

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State

John Thurston

500 Woodlane Street, Suite 026

Little Rock, Arkansas 72201 -1094

(501) 682 -5070

www.sos.arkansas.gov



Name of Department State Board of Election Commissioners

Agency or Division Name N/A/

Other Subdivision or Department, If Applicable N/A

Previous Agency Name, If Applicable N/A

Contact Person Chris Madison - Director

Contact E-mail Chris.Madison@Arkansas.gov

Contact Phone 501-682-1447

Name of Rule Rules for the Verification of Voter Registration

Newspaper Name Arkansas Democrat Gazette

Date of Publishing February 9th, 10th, and the 11th of 2024.

Final Date for Public Comment March 11, 2024

Location and Time of Public Meeting: N/A



STATE OF ARKANSAS
SARAH HUCKABEE SANDERS GOVERNOR

Request for Governor's Approval of Proposed Rule or Regulation

Department /Agency: State Board of Election Commissioners

Short Title of Rule: Rules for Verification of Voter Registration

New Rule: ☐ Yes ☒ No

Amendment to Existing Rule: ☒ Yes ☐ No

State Mandate: ☒ Yes ☐ No

Federal Mandate: ☐ Yes ☒ No

If yes, please provide the legal citation of the mandate: Act 441 of 2023 and A.C.A. § 7-1-101(40)(B)

Legal Authority for Rule: 7-4-101(f)(5).

Proposed Effective Date: May 1, 2024

Emergency Rule: ☐ Yes ☒ No

Expedited Rule Requested: ☒ Yes ☐ No

Summary of Proposed New Rule or Proposed Amendment to Existing Rule:

This amendment, began by incorporating statutory changes made by Act 441 of 2023. Further, while amending the Rule to comply with that Act, additional amendments are proposed to incorporate digital identification issued by qualifying entities, as permitted by state law. It also rewrites a section to provide greater clarity and conciseness. Finally, it provides some modifications to comply with BLR styling.

Financial Impact: ☐ Yes ☒ No ☐ Unknown; If yes or unknown, please explain:

Public Hearing Occurred on Rule: ☐ Yes ☒ No

Controversial: ☐ Yes ☒ No

If yes, please explain and provide detail of expected opposition.

Two Rules Repealed: No **Exception from the Governor:** Yes

First Rule Repealed:

Brief explanation of why repeal is appropriate:

Second Rule Repealed:

Brief explanation of why repeal is appropriate:

Documents Required for Approval Process

Please note that the Governor's office will not begin the approval process if any of the following applicable documents are not enclosed with the approval request.

- X BLR Questionnaire
- X BLR Financial Impact Statement
- X Proposed Rule - clean version
- X Mark-Up of Rule, if amended from previous version
- X Copy of Act or Regulation, if Rule is pursuant to State or Federal mandate

Contact Information

Department POC for Rules Process: Chris Madison – Director
Chris.Madison@Arkansas.gov

Department POC for this Rule: Chris Madison – Director
Chris.Madison@Arkansas.gov

NOTE: All documents must be returned to the Governor's Counsel as a single PDF file.

**QUESTIONNAIRE FOR FILING PROPOSED RULES
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT: Independent Agency

BOARD/COMMISSION: State Board of Election Commissioners

BOARD/COMMISSION DIRECTOR: Chris Madison

CONTACT PERSON: Chris Madison

ADDRESS: 501 Woodlane Street, Ste. 122S, Little Rock, Arkansas, 72201

PHONE NO.: 501-682-1447 **EMAIL:** Chris.Madison@Arkansas.gov

NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING: Director Chris Madison

PRESENTER EMAIL(S): Chris.Madison@Arkansas.gov

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach:

- X (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes;
- X (2) both a markup and clean copy of the rule; and
- X (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

- * 1. What is the official title of this rule?
Rules for Verification of Voter Registration
- 2. What is the subject of the proposed rule? The Rule provides information regarding the Verification of Voter Registration, the photo identification process for voters when checking-in to vote.
- 3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? N/A

4. Is this rule being filed for permanent promulgation? Yes

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? No

If yes, what was the effective date of the emergency rule? N/A.

On what date does the emergency rule expire? N/A.

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

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes

If yes, please provide the state statute and/or rule citation. **This Rule is amended to incorporate changes created by Act 441 of 2023. It is also amended to incorporate the possibility or potentiality of qualifying entities providing digital identification which a voter could then use to verify his or her voter registration information. See A.C.A. § 7-1-101(40)(B).**

7. Are two (2) rules being repealed in accord with Executive Order 23-02? No.

If yes, please list the rules being repealed.

If no, please explain.

This is not a new rule but an amendment to a rule required by Act 441 of 2023. The Rule is also being amended to incorporate the potential use of digital identification from qualifying entities. Lastly, the Rule has a minor amendment to clarify and make a section more concise.

8. Is this a new rule? No.

Does this repeal an existing rule? No.

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes.

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup. **See Attached, Draft Markup and Draft Clean Copies.**

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s). **A.C.A. § 7-4-101(f)(5).**

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes.

If yes, please provide the year of the act(s) and act number(s). **Act 441 of 2023.**

11. What is the reason for this proposed rule? Why is it necessary? **To incorporate the changes created by Act 441 of 2023. The amendment incorporates the statutory change that an Arkansas Trade School is a qualifying entity that may issue identification that can be used for Verification of Voter Registration. Furthermore, the amendment clarifies that digital identification, when issued in the first instance by a qualifying entity, is a qualifying identification document that a voter may use to verify his or her voter registration status. One section is written more plainly and succinctly to clarify that portion of the Rule. Lastly, the rule is amended to conform to BLR styling and linguistic applications.**

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1). **<https://www.arkansas.gov/sbec/rules/>**

13. Will a public hearing be held on this proposed rule? **No.**

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

2. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. **March 11, 2024.**

3. What is the proposed effective date for this rule? **May 1, 2024.**

4. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice. See Attached.

Copy of the Notice.

Proof of Publication will be added following publication on February 9, 10, and 11, 2024.

Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A). **See Attached “Arkansas Register – Proposed Rule Cover Sheet”**

17. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known. **None.**

18. Is the rule expected to be controversial? **No.**

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT: Independent Agency

BOARD/COMMISSION: State Board of Election Commissioners

PERSON COMPLETING THIS STATEMENT: Chris Madison - Director

TELEPHONE NO.: 501-682-1447

EMAIL: Chris.Madison@Arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents.

Please attach additional pages, if necessary.

TITLE OF THIS RULE: Rules for Verification of Voter Registration.

1. Does this proposed, amended, or repealed rule have a financial impact?
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.
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes.

If no, please explain:

- (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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and
 - (d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.
4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
N/A.
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total: **\$0**

Total: **\$0**

(b) What is the additional cost of the state rule? **None**

Current Fiscal Year

Next Fiscal Year

General Revenue: **\$0**

General Revenue: **\$0**

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total: **\$0**

Total: **\$0**

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

Current Fiscal Year

Next Fiscal Year

\$0

\$0

6. What is the total estimated cost by fiscal year to a state, county, or 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

Next Fiscal Year

\$0

\$0

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?

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.

STATE BOARD OF ELECTION COMMISSIONERS

501 Woodlane, 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
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Commissioners

Chris Madison
Director

Jon Davidson
Educational Services Manager

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Election Administration Supervisor

Tena Arnold
Business Operations Manager

Executive Summary of the 2023 Proposed Amendment to the RULES FOR THE VERIFICATION OF VOTER REGISTRATION

The State Board of Election Commissioners met on August 15, 2023, and approved changes to the “Rules for the Verification of Voter Registration.” This proposed amendment is being promulgated to incorporate changes approved by Act 441 of 2023 and to incorporate language from A.C.A. § 7-1-101(40)(B).

PURPOSE AND SUMMARY OF SUBSTANTIVE CHANGES

This amendment is because of the adoption of Act 441 of 2023. Act 441, known as the “Voter Registration and Secure Voter Records Act of 2023” made several changes to election law. Of particular importance was the inclusion of Trade Schools as a valid source for compliance with the Voter Verification requirements of Amendment 51. Because of this legislative change, the Rule has to be amended to accurately reflect that statutory requirement.

ADDITIONAL DISCUSSION

The Rule is also amended to incorporate the potential use of digital identification, when issued by an approved entity, per the requirements of A.C.A. § 7-1-101(40)(B). Section 804 is amended to read more plainly and succinctly. Lastly, stylistic changes are proposed to comply more closely with BLR style guides.

NOTICE OF RULEMAKING

Pursuant to the Administrative Procedure Act, notice is hereby given that the State Board of Election Commissioners (Board) is proposing to amend the following: (1) Rules for Poll Watchers, Vote Challenges, and Provisional Voting; (2) Rules of Procedure for Citizen Complaint Regarding Violations of State Election and Voter Registration Law; (3) Rules for Reimbursement of Expenses for State-Funded Elections; (4) Rules for the Verification of Voter Registration; and (5) Rules of Practice and Procedure.

These amendments reflect changes enacted during the 94th General Assembly. You may view the proposed amended rules and their accompanying Executive Summaries at www.arkansas.gov/sbec/rules or you may obtain copies by contacting the Board by email at info.sbec@arkansas.gov, by phone at 501-682-1834, or by mailed request to: Arkansas State Board of Election Commissioners, 501 Woodlane, Suite 122S, Little Rock, AR 72201.

You may provide written comments regarding these proposed amendments. Comments must be received by 4:30 p.m. on Monday, March 11, 2024. Comments may be sent by email to info.sbec@arkansas.gov or by mail to: Arkansas State Board of Election Commissioners, 501 Woodlane, Suite 122S, Little Rock, AR 72201.

DRAFT – CLEAN COPY

Agency # 108.00

**RULES
FOR
THE VERIFICATION OF VOTER
REGISTRATION**
(Effective October 28, 2017; _____)



State Board of Election Commissioners
501 Woodlane, Suite 122 South
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 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.

§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.¹
- (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 State²
- (d) county board – the county board of election commissioners.
- ~~(d)~~(e) 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)~~(f) 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, an accredited postsecondary educational institution in the State of Arkansas, or a trade school in the State of Arkansas; and

¹ A.C.A. § 7-5-201(e)

² A.C.A. § 7-5-905

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.

(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 A.C.A. §7-5-324 and rules propounded by the Secretary of State³

(3) A document or identification card may be presented in a digital format on an electronic device if the document or identification card:

- A. Complies with the requirements of subdivision (e)(1) of this section; and
- B. The digital format has been approved or issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas.

~~(f)~~(g) 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.

§ 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.⁴

(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

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

⁴ Ark. Const. amend. 51, §13(b)(2)(B)

resident of the facility⁵. This documentation shall be provided on a standardized form adopted by the Secretary of State.⁶

§ 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

⁵ Ark. Const. amend. 51, §13

⁶ A.C.A. § 7-5-905

(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.

§ 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. Before issuing a regular ballot, the poll worker shall require the flagged voter to present 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.

§ 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.⁷

(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.⁸

§ 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.⁹ 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.

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

⁸ Ark. Const. amend. 51, §13(b)(6); A.C.A. § 7-5-201(e)

⁹Ark. Const. amend. 51, §13(b)(3); A.C.A. § 7-5-323

(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 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.¹⁰

(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.¹¹

(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.¹²

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

(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:

(A) The voter's ballot is not successfully challenged for any other reason; and

(B) The voter subsequently verifies their voter registration to either the county clerk or the county board 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.

(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:

¹⁰ Ark. Const. amend. 51, §13(b)(3)(B)(iii)

¹¹ Ark. Const. amend. 51, §13(b)(3)(B)(i)-(ii)

¹² Ark. Const. amend. 51, §13(b)(3)(A)

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

(B) The absentee voter verifies his or her voter registration in person to either the county clerk or the county board by noon on the Monday following the election the voter's required identification.

(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.

§ 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.

§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 May 7, 2022~~)



State Board of Election Commissioners
501 Woodlane, ~~Suite 401N~~ Suite 122 South
Little Rock, AR 72201
(501) 682-1834 or (800) 411-6996
www.arkansas.gov/sbec

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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.

§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.¹
- (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 State²
- (d) county board – the county board of election commissioners.
- ~~(d)~~(e) 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)~~(f) 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, or a trade school in the State of Arkansas; and

¹ A.C.A. § 7-5-201(e)

² A.C.A. § 7-5-905

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.

(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 A.C.A. §7-5-324 and rules propounded by the Secretary of State³

(3) A document or identification card may be presented in a digital format on an electronic device if the document or identification card:

A. Complies with the requirements of subdivision (e)(1) of this section; and

B. The digital format has been approved or issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas.

~~(f)~~(g) 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.

§ 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.⁴

(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

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

⁴ Ark. Const. amend. 51, §13(b)(2)(B)

resident of the facility⁵. This documentation shall be provided on a standardized form adopted by the Secretary of State.⁶

§ 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

⁵ Ark. Const. amend. 51, §13

⁶ A.C.A. § 7-5-905

(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.

§ 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. Before issuing a regular ballot, the poll worker shall require the flagged voter to present 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. 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.⁷

§ 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.⁸

(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.⁹

⁷ A.C.A. § 7-5-201(e)

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

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

§ 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.¹⁰ 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 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.¹¹
- (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.¹²
- (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.¹³

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

(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:
 - (A) The voter's ballot is not successfully challenged for any other reason; and
 - (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.

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

¹¹ Ark. Const. amend. 51, §13(b)(3)(B)(iii)

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

¹³ Ark. Const. amend. 51, §13(b)(3)(A)

- (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.

(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:
 - (A) The absentee voter's ballot is not found deficient for any other reason; and
 - (B) 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.
- (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.

§ 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.

§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.

State of Arkansas

As Engrossed: S3/16/23

94th General Assembly

A Bill

Regular Session, 2023

HOUSE BILL 1407

By: Representatives McClure, Wing, Achor, Andrews, Barker, Beaty Jr., Beck, Bentley, M. Berry, Breaux, Brooks, K. Brown, M. Brown, Burkes, Joey Carr, C. Cooper, Cozart, Evans, C. Fite, L. Fite, Fortner, Furman, Gazaway, Gonzales, Gramlich, Haak, Hawk, Hollowell, Jean, Ladyman, Long, Lundstrum, Lynch, McAlindon, McCollum, M. McElroy, McGrew, B. McKenzie, McNair, S. Meeks, Miller, Milligan, K. Moore, Painter, Pearce, Pilkington, Puryear, R. Scott Richardson, Richmond, Rose, Rye, Schulz, Steimel, Tosh, Underwood, Vaught, Womack, Wooldridge, Wooten
By: Senators M. McKee, K. Hammer, Dees, J. Petty, Stone

For An Act To Be Entitled

AN ACT TO CREATE THE VOTER REGISTRATION AND SECURE
VOTER RECORDS ACT OF 2023; TO AMEND ARKANSAS
CONSTITUTION, AMENDMENT 51; TO AMEND THE LAW
CONCERNING AUDITS OF VOTER REGISTRATION INFORMATION;
TO AMEND THE DUTIES OF THE SECRETARY OF STATE; AND
FOR OTHER PURPOSES.

Subtitle

TO CREATE THE VOTER REGISTRATION AND
SECURE VOTER RECORDS ACT OF 2023; TO
AMEND ARKANSAS CONSTITUTION, AMENDMENT
51; AND TO AMEND THE DUTIES OF THE
SECRETARY OF STATE.

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

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Voter Registration and
Secure Voter Records Act of 2023".

SECTION 2. Arkansas Constitution, Amendment 51, § 6(a)(2), concerning



1 voter registration forms, is amended to add additional subdivisions to read
2 as follows:

3 (G) Inform the applicant that if the voter registration
4 application is being collected by a third-party voter registration
5 organization, the third-party voter registration organization may be unable
6 to deliver the application to the permanent registrar in the county in which
7 the applicant resides before the thirty-day voter registration deadline to
8 vote in the next election and that the applicant may elect to deliver the
9 application in person or by mail; and

10 (H) Inform the applicant of the process to determine if
11 the application has been received by the Secretary of State.
12

13 SECTION 3. Arkansas Constitution, Amendment 51, § 7, concerning voter
14 registration record files, is amended to add an additional subsection to read
15 as follows:

16 (j)(1) The Secretary of State shall ensure the security and accuracy
17 of the statewide voter registration list.

18 (2) To ensure the security and accuracy of the statewide voter
19 registration list maintained by the Secretary of State, the Secretary of
20 State shall:

21 (A) Cooperate with other states and jurisdictions to
22 compare registered voters, voter history, and voter registration lists to:

23 (i) Ensure the accuracy of the voter registration
24 rolls;

25 (ii) Identify voters whose addresses have changed;

26 (iii) Prevent registration in more than one (1)
27 state; and

28 (iv) Determine eligibility of individuals to vote in
29 Arkansas;

30 (B) Have the authority to utilize any services available
31 to establish and implement a system for the verification of citizenship
32 status for a person registering to vote;

33 (C) Regularly and before each election identify registered
34 voters who are deceased by comparing the information received from the Social
35 Security Administration, including without limitation a master death file or
36 index compiled by the Social Security Administration;

1 (D) Establish and implement a process for the verification
2 of address information:

3 (i) Submitted by a person registering to vote;

4 (ii) Submitted by a registered voter updating his or
5 her address; and

6 (iii) Provided through undeliverable mail by the
7 United States Postal Service concerning a person registering to vote or a
8 registered voter;

9 (E) Ensure all confidential voter registration information
10 and data remains confidential and protected under state and federal law;

11 (F) Allow view-only access to the voter registration
12 record files and data to all county boards of election commissioners to carry
13 out the county board of election commissioners' election administration
14 responsibilities; and

15 (G) Provide annual reports to the Joint Performance Review
16 Committee of the General Assembly concerning the accuracy of the voter
17 registration record files.

18 (3) The Secretary of State shall promulgate rules under the
19 Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to:

20 (A) Implement the requirements of this section; and

21 (B) Ensure the security, accuracy, and integrity of the:

22 (i) Statewide voter registration system;

23 (ii) Supporting technologies utilized by the
24 counties to maintain and record voter registration information;

25 (iii) Secure user access requirements established by
26 the Secretary of State; and

27 (iv) Election audit logs.

28
29 SECTION 4. Arkansas Constitution, Amendment 51, § 8(c)(2), concerning
30 voter registration application records and reports, is amended to read as
31 follows:

32 (2) Every six (6) months the Secretary of State shall compile a
33 statewide report available to the public reflecting the statistical data
34 collected pursuant to subsection (a) of this section. This report shall be
35 submitted to the ~~Federal Election Commission~~ United States Election
36 Assistance Commission for the national report pursuant to ~~section (9)(a)(3)~~

1 ~~of~~ the National Voter Registration Act of 1993, United States Code 52 USC §
2 20508. The state report shall also include:

3 (A) ~~numbers~~ Numbers of and descriptions of the agencies,
4 and the method of integrating voter registration in the agencies,
5 disaggregated by agency;

6 (B) Numbers and descriptions of the public assistance
7 programs and the method of integrating voter registration, disaggregated by
8 program;

9 (C) ~~an~~ An assessment of the impact of the National Voter
10 Registration Act of 1993, United States Code 52 USC § 20508, on the
11 administration of elections; and

12 ~~(G)(D)~~ recommendations Recommendations for improvements in
13 procedures, forms, and other matters affected by the National Voter
14 Registration Act of 1993, United States Code 52 USC § 20508.

15
16 SECTION 5. Arkansas Constitution, Amendment 51, § 8(d), concerning
17 voter registration application records and reports, is amended to read as
18 follows:

19 (d) Every six (6) months the state-level administration of each voter
20 registration agency shall issue a report to the Legislative Council and the
21 Secretary of State containing:

22 (1) ~~the~~ The statistical and other information collected in each
23 voter registration agency office, including the:

24 (A) Number of and description of each voter registration
25 agency;

26 (B) Method of integrating voter registration in the voter
27 registration agency; and

28 (C) Total number of registration application forms
29 transmitted to the Secretary of State, disaggregated by month by the voter
30 registration agency;

31 (2) The statistical and other information collected in each
32 public assistance agency, including the:

33 (A) Number of and description of each voter registration
34 agency;

35 (B) Method of integrating voter registration in the voter
36 registration agency; and

1 (C) Number of registration application forms transmitted
2 to the Secretary of State, disaggregated by month by the voter registration
3 agency; and

4 (3) ~~recommendations~~ Recommendations for improvements in
5 procedures, forms, and other matters, including training.

6
7 SECTION 6. Arkansas Constitution, Amendment 51, § 9(a), concerning the
8 application to register to vote, is amended to add an additional subdivision
9 to read as follows:

10 (4) Are citizens of the United States.

11
12 SECTION 7. Arkansas Constitution, Amendment 51, § 11(a), concerning
13 the cancellation of voter registration, is amended to add an additional
14 subdivision to read as follows:

15 (7) Who are not citizens of the United States.

16
17 SECTION 8. Arkansas Constitution, Amendment 51, § 11(f), concerning
18 the cancellation of voter registration, is amended to read as follows:

19 (f) Within ten (10) days following the receipt or possession of
20 information requiring any cancellation of registration, ~~other than under~~
21 ~~section 11(a)(1) of this amendment,~~ the permanent registrar shall cancel the
22 registration, and note the date of the cancellation, the reason for the
23 cancellation, and the person cancelling the registration in the voter
24 registration system.

25
26 SECTION 9. Arkansas Constitution, Amendment 51, § 13(b)(1)(A)(i)(a),
27 concerning fail-safe voting and verification of voter registration, is
28 amended to read as follows:

29 (a) Shows the legal name of the person to whom
30 the document or identification card was issued;

31
32 SECTION 10. Arkansas Constitution, Amendment 51, § 13(b)(1)(A)(i)(c),
33 concerning fail-safe voting and verification of voter registration, is
34 amended to read as follows:

35 (c) Is issued by the United States, the State
36 of Arkansas, ~~or~~ an accredited postsecondary educational institution in the

1 State of Arkansas, or a trade school in the State of Arkansas; and

2
3 SECTION 11. Arkansas Constitution, Amendment 51, § 13(b)(8)(C),
4 concerning fail-safe voting and verification of voter registration, is
5 amended to read as follows:

6 (C) The prosecuting attorney or a state entity authorized
7 by the General Assembly may investigate possible voter fraud.

8
9 SECTION 12. Arkansas Constitution, Amendment 51, § 15(b), concerning
10 penalties for violations of the voter registration laws, is amended to read
11 as follows:

12 (b) Any public official, ~~or~~ election official, or public employee who
13 wilfully violates any provision of this amendment shall be guilty of a
14 misdemeanor, and upon conviction thereof shall also be removed from such
15 office or position.

16
17 SECTION 13. Arkansas Code § 7-4-121, concerning election audits by the
18 State Board of Election Commissioners, is amended to add an additional
19 subdivision to read as follows:

20 (c)(1) An audit shall be performed by the State Board of Election
21 Commissioners of the voter registration data to ensure voter registration
22 data is accurate and up to date.

23 (2) The audit shall be performed annually by December 31.

24 (3) The results of the audit shall be made publicly available on
25 the State Board of Election Commissioner's website.

26
27 /s/McClure
28

29
30 APPROVED: 4/4/23
31
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36