

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

INTERIM STUDY PROPOSAL 2009-159

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

HOUSE BILL 1855

By: Representatives King, Greenberg

Filed with: House Interim Committee on State Agencies and Governmental Affairs
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO REQUIRE THAT A VOTER PROVIDE PROOF OF
IDENTITY WHEN VOTING; TO ELIMINATE THE FEE FOR AN
ARKANSAS IDENTIFICATION CARD; AND FOR OTHER
PURPOSES.

Subtitle

AN ACT TO REQUIRE THAT A VOTER PROVIDE
PROOF OF IDENTITY WHEN VOTING AND TO
ELIMINATE THE FEE FOR AN ARKANSAS
IDENTIFICATION CARD.

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

SECTION 1. Arkansas Code § 7-1-101 is amended to read as follows:

7-1-101. Definitions.

As used in this title, unless the context or chapter otherwise
requires:

(1) "Administrator" means the administrative head of a long-term
care or residential care facility licensed by the state who is authorized in
writing by a patient of the long-term care or residential care facility to
deliver the application for an absentee ballot and to obtain or deliver the
absentee ballot to the county clerk;

(2) "Audit log" means an electronically stored record of events
and ballot images from which election officials may produce a permanent paper



1 record with a manual audit capacity for a voting system using voting
2 machines;

3 (3) "Authorized agent" means a person who is identified and
4 authorized to deliver the application, obtain a ballot, and deliver the
5 ballot on the day of the election to the county clerk by an applicant who is
6 medically unable to cast a ballot at a polling site due to unforeseen medical
7 necessity as set forth in an affidavit from the administrative head of a
8 hospital or long-term or residential care facility;

9 (4) "Canvassing" means examining and counting the returns of
10 votes cast at a public election to determine authenticity;

11 (5) "Constitutional officers of this state" means the offices of
12 the Governor, Lieutenant Governor, Secretary of State, Attorney General,
13 Auditor of State, Treasurer of State, and Commissioner of State Lands;

14 (6) "Counting location" means a location selected by the county
15 board of election commissioners with respect to all elections for the
16 automatic processing or counting, or both, of votes;

17 (7) "Designated bearer" means any person who is identified and
18 authorized by the applicant to obtain from the county clerk or to deliver to
19 the county clerk the applicant's ballot;

20 (8) "Election official" or "election officer" means a person who
21 is a member of the county board of election commissioners or a person who is
22 a poll worker designated by a county board of election commissioners to be an
23 election clerk, election judge, or election sheriff;

24 (9) "Electronic vote tabulating device" means a device used to
25 electronically scan a marked paper ballot for the purpose of tabulation;

26 (10) "Fail-safe voting" means the mechanism established under
27 the National Voter Registration Act of 1993, 42 U.S.C. § 1973 et seq., that
28 allows ~~voters who have~~ a voter who has moved within the same county to vote
29 at ~~their~~ his or her new precinct without having updated ~~their~~ his or her
30 voter registration records;

31 (11) "First-time voter" means any registered voter who has not
32 previously voted in a federal election in the state;

33 (12) "General or special election" means the regular biennial or
34 annual elections for election of United States, state, district, county,
35 township, and municipal officials and the special elections to fill vacancies
36 therein and special elections to approve any measure. The term as used in

1 this act shall not apply to school elections for officials of school
2 districts;

3 (13) "Majority party" means that political party in the State of
4 Arkansas whose candidates were elected to a majority of the constitutional
5 offices of this state in the last preceding general election;

6 (14) "Marking device" means any approved device for marking a
7 paper ballot with ink or other substance that will enable the votes to be
8 tabulated by means of an electronic vote tabulating device;

9 (15) "Minority party" means that political party whose
10 candidates were elected to less than a majority of the constitutional offices
11 of this state in the last preceding general election or the political party
12 that polled the second greatest number of votes for the office of Governor in
13 the last preceding general election if all of the elected constitutional
14 officers of this state are from a single political party;

15 (16) "Party certificate" means a written statement or receipt
16 signed by the secretary or chair of the county committee or of the state
17 committee, as the case may be, of the political party evidencing the name and
18 title proposed to be used by the candidate on the ballot, the position the
19 candidate seeks, payment of the fees, and filing of the party pledge, if any,
20 required by the political party;

21 (17)(A) "Political party" means any group of voters that at the
22 last preceding general election polled for its candidate for Governor in the
23 state or nominees for presidential electors at least three percent (3%) of
24 the entire vote cast for the office.

25 (B) No group of electors shall assume a name or
26 designation that is so similar in the opinion of the Secretary of State to
27 that of an existing political party as to confuse or mislead the voters at an
28 election.

29 (C) When any political party fails to obtain three percent
30 (3%) of the total votes cast at an election for the office of Governor or
31 nominees for presidential electors, it shall cease to be a political party;

32 (18) "Polling site" means a location selected by the county
33 board of election commissioners where votes are cast;

34 (19) "Precinct" means the geographical boundary lines dividing a
35 county, municipality, township, or school district for voting purposes;

36 (20) "Primary election" means any election held by a political

1 party in the manner provided by law for the purpose of selecting nominees of
2 the political party for certification as candidates for election at any
3 general or special election in this state;

4 (21) "Proof of identity" means a document or identification card
5 that:

6 (A) Shows the name of the person to whom the document was
7 issued;

8 (B) Shows a photograph of the person to whom the document
9 was issued;

10 (C) Contains an expiration date and:

11 (i) Is not expired; or

12 (ii) Expired no more than four (4) years before the
13 date of the election in which the person wishes to vote; and

14 (D) Is issued by the United States or the State of Arkansas;

15 ~~(21)~~(22) "Provisional ballot" means a ballot:

16 (A) Cast by special procedures to record a vote when there is
17 some question concerning a voter's eligibility; and

18 (B) Counted contingent upon the verification of the
19 voter's eligibility;

20 ~~(22)~~(23) "Qualified elector" means a person who holds the
21 qualifications of an elector and who is registered pursuant to Arkansas
22 Constitution, Amendment 51;

23 ~~(23)~~(24) "Sample ballot" means a ballot for distribution to the
24 public or the press marked with the word "SAMPLE" ~~so as~~ in order to prevent
25 the production of counterfeit ballots;

26 ~~(24)~~(25) "Vacancy in election" means the vacancy in an elective
27 office created by death, resignation, or other good and legal cause, arising
28 prior to election to the office at a general or special election but arising
29 subsequent to the certification of the ballot;

30 ~~(25)~~(26) "Vacancy in nomination" means the circumstances in
31 which the person who received the majority of votes at the preferential
32 primary election or general primary election cannot accept the nomination due
33 to death or notifies the party that he or she will not accept the nomination
34 due to serious illness, moving out of the area from which the person was
35 elected as the party's nominee, or filing for another office preceding the
36 final date for certification of nominations;

1 ~~(26)~~(27)(A) “Vacancy in office” means the vacancy in an elective
2 office created by death, resignation, or other good and legal cause arising
3 subsequent to election to the office at a general or special election or
4 arising subsequent to taking office and prior to the expiration of the term
5 of office in those circumstances wherein the vacancy must be filled by a
6 special election rather than by appointment.

7 (B) The phrase “vacancy in office” shall not apply to the
8 election of a person at a general election to fill an unexpired portion of a
9 term of office;

10 ~~(27)~~(28) “Voter-verified paper audit trail” means a
11 contemporaneous paper record of a ballot printed for the voter to confirm his
12 or her votes before the voter casts his or her ballot that:

13 (A) Allows the voter to verify the voter-verified paper
14 audit trail before the casting of the voter’s ballot;

15 (B) Is not retained by the voter;

16 (C) Does not contain individual voter information;

17 (D) Is produced on paper that is sturdy, clean, and
18 resistant to degradation; and

19 (E) Is readable in a manner that makes the voter’s ballot
20 choices obvious to the voter without the use of computer or electronic code;

21 ~~(28)~~(29) “Voting machine” means either:

22 (A) A direct recording electronic voting machine that:

23 (i) Records votes by means of a ballot display
24 provided with mechanical or electro-optical components that may be actuated
25 by the voter;

26 (ii) Processes the data by means of a computer
27 program;

28 (iii) Records voting data and ballot images in
29 internal and external memory components; and

30 (iv) Produces a tabulation of the voting data stored
31 in a removable memory component and on a printed copy; or

32 (B) An electronic device for marking a paper ballot to be
33 electronically scanned; and

34 ~~(29)~~(30) “Voting system” means:

35 (A) The total combination of mechanical,
36 electromechanical, or electronic equipment, including the software, firmware,

1 and documentation required to program, control, and support the equipment
2 that is used:

- 3 (i) To define ballots;
- 4 (ii) To cast and count votes;
- 5 (iii) To report or display election results; and
- 6 (iv) To maintain and produce any audit trail

7 information; and

8 (B) The practices and documentation used to:

- 9 (i) Identify system components and versions of
- 10 components;
- 11 (ii) Test the system during its development and
- 12 maintenance;
- 13 (iii) Maintain records of system errors and defects;
- 14 (iv) Determine specific system changes to be made to
- 15 a system after the initial qualification of the system; and
- 16 (v) Make available any materials to the voter,
- 17 including, but not limited to, notices, instructions, forms, or paper
- 18 ballots.

19

20 SECTION 2. Arkansas Code § 7-5-201 is amended to read as follows:

21 7-5-201. Voter qualification.

22 (a) To be qualified to vote, a person shall have registered at least
23 thirty (30) calendar days immediately prior to the election and in the manner
24 set forth by Arkansas Constitution, Amendment 51.

25 (b) "Voting residence" shall be a voter's domicile and shall be
26 governed by the following provisions:

27 (1) The domicile of a person is that place in which his or her
28 habitation is fixed to which he or she has the intention to return whenever
29 he or she is absent;

30 (2) A change of domicile is made only by the act of abandonment,
31 joined with the intent to remain in another place. A person can have only one
32 (1) domicile at any given time;

33 (3) A person does not lose his or her domicile if he or she
34 temporarily leaves his or her home and goes to another country, state, or
35 place in this state with the intent of returning;

36 (4) The place where a person's family resides is presumed to be

1 his or her place of domicile, but a person may acquire a separate residence
2 if he or she takes another abode with the intention of remaining there;

3 (5) A married person may be considered to have a domicile
4 separate from that of his or her spouse for the purposes of voting or holding
5 office. For those purposes, domicile is determined as if the person were
6 single; and

7 (6) Persons who are temporarily living in a particular place
8 because of a temporary work-related assignment or duty post or as a result of
9 their performing duties in connection with their status as military
10 personnel, students, or office holders shall be deemed residents of that
11 place where they established their home prior to beginning such assignments
12 or duties.

13 (c) No person may be qualified to vote in more than one (1) precinct
14 of any county at any one (1) time.

15 (d)(1) Except as provided in subdivision (d)(2) and subsection (e) of
16 this section, any person desiring to vote in this state shall:

17 (A) Present proof of identity to the election official
18 when appearing to vote in person either early or at the polls on election
19 day; or

20 (B) When voting by mail, submit with the ballot a copy of
21 a current and valid photo identification or a copy of a current utility bill,
22 bank statement, government check, paycheck, or other government document that
23 shows the name and address of the voter.

24 (2)(A) A person who is a resident of a licensed nursing home,
25 licensed residential care facility, licensed assisted-living facility, or any
26 licensed facility that provides long-term medical or personal care is not
27 required to provide proof of identity before voting.

28 (B) A person not required to provide proof of identity
29 under subdivision (d)(2)(A) of this section shall provide documentation from
30 the administrator of the facility attesting that the person is a resident of
31 the facility.

32 ~~(d)(e)~~ (1) Any In addition to the proof of identity required by
33 subdivision (d)(1) of this section, any person registering to vote by mail
34 and who has not previously voted in a federal election in this state shall:

35 (A) Present to the election official a current and
36 valid photo identification or copy of a current utility bill, bank statement,

1 government check, paycheck, or other government document that shows the name
2 and address of the voter when appearing to vote in person either early or at
3 the polls on election day; or

4 (B) When voting by mail, submit with the ballot a copy of
5 a current and valid photo identification or a copy of a current utility bill,
6 bank statement, government check, paycheck, or other government document that
7 shows the name and address of the voter.

8 (2) The provision of subdivision ~~(d)~~(e)(1) of this section does
9 not include:

10 (A) Persons whose applications are transmitted by state or
11 federal voter registration agencies;

12 (B) Persons who are covered by the Uniformed and Overseas
13 Citizens Absentee Voting Act, 42 U.S.C § 1973ff-1 et seq.;

14 (C) Persons covered by the Voting Accessibility for the
15 Elderly and Handicapped Act, 42 U.S.C § 1973ee et seq.;

16 (D) Persons who are entitled to vote otherwise than in
17 person under any other federal law;

18 (E) Persons who register to vote by mail and submit as
19 part of the registration any of the identification documents listed in
20 subdivision ~~(d)~~(e)(1) of this section; or

21 (F) Persons who register to vote by mail and submit with
22 the registration either a driver's license number or at least the last four
23 (4) digits of the individual's social security number and with respect to
24 whom a state or local election official matches the license number or social
25 security number with an existing state identification record bearing the same
26 number, name, and date of birth as provided in the registration.

27 ~~(e)~~(f) Any person who receives an absentee ballot according to the
28 precinct voter registration list but who elects to vote by early voting or to
29 vote at his or her polling site on election day shall be permitted to cast a
30 provisional ballot.

31
32 SECTION 3. Arkansas Code § 7-5-305 (a)(8), concerning requests for
33 identification when voting, is amended to read as follows:

34
35 (8)(A)(i) ~~Request~~ Except as provided in subdivision
36 (a)(8)(A)(ii) and (a)(8)(B)(ii) of this section, request the voter for

1 purposes of identification to provide a ~~current and valid photo~~
2 ~~identification or a copy of a current utility bill, bank statement,~~
3 ~~government check, paycheck, or other government document that shows the name~~
4 ~~and address of the voter~~ proof of identity.

5 (ii)(a) A person who is a resident of a licensed
6 nursing home, licensed residential care facility, licensed assisted-living
7 facility, or any licensed facility that provides long-term medical or
8 personal care is not required to provide proof of identity before voting.

9 (b) A person not required to provide proof of
10 identity under subdivision (a)(8)(A)(ii)(a) of this section shall provide
11 documentation from the administrator of the facility attesting that the
12 person is a resident of the facility.

13 (B)(i) If a voter is unable to provide this ~~identification~~
14 proof of identity, the election official shall:

15 (a) indicate Indicate on the precinct
16 voter registration list that the voter did not provide ~~identification~~ proof
17 of identity; and

18 (b) Permit the voter to cast a
19 provisional ballot.

20 (ii) When a voter is unable to provide proof of
21 identity, the voter and the election official shall follow the procedure
22 under § 7-5-321.

23 ~~(ii)(iii)~~ (iii) A first-time voter who registers by mail
24 without providing identification when registering and desires to vote in
25 person but who does not meet the identification requirements of ~~subdivision~~
26 ~~(a)(8)(A) of this section~~ § 7-5-201 (e) may cast a provisional ballot.

27 ~~(iii)(iv)~~ (iv) Following each election, the county board
28 of election commissioners may review the precinct voter registration lists
29 and may provide the information of the voters not providing identification at
30 the polls to the prosecuting attorney.

31 ~~(iv)(v)~~ (v) The prosecuting attorney may investigate
32 possible voter fraud;

33
34 SECTION 4. Arkansas Code Title 7, Chapter 5, Subchapter 3 is amended
35 to add a new section to read as follows:

36 7-5-321. Procedure when voter fails to provide proof of identity.

1 (a) If the voter is listed on the precinct voter registration list but
2 fails to provide proof of identity, the election official shall:

3 (1) Indicate on the precinct voter registration list that the
4 voter did not provide proof of identity; and

5 (2) Permit the voter to cast a provisional ballot.

6 (b)(1) A person who is a resident of a licensed nursing home, licensed
7 residential care facility, licensed assisted-living facility, or any licensed
8 facility that provides long-term medical or personal care is not required to
9 provide proof of identity before voting.

10 (2) A person not required to provide proof of identity under
11 subdivision (b)(1) of this section shall provide documentation from the
12 administrator of the facility attesting that the person is a resident of the
13 facility.

14 (c) A provisional ballot cast by a voter who did not provide proof of
15 identity shall be counted only if:

16 (1) The voter returns to the county board of election
17 commissioners by 12:00 p.m. on the Monday following the election and:

18 (A) Provides proof of identity; or

19 (B) Executes an affidavit stating that the voter cannot
20 provide proof of identity because the voter:

21 (i) Is indigent; or

22 (ii) Has a religious objection to being
23 photographed; and

24 (2) The voter has not been challenged or required to vote a
25 provisional ballot for any other reason.

26
27 SECTION 5. Arkansas Code § 7-5-418 is amended to read as follows:

28 7-5-418. Early voting.

29 (a)(1)(A) Except as provided in subdivision (a)(1)(B) of this section,
30 early voting shall be available to any qualified elector who applies to the
31 county clerk's designated early voting location, beginning fifteen (15) days
32 before a preferential primary or general election between the hours of 8:00
33 a.m. and 6:00 p.m. Monday through Friday and 10:00 a.m. and 4:00 p.m.
34 Saturday and ending at 5:00 p.m. on the Monday before the election.

35 (B) Early voting shall not be available on state or county
36 holidays.

1 (2) However, on all other elections, including presidential
2 preferential primary, general primary, and general runoff elections, early
3 voting shall be available to any qualified elector who applies to the county
4 clerk during regular office hours, beginning seven (7) days before the
5 election and ending on the day before the election day at the time the county
6 clerk's office regularly closes.

7 (b)(1)(A) The county board of election commissioners may decide to
8 hold early voting at additional polling sites outside the offices of the
9 county clerk on any of the days and times provided for in subsection (a) of
10 this section, if it so chooses.

11 (B) The county board shall determine by unanimous vote the
12 location of additional polling sites for early voting.

13 (2) The county board shall appoint the election officials for the
14 additional early voting polling site or sites in the same manner as election
15 officials are appointed for election day.

16 (3)(A) The county board shall notify the county clerk of its decision
17 to hold early voting at additional polling sites outside the office of the
18 county clerk within ten (10) days of the decision.

19 (B)(i) If the county board decides to hold early
20 voting at additional polling sites outside the office of the county clerk,
21 the county clerk may choose not to hold early voting within the office of the
22 county clerk. The county clerk shall notify the county board within ten (10)
23 days of the receipt of notice from the county board regarding early voting at
24 additional polling sites.

25 (ii) If the county clerk decides not to hold early
26 voting within the office of the county clerk as provided in subdivision
27 (b)(3)(B)(i) of this section, the county board shall hold early voting at one
28 (1) or more conveniently located polling sites on the days and times provided
29 in subsection (a) of this section.

30 (4) The early voting election official shall record the date on
31 all pages of the early voting roster or early voting request form and keep a
32 daily record of the number of early ballots cast.

33 (5) All voted ballots and unvoted ballots and all related
34 election materials at each additional early voting polling site shall be
35 stored in a secure location in the county courthouse or in a secure location
36 as determined by the county board of election commissioners immediately after

1 the close of the additional polling sites each day that early voting is
2 conducted there.

3 (c) Before a person is permitted to cast an early vote, the county
4 clerk or election official shall:

5 (1) Request the voter to identify himself or herself by stating
6 his or her name, date of birth, and address in order to verify his or her
7 registration;

8 (2) Request the voter to present proof of identity to the county
9 clerk or election official;

10 ~~(2)(3)~~ If the voter's name or address is not the same as that in
11 the county voter registration record files, request the voter to complete an
12 updated voter registration application form;

13 ~~(3)(4)~~ Request the voter to sign an early voting roster or early
14 voting request form that identifies his or her name, address, date of birth,
15 and the date on the roster or form; and

16 ~~(4)(5)~~ Enter the voter's precinct number on the early voting
17 roster or early voting request form.

18 (d)(1) If the voter is not listed in the county voter registration
19 record files and the county clerk is unable to verify the voter's
20 registration and if the voter contends that he or she is eligible to vote,
21 then the voter may vote a provisional ballot that shall be counted only upon
22 verification of the voter's registration status.

23 (2)(A) If the voter fails to provide proof of identity, the
24 election official shall follow the procedure stated in § 7-5-321.

25 (B)(i) A person who is a resident of a licensed nursing
26 home, licensed residential care facility, licensed assisted-living facility,
27 or any licensed facility that provides long-term medical or personal care is
28 not required to provide proof of identity before voting.

29 (ii) A person not required to provide proof of
30 identity under subdivision (d)(2)(B)(i) of this section shall provide
31 documentation from the administrator of the facility attesting that the
32 person is a resident of the facility.

33 (e) The county clerk or county board shall furnish voting locations
34 that adequately allow the early voter to personally and secretly execute his
35 or her ballot.

36 (f) Upon casting his or her ballot, the voter shall then deposit the

1 ballot in the appropriate box in the same manner as for votes cast on the day
2 of the election.

3 (g) Except as provided in this section, early voting shall be
4 conducted in the same manner as voting on election day. Conduct that is
5 prohibited or restricted on election day shall be subject to the same
6 prohibitions and restrictions on the days on which early voting is conducted.
7

8 SECTION 6. Arkansas Code § 27-16-805(a), concerning the fee for an
9 identification card, is amended to read as follows:

10 (a)(1) The Office of Driver Services of the Department of Finance and
11 Administration may issue an identification card to those Arkansas residents
12 five (5) years of age or older who are not licensed drivers.

13 (2)(A) ~~The fee for the card shall be five dollars (\$5.00)~~ The
14 Office of Driver Services shall not impose a fee on an individual who meets
15 the requirements of subdivision (a)(2)(B) of this section for the issuance
16 of:

17 (i) An original identification card;

18 (ii) A renewal of an identification card; or

19 (iii) A duplicate identification card.

20 (B) An identification card shall be issued without the
21 payment of a fee or charge to an individual who:

22 (i) Does not have a valid Arkansas driver's license;

23 and

24 (ii) Will be at least eighteen (18) years of age at
25 the next general election, special election, or municipal election.