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Agency # 108.00

**RULES
FOR
THE VERIFICATION OF VOTER
REGISTRATION**

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



State Board of Election Commissioners
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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.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) 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.

¹ A.C.A. § 7-5-201(e)

² 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 State³

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

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

⁴ Ark. Const. amend. 51, §13(b)(2)(B)

⁵ Ark. Const. amend. 51, §13

⁶ 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.⁷

§ 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.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

§ 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.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

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)

¹⁰Ark. 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.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

§ 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.

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)

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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.

DRAFT

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: H1/26/21

A Bill

HOUSE BILL 1112

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

For An Act To Be Entitled

11
12 AN ACT TO AMEND THE LAW CONCERNING VOTER
13 IDENTIFICATION; TO AMEND THE LAW CONCERNING
14 VERIFICATION OF PROVISIONAL BALLOTS; TO AMEND
15 AMENDMENT 51 OF THE ARKANSAS CONSTITUTION; AND FOR
16 OTHER PURPOSES.
17
18

Subtitle

19
20 TO AMEND THE LAW CONCERNING VOTER
21 IDENTIFICATION; TO AMEND THE LAW
22 CONCERNING VERIFICATION OF PROVISIONAL
23 BALLOTS; AND TO AMEND AMENDMENT 51 OF THE
24 ARKANSAS CONSTITUTION.
25
26

27
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

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

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

35 ~~(A)(i)(a) The voter completes a sworn statement at the~~
36 ~~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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APPROVED: 3/3/21

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