (d) Long-Term Care or Residential Care Facility – a nursing home, residential care facility, assisted living facility, post-acute head injury retraining and residential care facility, or any other facility which provides long-term medical or personal care and which is licensed by the State of Arkansas.
- (e) Photo Identification:
  - (1) A document or identification card that satisfies 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.

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<sup>1</sup> A.C.A. § 7-5-201(e)

<sup>2</sup> A.C.A. § 7-5-905

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(2) Documents or Identification cards that comply with the above requirements for photo identification 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 issued to any person by an accredited postsecondary educational institution in the State of Arkansas;
- F. A United States Military identification document;
- G. A public assistance identification card if the card shows a photograph of the person to whom the document or identification card was issued; and
- H. A voter identification card as provided under ~~Act 633 of 2016~~ A.C.A. §7-5-324 and rules propounded by the Secretary of State<sup>3</sup>

(f) Verification of Voter Registration - The process by which an individual seeking to vote presents a photo identification to an election official for the purpose of confirming that the individual physically present at the poll is the same individual to whose voter registration the vote cast will be credited.

## **§ ~~801~~ 802 Verification of Voter Registration Required When Voting at the Polls**

(a) All voters, except those who reside in a long-term care or residential care facility, must verify their voter registration in order to cast a regular ballot at the polls during early voting and on election day.<sup>4</sup>

(b) 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<sup>5</sup>. This documentation shall be provided on a standardized form adopted by the Secretary of State.<sup>6</sup>

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<sup>3</sup> Ark. Const. amend. 51, §13(b); A.C.A. §7-1-101(38)

<sup>4</sup> Ark. Const. amend. 51, §13(b)(2)(B)

<sup>5</sup> Ark. Const. amend. 51, §13

<sup>6</sup> A.C.A. § 7-5-905

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## § ~~802~~ 803 Verification of Voter Registration by Election Officials

(a) The photo identification shall be used to verify the name and appearance of the voter. The Precinct Voter Registration List shall be used to verify the address of the voter by comparing the voter's address on the list to the address stated by the voter.

(b) The election official verifying the voter registration of a voter shall:

- (1) Verify that the name on the photo identification is consistent with the name in the Precinct Voter Registration List, allowing for abbreviations and nicknames;
- (2) If the name is consistent, compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, given reasonable allowances for changes in hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics;
- (3) If the election official 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;
- (4) If the name appearing on the voter's photo identification varies in part from the name in the Precinct Voter Registration List or the name as stated by the voter, an election official should issue a regular ballot only if the variation can be explained as an abbreviation of a given name, the inclusion of a nick name on the photo identification where the name still bears substantial similarity to the voter's name on the Precinct Voter Registration List, a lawful change in the voter's name due to marriage or divorce, or other similar circumstances which satisfy the election official that the voter is the person depicted in the photograph so long as the name still bears substantial similarity to the voter's name on the Precinct Voter Registration List and all variations are explained;
- (5) If the variation is due to a change in the voter's name and the name reflected in the Precinct Voter Registration List is the voter's old name, the voter should only be issued a ballot after the voter completes a voter registration application form for the purpose of updating the voter's information;
- (6) If the election official determines that the photo identification presented does not depict the voter or the name of the voter in the Present Voter Registration List is insufficiently similar to the name appearing on the photo identification, the question of whether the voter is permitted to cast a regular ballot shall be referred to the election judge of that polling site who shall resolve any marginal cases of identity in favor of the voter; and
- (7) If the election judge agrees that the photo identification does not depict the voter or that the name that appears on the photo identification is insufficiently similar to the name on the Precinct Voter Registration List, the voter will have failed to verify his or her voter registration and the poll worker shall offer the voter a provisional ballot.

(c) The election judge at any polling site is the election official who is in charge of that polling site regardless of the title used locally to reference this election official.

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## **§ ~~803~~ 804 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 the required identification documentation, will be flagged on the Precinct Voter Registration List for additional identification documentation when voting at the polls during early voting, on election day, or by voting using an absentee ballot. A flagged voter who presents a valid photo identification that is also current (i.e., not expired) may vote without presenting an additional identification document. However, if a flagged voter presents a valid photo identification that is not current (i.e., is expired) and valid for the purpose for which it was issued, the flagged voter 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.<sup>7</sup>

## **§ ~~804~~ 805 Failure to Verify Voter Registration or Present other Required Documentation at the Polls**

(a) A person voting at the polls during early voting or on election day who did not verify their voter registration or, if a resident of a long-term care or residential care facility licensed by the state, who did not provide documentation of residency from the administrator of the facility attesting that the person is a resident of the facility, shall be offered a provisional ballot.<sup>8</sup>

(b) 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.<sup>9</sup>

## **§ ~~805~~ 806 Identification Required When Voting Absentee**

(a) The absentee voter must submit verification of their voter registration when they return their absentee ballot to the clerk's office.<sup>10</sup> A photocopy of any document that qualifies as photo identification under these rules shall be sufficient to satisfy the photo identification requirement when verifying the voter's registration.

(b) If a resident of a long-term or residential care facility licensed by the State of Arkansas does not submit photo identification in order to verify their voter registration, that resident's ballot will

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<sup>7</sup> A.C.A. § 7-5-201(e)

<sup>8</sup> Ark. Const. amend. 51, §13(b)(2); A.C.A. § 7-5-305(a)(8)(B)

<sup>9</sup> Ark. Const. amend. 51, §13(b)(6); A.C.A. § 7-5-201(e)

<sup>10</sup>Ark. Const. amend. 51, §13(b)(3); A.C.A. § 7-5-323

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still be counted as a regular ballot if the voter submits documentation of residency from the administrator of the facility attesting that the person is a resident of the facility.<sup>11</sup>

(c) Active duty members of the uniformed services and merchant marine voters and their spouses and dependents who are away from the county because of the active duty status of a uniformed service or merchant marine member are exempt from the identification requirement for absentee ballots.<sup>12</sup>

(d) The ballot of a voter who failed to verify their voter registration and who is not otherwise entitled to have his or her absentee ballot counted without verification under this section shall be considered a provisional ballot.<sup>13</sup>

## **§ 806 807 Curing Provisional Ballots Created by the Failure to Verify the Voter's Registration**

(a) ~~A.~~ Voters at the Polls

(1) A provisional ballot cast because a voter failed to verify their voter registration 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)~~ (A) The voter's ballot is not successfully challenged for any other reason; and

~~(2)~~ (B) ~~One of the two following steps are taken by the voter:~~

~~a. The voter submits a sworn statement with his or her provisional ballot that states he or she is registered to vote in the State of Arkansas and that he or she is the person who registered to vote; or~~

~~b. The voter subsequently verifies their voter registration to either the county clerk or the county board of election commissioners by noon on the Monday following the election.~~

(2) The voter may verify his or her voter registration to the county board by presenting photo identification at any meeting of the county board held before noon on the Monday following the election.

(3) The voter may verify his voter registration to the county clerk by presenting the photo identification to the county clerk before noon on the Monday following the election.

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<sup>11</sup> Ark. Const. amend. 51, §13(b)(3)(B)(iii)

<sup>12</sup> Ark. Const. amend. 51, §13(b)(3)(B)(i)-(ii)

<sup>13</sup> Ark. Const. amend. 51, §13(b)(3)(A)

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## (b) ~~B.~~ Absentee Voters

(1) The ballot of an absentee voter that was made provisional for failure to verify that person's voter registration when returning his or her absentee ballot shall be counted and included in the certified results of the election if:

~~(1)~~ (A) The absentee voter's ballot is not found deficient for any other reason; and

~~(2)~~ (B) ~~One of the two following steps are taken by the voter:~~

~~a.~~ The absentee voter verifies his or her voter registration in person to either the county clerk or the county board of election commissioners by noon on the Monday following the election the voter's required identification; or

~~b.~~ ~~The voter signs the sworn statement stating that the voter is registered to vote in the State of Arkansas and that he or she is the person registered to vote.~~

(2) The absentee voter may verify his or her voter registration to the county board by presenting photo identification to the county board at any meeting of the county board held before noon on the Monday following the election.

(3) The absentee voter may alternatively verify his voter registration to the county clerk by presenting the photo identification to the county clerk before noon on the Monday following the election.

## **§ ~~807~~ 808 Assessment of Validity of Photo Identification Submitted Postelection**

(a) When verifying the voter registration of a voter who cast a provisional ballot at the poll or whose absentee ballot was deemed provisional based on the voter's failure to verify his or her voter registration, 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, given reasonable allowances for changes in hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics.

(b) The county clerk or the county board verifying the voter's registration shall make a photocopy of the photo identification and retain the copy with the voter's provisional ballot envelope.

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## **~~§808~~ 809 County Clerk to Provide Verification of Voter Registration to Election Commission**

If a voter verifies his or her voter registration to the county clerk after the election, the county clerk who conducts the verification shall provide the copy of the voter's photo identification to the county board before the county board certifies the election.

**RULES  
FOR  
THE VERIFICATION OF VOTER  
REGISTRATION**

(Effective October 28, 2017; Revised **January 22, 2022**)



State Board of Election Commissioners  
501 Woodlane, Suite 401N  
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## TABLE OF CONTENTS

Scope of Rules .....	3
§ <del>800</del> <u>801</u> Definitions.....	3
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§ <del>802</del> <u>803</u> Poll Worker Verification of Voter Registration.....	5
§ <del>803</del> <u>804</u> Additional Identification Requirement for Certain First-Time Voters .....	6
§ <del>804</del> <u>805</u> Failure to Verify Voter Registration or Present Required Documentation at the Polls..	6
§ <del>805</del> <u>806</u> Identification Required When Voting Absentee.....	6
§ <del>806</del> <u>807</u> Curing Provisional Ballots Created by the Failure to Verify the Voter’s Registration ..	7
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- (b) Administrator – the administrative head of a long-term care or residential care facility licensed by the state.
- (c) Documentation of Residency – a statement by the administrator of a residential care facility or long-term care facility 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. This documentation shall only be accepted if it is on the form provided by the Secretary of State<sup>2</sup>
- (d) Long-Term Care or Residential Care Facility – a nursing home, residential care facility, assisted living facility, post-acute head injury retraining and residential care facility, or any other facility which provides long-term medical or personal care and which is licensed by the State of Arkansas.
- (e) Photo Identification:
  - (1) A document or identification card that satisfies 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.

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<sup>1</sup> A.C.A. § 7-5-201(e)

<sup>2</sup> A.C.A. § 7-5-905

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(2) Documents or Identification cards that comply with the above requirements for photo identification 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 issued to any person by an accredited postsecondary educational institution in the State of Arkansas;
- F. A United States Military identification document;
- G. A public assistance identification card if the card shows a photograph of the person to whom the document or identification card was issued; and
- H. A voter identification card as provided under ~~Act 633 of 2016~~ A.C.A. §7-5-324 and rules propounded by the Secretary of State<sup>3</sup>

(f) Verification of Voter Registration - The process by which an individual seeking to vote presents a photo identification to an election official for the purpose of confirming that the individual physically present at the poll is the same individual to whose voter registration the vote cast will be credited.

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(b) 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<sup>5</sup>. This documentation shall be provided on a standardized form adopted by the Secretary of State.<sup>6</sup>

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<sup>3</sup> Ark. Const. amend. 51, §13(b); A.C.A. §7-1-101(38)

<sup>4</sup> Ark. Const. amend. 51, §13(b)(2)(B)

<sup>5</sup> Ark. Const. amend. 51, §13

<sup>6</sup> A.C.A. § 7-5-905

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## § ~~802~~ 803 Verification of Voter Registration by Election Officials

(a) The photo identification shall be used to verify the name and appearance of the voter. The Precinct Voter Registration List shall be used to verify the address of the voter by comparing the voter's address on the list to the address stated by the voter.

(b) The election official verifying the voter registration of a voter shall:

- (1) Verify that the name on the photo identification is consistent with the name in the Precinct Voter Registration List, allowing for abbreviations and nicknames;
- (2) If the name is consistent, compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, given reasonable allowances for changes in hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics;
- (3) If the election official 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;
- (4) If the name appearing on the voter's photo identification varies in part from the name in the Precinct Voter Registration List or the name as stated by the voter, an election official should issue a regular ballot only if the variation can be explained as an abbreviation of a given name, the inclusion of a nick name on the photo identification where the name still bears substantial similarity to the voter's name on the Precinct Voter Registration List, a lawful change in the voter's name due to marriage or divorce, or other similar circumstances which satisfy the election official that the voter is the person depicted in the photograph so long as the name still bears substantial similarity to the voter's name on the Precinct Voter Registration List and all variations are explained;
- (5) If the variation is due to a change in the voter's name and the name reflected in the Precinct Voter Registration List is the voter's old name, the voter should only be issued a ballot after the voter completes a voter registration application form for the purpose of updating the voter's information;
- (6) If the election official determines that the photo identification presented does not depict the voter or the name of the voter in the Present Voter Registration List is insufficiently similar to the name appearing on the photo identification, the question of whether the voter is permitted to cast a regular ballot shall be referred to the election judge of that polling site who shall resolve any marginal cases of identity in favor of the voter; and
- (7) If the election judge agrees that the photo identification does not depict the voter or that the name that appears on the photo identification is insufficiently similar to the name on the Precinct Voter Registration List, the voter will have failed to verify his or her voter registration and the poll worker shall offer the voter a provisional ballot.

(c) The election judge at any polling site is the election official who is in charge of that polling site regardless of the title used locally to reference this election official.

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## **§ ~~803~~ 804 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 the required identification documentation, will be flagged on the Precinct Voter Registration List for additional identification documentation when voting at the polls during early voting, on election day, or by voting using an absentee ballot. A flagged voter who presents a valid photo identification that is also current (i.e., not expired) may vote without presenting an additional identification document. However, if a flagged voter presents a valid photo identification that is not current (i.e., is expired) and valid for the purpose for which it was issued, the flagged voter 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.<sup>7</sup>

## **§ ~~804~~ 805 Failure to Verify Voter Registration or Present other Required Documentation at the Polls**

(a) A person voting at the polls during early voting or on election day who did not verify their voter registration or, if a resident of a long-term care or residential care facility licensed by the state, who did not provide documentation of residency from the administrator of the facility attesting that the person is a resident of the facility, shall be offered a provisional ballot.<sup>8</sup>

(b) 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.<sup>9</sup>

## **§ ~~805~~ 806 Identification Required When Voting Absentee**

(a) The absentee voter must submit verification of their voter registration when they return their absentee ballot to the clerk's office.<sup>10</sup> A photocopy of any document that qualifies as photo identification under these rules shall be sufficient to satisfy the photo identification requirement when verifying the voter's registration.

(b) If a resident of a long-term or residential care facility licensed by the State of Arkansas does not submit photo identification in order to verify their voter registration, that resident's ballot will

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<sup>7</sup> A.C.A. § 7-5-201(e)

<sup>8</sup> Ark. Const. amend. 51, §13(b)(2); A.C.A. § 7-5-305(a)(8)(B)

<sup>9</sup> Ark. Const. amend. 51, §13(b)(6); A.C.A. § 7-5-201(e)

<sup>10</sup>Ark. Const. amend. 51, §13(b)(3); A.C.A. § 7-5-323

# DRAFT – MARKUP COPY

still be counted as a regular ballot if the voter submits documentation of residency from the administrator of the facility attesting that the person is a resident of the facility.<sup>11</sup>

(c) Active duty members of the uniformed services and merchant marine voters and their spouses and dependents who are away from the county because of the active duty status of a uniformed service or merchant marine member are exempt from the identification requirement for absentee ballots.<sup>12</sup>

(d) The ballot of a voter who failed to verify their voter registration and who is not otherwise entitled to have his or her absentee ballot counted without verification under this section shall be considered a provisional ballot.<sup>13</sup>

## **§ 806 807 Curing Provisional Ballots Created by the Failure to Verify the Voter's Registration**

(a) ~~A.~~ Voters at the Polls

(1) A provisional ballot cast because a voter failed to verify their voter registration 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)~~ (A) The voter's ballot is not successfully challenged for any other reason; and

~~(2)~~ (B) ~~One of the two following steps are taken by the voter:~~

~~a. The voter submits a sworn statement with his or her provisional ballot that states he or she is registered to vote in the State of Arkansas and that he or she is the person who registered to vote; or~~

~~b. The voter subsequently verifies their voter registration to either the county clerk or the county board of election commissioners by noon on the Monday following the election.~~

(2) The voter may verify his or her voter registration to the county board by presenting photo identification at any meeting of the county board held before noon on the Monday following the election.

(3) The voter may verify his voter registration to the county clerk by presenting the photo identification to the county clerk before noon on the Monday following the election.

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<sup>11</sup> Ark. Const. amend. 51, §13(b)(3)(B)(iii)

<sup>12</sup> Ark. Const. amend. 51, §13(b)(3)(B)(i)-(ii)

<sup>13</sup> Ark. Const. amend. 51, §13(b)(3)(A)

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## (b) ~~B.~~ Absentee Voters

(1) The ballot of an absentee voter that was made provisional for failure to verify that person's voter registration when returning his or her absentee ballot shall be counted and included in the certified results of the election if:

~~(1)~~ (A) The absentee voter's ballot is not found deficient for any other reason; and

~~(2)~~ (B) ~~One of the two following steps are taken by the voter:~~

~~a.~~ The absentee voter verifies his or her voter registration in person to either the county clerk or the county board of election commissioners by noon on the Monday following the election the voter's required identification; or

~~b.~~ ~~The voter signs the sworn statement stating that the voter is registered to vote in the State of Arkansas and that he or she is the person registered to vote.~~

(2) The absentee voter may verify his or her voter registration to the county board by presenting photo identification to the county board at any meeting of the county board held before noon on the Monday following the election.

(3) The absentee voter may alternatively verify his voter registration to the county clerk by presenting the photo identification to the county clerk before noon on the Monday following the election.

## **§ ~~807~~ 808 Assessment of Validity of Photo Identification Submitted Postelection**

(a) When verifying the voter registration of a voter who cast a provisional ballot at the poll or whose absentee ballot was deemed provisional based on the voter's failure to verify his or her voter registration, 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, given reasonable allowances for changes in hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics.

(b) The county clerk or the county board verifying the voter's registration shall make a photocopy of the photo identification and retain the copy with the voter's provisional ballot envelope.

# DRAFT – MARKUP COPY

## **~~§808~~ 809 County Clerk to Provide Verification of Voter Registration to Election Commission**

If a voter verifies his or her voter registration to the county clerk after the election, the county clerk who conducts the verification shall provide the copy of the voter's photo identification to the county board before the county board certifies the election.

DRAFT

State of Arkansas

As Engrossed: H1/26/21

93rd General Assembly

# A Bill

Regular Session, 2021

HOUSE BILL 1112

By: Representatives Lowery, Beaty Jr., Beck, Bentley, M. Berry, S. Berry, Boyd, Breaux, Brooks, Brown, Bryant, Cavanaugh, Cloud, Coleman, Crawford, Deffenbaugh, Dotson, Eaves, Eubanks, Evans, Fortner, Furman, Gonzales, M. Gray, Haak, Hawks, Hollowell, Jean, Ladyman, Lundstrum, Lynch, J. Mayberry, McClure, McCollum, McGrew, McNair, S. Meeks, Milligan, Payton, Pilkington, Ray, Richmond, Rye, B. Smith, S. Smith, Underwood, Vaught, Warren, Watson, Wing  
By: Senators A. Clark, Irvin, M. Johnson, Rapert

## For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING VOTER IDENTIFICATION; TO AMEND THE LAW CONCERNING VERIFICATION OF PROVISIONAL BALLOTS; TO AMEND AMENDMENT 51 OF THE ARKANSAS CONSTITUTION; AND FOR OTHER PURPOSES.

## Subtitle

TO AMEND THE LAW CONCERNING VOTER IDENTIFICATION; TO AMEND THE LAW CONCERNING VERIFICATION OF PROVISIONAL BALLOTS; AND TO AMEND AMENDMENT 51 OF THE ARKANSAS CONSTITUTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Constitution, Amendment 51, § 13(b)(4) and (5), concerning fail-safe voting and verification of voter registration, are amended to read as follows:

(4) A provisional ballot cast by a voter who did not present a required document or identification card shall be counted if:

~~(A)(i)(a) The voter completes a sworn statement at the polling site when voting either early or at the polls on election day stating~~



1 ~~that the voter is registered to vote in this state and that he or she is the~~  
2 ~~person registered to vote.~~

3 ~~(b) A sworn statement completed under~~  
4 ~~subdivision (b)(4)(A)(i)(a) of this section is not required to be notarized~~  
5 ~~but the voter shall execute the sworn statement under penalty of perjury.~~

6 ~~(c) A sworn statement completed at the polling~~  
7 ~~site shall be delivered to the county board of election commissioners so that~~  
8 ~~the provisional ballot may be counted; and~~

9 ~~(ii) The county board of election commissioners does~~  
10 ~~not determine that the provisional ballot is invalid and should not be~~  
11 ~~counted based on other grounds; or~~

12 ~~(B)(i)(A)~~ The voter returns to the county board of  
13 election commissioners or the county clerk by 12:00 noon on the Monday  
14 following the election and presents a document or identification card that  
15 complies with the requirements of subdivision (b)(1)(A)(i) of this section;  
16 and

17 ~~(ii)(B)~~ The county board of election commissioners does  
18 not determine that the provisional ballot is invalid and should not be  
19 counted based on other grounds.

20 (5) A provisional ballot cast by an absentee voter who failed to  
21 submit with an absentee ballot documentation that complies with subdivision  
22 (b)(1)(A)(ii) of this section shall be counted if:

23 ~~(A)(i)(a) The voter completes and returns the sworn~~  
24 ~~statement portion of the absentee ballot form stating that the voter is~~  
25 ~~registered to vote in this state and that he or she is the person registered~~  
26 ~~to vote.~~

27 ~~(b) A sworn statement returned under~~  
28 ~~subdivision (b)(5)(A)(i)(a) of this section is not required to be notarized~~  
29 ~~but the voter shall execute the sworn statement under penalty of perjury; and~~

30 ~~(ii) The county board of election commissioners does~~  
31 ~~not determine that the provisional ballot is invalid and should not be~~  
32 ~~counted based on other grounds; or~~

33 ~~(B)(i)(A)~~ The voter returns to the county board of  
34 election commissioners or the county clerk by 12:00 noon on the Monday  
35 following the election and presents a copy of a document or identification  
36 card that complies with the requirements of subdivision (b)(1)(A)(i) of this

1 section; and

2 ~~(ii)~~(B) The county board of election commissioners  
3 does not determine that the provisional ballot is invalid and should not be  
4 counted based on other grounds.

5  
6 SECTION 2. Arkansas Constitution, Amendment 51, § 13(b)(7), concerning  
7 fail-safe voting and verification of voter registration, is amended to read  
8 as follows:

9 (7) The State Board of Election Commissioners shall promulgate  
10 rules necessary to implement subsection (b) of this section, ~~including~~  
11 ~~without limitation the preparation of a sworn statement to be used by voters~~  
12 ~~who cast a provisional ballot under subsection (b) of this section.~~

13  
14 SECTION 3. Arkansas Code § 7-5-308(b)(4)-(10), concerning provisional  
15 ballot procedures, is amended to read as follows:

16 ~~(4)(A) The poll worker shall inform the voter that the voter may~~  
17 ~~complete a sworn statement stating that the voter is registered to vote in~~  
18 ~~this state and that he or she is the person who is registered to vote.~~

19 ~~(B) A sworn statement completed under subdivision~~  
20 ~~(b)(4)(A) of this section is not required to be notarized, but the voter~~  
21 ~~shall execute the sworn statement under penalty of perjury.~~

22 ~~(C) The sworn statement under subdivision (b)(4)(A) of~~  
23 ~~this section shall be delivered to the county board of election commissioners~~  
24 ~~so that the provisional ballot may be counted under subsection (f) of this~~  
25 ~~section.~~

26 ~~(5)~~(4) Unless a provisional ballot is cast using a ballot  
27 marking device, the poll worker shall initial the back of the provisional  
28 ballot, remove the provisional ballot stub from the provisional ballot, and  
29 place the stub in the stub box provided;

30 ~~(6)~~(5) The voter shall mark his or her provisional ballot;

31 ~~(7)~~(6) The voter shall place the voted provisional ballot in a  
32 provisional ballot secrecy envelope marked "provisional ballot" and seal the  
33 envelope;

34 ~~(8)~~(7) The voter shall place the sealed provisional ballot  
35 envelope containing the voted provisional ballot in a voter envelope, seal  
36 the envelope, and give it to the poll worker;

1           ~~(9)~~(8) The poll worker shall provide the voter written  
2 information instructing him or her on how to determine whether his or her  
3 provisional ballot was counted, and if not, the reason the ballot was not  
4 counted; and

5           ~~(10)~~(9) The poll worker shall make a separate list of the names  
6 and addresses of all persons voting a provisional ballot under this  
7 subsection, and each person voting a provisional ballot shall sign his or her  
8 name to this list.

9  
10           SECTION 4. Arkansas Code § 7-5-308(f), concerning provisional ballot  
11 procedures, is amended to read as follows:

12           (f) Unless enjoined by a court ~~of competent~~ with jurisdiction, a  
13 provisional ballot under subsection (b) of this section shall be counted if:

14           ~~(1)(A) The voter completes a sworn statement at the polling site~~  
15 ~~when voting either early or at the polls on election day stating that the~~  
16 ~~voter is registered to vote in this state and that he or she is the person~~  
17 ~~registered to vote; and~~

18           ~~(B) The county board of election commissioners does not~~  
19 ~~determine that the provisional ballot is invalid and should not be counted~~  
20 ~~based on other grounds; or~~

21           ~~(2)(A)(1)~~ The voter returns to the county board of election  
22 commissioners or the county clerk by 12:00 noon on the Monday following the  
23 election and presents a document or identification card that complies with  
24 the requirements of Arkansas Constitution, Amendment 51, § 13; and

25           ~~(B)(2)~~ The county board of election commissioners does not  
26 determine that the provisional ballot is invalid and should not be counted  
27 based on other grounds.

28  
29           SECTION 5. Arkansas Code § 7-5-412(b), concerning the marking, return,  
30 and delivery of mailed absentee ballots, is amended to read as follows:

31           (b)~~(1)~~ A voter who desires to cast an absentee ballot but who does not  
32 meet the identification requirements of subdivision (a)(2) of this section  
33 may cast his or her absentee ballot by mail, and the absentee ballot shall be  
34 considered as a provisional ballot.

35           ~~(2)(A) The voter statement accompanying the absentee ballot~~  
36 ~~shall include a sworn statement portion that may be completed by the voter~~

1 ~~stating that the voter is registered to vote and that he or she is the person~~  
2 ~~who is registered.~~

3 ~~(B) The sworn statement portion of the voter statement is~~  
4 ~~not required to be notarized, but the voter shall execute the sworn statement~~  
5 ~~under penalty of perjury.~~

6  
7 /s/Lowery

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10 **APPROVED: 3/3/21**  
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**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS**  
**WITH THE ARKANSAS LEGISLATIVE COUNCIL**

**DEPARTMENT/AGENCY**      State Board of Election Commissioners

**DIVISION**      N/A

**DIVISION DIRECTOR**      Daniel J. Shults

**CONTACT PERSON**      Richard Chris Madison

**ADDRESS**      501 Woodlane St. Ste. 122S, Little Rock, AR 72201

**PHONE NO.**      501-682-1447      **FAX NO.**      501-682-1782

**E-MAIL**      Chris.madison@arkansas.gov

**NAME OF PRESENTER AT COMMITTEE MEETING**      Daniel J. Shults, Director

**PRESENTER E-MAIL**      Daniel.Shults@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:

Jessica C. Sutton  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

\*\*\*\*\*

1. What is the short title of this rule?      Rules for Verification of Voter Registration

This amendment updates the rule governing the presentment of a photo ID to verify a voter's registration to reflect the elimination of the optional identity affirmation by Act 249 of 2021.

2. What is the subject of the proposed rule?

3. Is this rule required to comply with a federal statute, rule, or regulation?      Yes      No **X**  
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 **X**

If yes, what is the effective date of the emergency rule?      \_\_\_\_\_

When does the emergency rule expire?      \_\_\_\_\_

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 **X**  
If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule?                      Yes                      No **X**  
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 **X**                      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."**

This update is required by Act 249 of 2021 which eliminated the optional identity affirmation from the process of verifying a voter's registration with a photo ID. Prior to the Act, a voter who could not satisfy the voter ID requirement was able to sign a more tightly worded affirmation in addition to the standard voter statement affirming under penalty of perjury that the voter was registered and eligible to vote using the information provided. The CBEC was then required to find that the voter's provisional ballot satisfied the voter ID requirements and, unless an issue unrelated to the ID requirement arose, the ballot would be automatically counted.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

The constitution grants the SBEC the authority to promulgate rules relating to the verification of voter registration with a photo ID. Ark. Const. Amend. 51 Sec. 13(b)(7). Furthermore, the SBEC has been given the authority to promulgate all necessary rules for "even and consistent application of voter registration laws and fair and orderly election procedures." A.C.A. 7-4-101(f)(5).

7. What is the purpose of this proposed rule? Why is it necessary?

Following the enactment of the state's current Voter ID law by Act 633 of 2017, the SBEC promulgated the Rules for the Verification of Voter Registration.

Act 249 of 2021 amended the constitutional and statutory provisions which govern the process of verifying a voter's registration with a photo ID requiring the SBEC to amend the Rule in order to bring it in line with the modification made by the Act.

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](http://www.Arkansas.gov/sbec)

9. Will a public hearing be held on this proposed rule?                      Yes **X**                      No  
If yes, please complete the following:

Date: February 7, 2022

Time: 1:30 p.m.

Place: Timberlands Conference room, 501 Woodlane  
Street, Ste. GS-05, Little Rock, Arkansas 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)  
4:30 p.m. on February 22, 2022

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11. What is the proposed effective date of this proposed rule? (Must provide a date.)  
April 25, 2022

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12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.

See Attached Exhibit A - Copy of Notice and Exhibit B - Email confirmation of publication dates.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e).

See attached Exhibit C- Email transmitting Documents to SOS for publication. See attached Exhibit D – transmittal to Arkansas State Library.

14. 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.

None

## **FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** State Board of Election Commissioners

**DIVISION** N/A

**PERSON COMPLETING THIS STATEMENT** Daniel J. Shults, Director

**TELEPHONE** 501-682-1834 **FAX** 501-682-1782 **EMAIL:** Daniel.shults@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 the Verification of Voter Registration

- |   |              |             |
|---|--------------|-------------|
| 1. Does this proposed, amended, or repealed rule have a financial impact?   | Yes          | No <b>X</b> |
| 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 <b>X</b> | 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 <b>X</b> | 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;
  
  
- (b) The reason for adoption of the more costly rule;
  
  
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
  
  
- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

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>\$0.00</u>
Federal Funds	<u>\$0.00</u>
Cash Funds	<u>\$0.00</u>
Special Revenue	<u>\$0.00</u>
Other (Identify)	<u>\$0.00</u>
 Total	 <u>\$0.00</u>

**Next Fiscal Year**

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

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

**Current Fiscal Year**

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

**Next Fiscal Year**

General Revenue	<u>\$0.00</u>
Federal Funds	<u>\$0.00</u>
Cash Funds	<u>\$0.00</u>
Special Revenue	<u>\$0.00</u>
Other (Identify)	<u>\$0.00</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

**Next Fiscal Year**

\$ \$0.00

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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

**Next Fiscal Year**

\$ \$0.00

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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 **X**

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.