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2 93rd General Assembly
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4

As Engrossed: S4/20/21

A Bill

SENATE BILL 604

5 By: Senator B. Ballinger
6 By: Representative Womack
7

For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS LAW TO IMPOSE PENALTIES ON
10 STATE AND COUNTY ELECTION OFFICIALS WHO FAIL TO
11 PERFORM STATUTORY DUTIES; TO ALLOW INVESTIGATION OF
12 ELECTION LAW VIOLATIONS BY THE DIVISION OF ARKANSAS
13 STATE POLICE; AND FOR OTHER PURPOSES.
14
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Subtitle

17 TO AMEND ARKANSAS LAW TO IMPOSE PENALTIES
18 ON STATE AND COUNTY ELECTION OFFICIALS
19 WHO FAIL TO PERFORM STATUTORY DUTIES; AND
20 TO ALLOW INVESTIGATION OF ELECTION LAW
21 VIOLATIONS BY THE DIVISION OF ARKANSAS
22 STATE POLICE.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

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

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

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

34 (ii) Fails to follow or implement guidance issued
35 under § 7-4-101(f)(5); or

36 (iii) Performs a duty or carries out a



1 responsibility in a manner that hinders or disregards the purpose of the duty
2 or responsibility.

3 (B) The Attorney General's office shall have exclusive
4 jurisdiction to investigate and sanction violations of this subdivision,
5 subject to such delegation as the Attorney General directs under § 7-4-
6 122(a).

7
8 SECTION 2. Arkansas Code § 7-4-120 is amended to read as follows:

9 7-4-120. Complaints of election law violations – Definitions.

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

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

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

18 or

19 (B) Campaign finance and disclosure laws for which the
20 Arkansas Ethics Commission has the duty and authority to investigate and
21 sanction under §§ 7-6-217 and 7-6-218.

22 (C) Felony election-related offenses under § 7-1-
23 104(a)(19) for which the Attorney General's office has the exclusive
24 jurisdiction to investigate and sanction.

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

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

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

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

1 or

2 (B) ~~The election associated with the complaint.~~

3 (2) A complaint shall be signed by the complainant under penalty
4 of perjury.

5 (3)(A) A complaint shall clearly:

6 (i) Describe the alleged violation, including
7 without limitation the supporting facts for the violation;

8 (ii) State when the alleged violation occurred; and

9 (iii) State the location of the alleged violation.

10 (B)(i) The complaint may specify a desired resolution to
11 the complaint.

12 (ii) If the complaint is timely filed but does not
13 specify the desired resolution of the complainant:

14 (a) ~~The State Board of Election Commissioners~~
15 investigating agency shall notify the complainant that a desired resolution
16 is not specified; and

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

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

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

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

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

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

32 (C) If at the conclusion of the investigation, ~~the State~~
33 ~~Board of Election Commissioners~~ investigating agency finds that there is
34 probable cause to believe there has been a violation of the voter
35 registration laws or election laws, ~~the State Board of Election Commissioners~~
36 investigating agency may set a public hearing.

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

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

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

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

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

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

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

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

29 (A) A copy of the complaint; and

30 (B) Instructions for filing a response.

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

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

35 (B) Request the person who is the subject of the complaint
36 to answer allegations in writing, produce relevant evidence, or appear in

1 person before the ~~State Board of Election Commissioners~~ investigating agency;
2 and

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

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

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

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

12 (e) If the ~~State Board of Election Commissioners~~ investigating agency
13 finds a violation of the voter registration laws or election laws under its
14 jurisdiction, the ~~State Board of Election Commissioners~~ investigating agency
15 may:

16 (1) Issue a public letter of caution, warning, or reprimand;

17 (2) Impose a fine of no less than twenty-five dollars (\$25.00)
18 and no more than one thousand dollars (\$1,000) for a negligent, knowing, or
19 intentional violation;

20 (3) Report the information obtained in the investigation and the
21 findings and determinations of the ~~State Board of Election Commissioners~~
22 investigating agency to the appropriate law enforcement authorities;

23 (4) Order payment of the costs of the investigation and hearing;
24 or

25 (5) Combine any of the sanctions authorized under this section.

26 (f) The ~~State Board of Election Commissioners~~ investigating agency
27 shall advise the complainant and the person who is the subject of the
28 complaint of the:

29 (1) Finding of the ~~State Board of Election Commissioners~~
30 investigating agency;

31 (2) Final action taken and sanctions issued by the ~~State Board~~
32 ~~of Election Commissioners~~ investigating agency; and

33 (3) Reasons for the findings, final actions, and sanctions.

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

36 (h)(1) The ~~State Board of Election Commissioners~~ investigating agency

1 shall adopt rules concerning the imposition of fines under this section.

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

7 (A) Pulaski County Circuit Court;

8 (B) Circuit court of the county in which the person
9 resides; or

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

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

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

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

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

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

27 (k) As used in this section:

28 (1) "Election laws" means the Arkansas statutes concerning
29 elections conducted by county boards of election commissioners and the rules
30 promulgated by the State Board of Election Commissioners under § 7-4-101
31 concerning elections conducted by county boards of election commissioners;

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

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

36 (4) "Voter registration laws" means those laws under Arkansas

1 Constitution, Amendment 51, and the rules promulgated pursuant to Arkansas
2 Constitution, Amendment 51.

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

6 7-4-122. Penalties for nonperformance of duty by election official.

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

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

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

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

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

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

20 (3) A person who is a poll worker designated by a county board
21 of election commissioners to be:

22 (A) An election clerk;

23 (B) An election judge;

24 (C) An election sheriff; or

25 (D) A deputy county clerk assigned to conduct early
26 voting.

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28 /s/B. Ballinger
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