

ARKANSAS SENATE

93rd General Assembly - Regular Session, 2021 Amendment Form

Subtitle of Senate Bill No. 604

TO AMEND ARKANSAS LAW TO IMPOSE PENALTIES ON STATE AND COUNTY ELECTION OFFICIALS WHO FAIL TO PERFORM STATUTORY DUTIES; AND TO ALLOW INVESTIGATION OF ELECTION LAW VIOLATIONS BY THE DIVISION OF ARKANSAS STATE POLICE.

Amendment No. 1 to Senate Bill 604

Amend Senate Bill No. 604 as originally introduced:

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 7-1-104(a), concerning miscellaneous felonies and penalties, is amended to add an additional subdivision to read as follows:

(19)(A) An election official shall be subject to the penalties under § 7-4-122 if the election official knowingly, willfully, and with the intent to influence the outcome of an election:

(i) Fails to perform a duty prescribed by law;

(ii) Fails to follow or implement guidance issued

under § 7-4-101(f)(5); or

(iii) Performs a duty or carries out a responsibility in a manner that hinders or disregards the purpose of the duty or responsibility.

(B) The Attorney General's office shall have exclusive jurisdiction to investigate and sanction violations of this subdivision, subject to such delegation as the Attorney General directs under § 7-4-122(a).

SECTION 2. Arkansas Code § 7-4-120 is amended to read as follows:
7-4-120. Complaints of election law violations – Definitions.

(a)(1) Except as provided in subdivision (a)(2) of this section, the State Board of Election Commissioners may investigate alleged violations, render findings, and impose sanctions according to this subchapter for violations of election and voter registration laws.

(2) The State Board of Election Commissioners shall not investigate alleged violations, render findings, or impose sanctions concerning violations of:

(A) The provisions of § 7-1-103(a)(1)-(4), (6), and (7);

or

(B) Campaign finance and disclosure laws for which the



Arkansas Ethics Commission has the duty and authority to investigate and sanction under §§ 7-6-217 and 7-6-218.

(C) Felony election-related offenses under § 7-1-104(a)(19) for which the Attorney General's office has the exclusive jurisdiction to investigate and sanction.

(3) The State Board of Election Commissioners or the Attorney General's office may refer the investigation of alleged violations of election and voter registration laws under their respective jurisdictions to the Division of Arkansas State Police for investigation.

(4) The division shall investigate an alleged violation of election and voter registration law if the alleged violation is referred to the division by the State Board of Election Commissioners or the Attorney General's office.

(b)(1) A complaint shall be filed with the State Board of Election Commissioners or the Attorney General's office in writing within thirty (30) days of:

(A) An alleged violation of the voter registration laws;
or

(B) The election associated with the complaint.
(2) A complaint shall be signed by the complainant under penalty of perjury.

(3)(A) A complaint shall clearly:
(i) Describe the alleged violation, including without limitation the supporting facts for the violation;
(ii) State when the alleged violation occurred; and
(iii) State the location of the alleged violation.

(B)(i) The complaint may specify a desired resolution to the complaint.
(ii) If the complaint is timely filed but does not specify the desired resolution of the complainant:
(a) ~~The State Board of Election Commissioners~~ investigating agency shall notify the complainant that a desired resolution is not specified; and

(b) The complainant may file the additional information within ten (10) days from mailing of the notice.

(4)(A) If a complaint does not meet the requirements of this section, the complaint shall be dismissed.

(B) If a complaint is dismissed because it does not meet the requirements of this section, the ~~State Board of Election Commissioners~~ investigating agency shall notify the complainant of the fact of dismissal.

(5) A person shall not file a frivolous complaint.

(6)(A) If a complaint is filed as required by this section, the State Board of Election Commissioners, the Attorney General's office, or the division shall investigate the alleged violation.

(B) Immediately upon beginning an investigation under this section, the ~~State Board of Election Commissioners~~ investigating agency shall notify the person under investigation of the fact of the investigation and the nature of the investigation.

(C) If at the conclusion of the investigation, the ~~State Board of Election Commissioners~~ investigating agency finds that there is probable cause to believe there has been a violation of the voter

registration laws or election laws, the ~~State Board of Election Commissioners~~ investigating agency may set a public hearing.

(c)(1) The ~~State Board of Election Commissioners~~ investigating agency shall maintain a record of all inquiries, investigations, and proceedings.

(2) Except as provided in subdivisions (c)(3) and (4) of this section, records under this section are exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., until:

(A) A hearing by the ~~State Board of Election Commissioners~~ investigating agency is set; or

(B) The investigation by the State Board of Election Commissioners, the Attorney General's office, or the division is closed by the ~~State Board of Election Commissioners~~ investigating agency.

(3) The ~~State Board of Election Commissioners~~ investigating agency may disclose, through its members or staff, otherwise confidential information to proper law enforcement officers, agencies, and other entities as is necessary to conduct the investigation under this section.

(4) The records of the investigation upon which the ~~State Board of Election Commissioners~~ investigating agency has based its findings shall be opened to public inspection thirty (30) days after the final adjudication in which the ~~State Board of Election Commissioners~~ investigating agency makes a final decision.

(d)(1) If the ~~State Board of Election Commissioners~~ investigating agency determines that the complaint can be addressed through documentary submissions and without a formal investigation, the ~~State Board of Election Commissioners~~ investigating agency may address the complaint with documentary submissions.

(2) If the ~~State Board of Election Commissioners~~ investigating agency determines that an investigation is necessary, the ~~State Board of Election Commissioners~~ investigating agency shall provide to the person who is the subject of the complaint:

(A) A copy of the complaint; and

(B) Instructions for filing a response.

(3) The ~~State Board of Election Commissioners~~ investigating agency may:

(A) Administer oaths for the purpose of taking sworn statements from witnesses in the course of its investigations;

(B) Request the person who is the subject of the complaint to answer allegations in writing, produce relevant evidence, or appear in person before the ~~State Board of Election Commissioners~~ investigating agency; and

(C) Subpoena any person or the books, records, or other documents relevant to the investigation or inquiry.

(4) The ~~State Board of Election Commissioners~~ investigating agency shall:

(A) Provide the person subpoenaed with reasonable notice of the subpoena and an opportunity to respond; and

(B) Advise the complainant and the person who is the subject of the complaint in writing of the final action of the ~~State Board of Election Commissioners~~ investigating agency.

(e) If the ~~State Board of Election Commissioners~~ investigating agency finds a violation of the voter registration laws or election laws under its

jurisdiction, the ~~State Board of Election Commissioners~~ investigating agency may:

- (1) Issue a public letter of caution, warning, or reprimand;
- (2) Impose a fine of no less than twenty-five dollars (\$25.00) and no more than one thousand dollars (\$1,000) for a negligent, knowing, or intentional violation;
- (3) Report the information obtained in the investigation and the findings and determinations of the ~~State Board of Election Commissioners~~ investigating agency to the appropriate law enforcement authorities;
- (4) Order payment of the costs of the investigation and hearing;

or

(5) Combine any of the sanctions authorized under this section.
(f) The ~~State Board of Election Commissioners~~ investigating agency shall advise the complainant and the person who is the subject of the complaint of the:

- (1) Finding of the ~~State Board of Election Commissioners~~ investigating agency;
- (2) Final action taken and sanctions issued by the ~~State Board of Election Commissioners~~ investigating agency; and
- (3) Reasons for the findings, final actions, and sanctions.

(g) The ~~State Board of Election Commissioners~~ investigating agency shall maintain a record of all inquiries, investigations, and proceedings.

(h)(1) The ~~State Board of Election Commissioners~~ investigating agency shall adopt rules concerning the imposition of fines under this section.

(2) If a person fails to pay the fines ordered by the ~~State Board of Election Commissioners~~ investigating agency under this section, the ~~State Board of Election Commissioners~~ investigating agency may obtain a judgment from a court for the amount of the fine imposed by filing suit in the:

- (A) Pulaski County Circuit Court;
- (B) Circuit court of the county in which the person

resides; or

- (C) Small claims division of a district court.

(3) The fee for filing of a suit in a circuit or district court in this state shall be waived for the ~~State Board of Election Commissioners~~ investigating agency.

(4) All moneys received by the ~~State Board of Election Commissioners~~ investigating agency in payment of fines shall be deposited into the State Treasury as general revenues.

(i)(1) The ~~State Board of Election Commissioners~~ investigating agency shall conclude its investigation and take its final action under this section within one hundred eighty (180) days of the filing of a complaint.

(2) If the ~~State Board of Election Commissioners~~ investigating agency holds a hearing under this section, the ~~State Board of Election Commissioners~~ investigating agency shall conclude all actions under this section within two hundred forty (240) days.

(j) A final action of the ~~State Board of Election Commissioners~~ investigating agency under this section is an adjudication for purposes of judicial review under § 25-15-212.

(k) As used in this section:

- (1) "Election laws" means the Arkansas statutes concerning

elections conducted by county boards of election commissioners and the rules promulgated by the State Board of Election Commissioners under § 7-4-101 concerning elections conducted by county boards of election commissioners;

(2) "Frivolous" means clearly lacking any basis in fact or law;
and

(3) "Investigating agency" means the state agency tasked with investigating an alleged violation under this section; and

(4) "Voter registration laws" means those laws under Arkansas Constitution, Amendment 51, and the rules promulgated pursuant to Arkansas Constitution, Amendment 51.

SECTION 3. Arkansas Code Title 7, Chapter 4, Subchapter 1, is amended to add an additional section to read as follows:

7-4-122. Penalties for nonperformance of duty by election official.

(a) When the Attorney General's office receives information indicating that an election official has committed a violation under § 7-1-104(a)(19), the Attorney General may refer the matter to the Division of Arkansas State Police for investigation.

(b) The division is authorized to initiate an investigation of the alleged violation under the procedures of § 7-4-120(d).

(c) If, at the conclusion of the investigation, the Attorney General determines that the election official violated § 7-1-104(a)(19), the Attorney General may impose a penalty allowed under § 7-4-120(e).

(d) As used in this section, "election official" means a person who is:

(1) A member of a county board of election commissioners;

(2) A person who performs election coordinator duties; or

(3) A person who is a poll worker designated by a county board

of election commissioners to be:

(A) An election clerk;

(B) An election judge;

(C) An election sheriff; or

(D) A deputy county clerk assigned to conduct early

voting."

The Amendment was read the first time, rules suspended and read the second time and

By: Senator B. Ballinger

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Secretary