

DRAFT – MARKUP COPY

Agency # 108.00

**RULES
FOR
THE VERIFICATION OF VOTER
REGISTRATION**
(Effective October 28, 2017; Revised ~~May 7, 2022~~)

RECEIVED

FEB 13 2024
BLR



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

TABLE OF CONTENTS

Scope of Rules	3
§ 801 Definitions.....	3
§ 802 Verification of Voter Registration Required When Voting at the Polls	4
§ 803 Poll Worker Verification of Voter Registration.....	5
§ 804 Additional Identification Requirement for Certain First-Time Voters	6
§ 805 Failure to Verify Voter Registration or Present Required Documentation at the Polls.....	6
§ 806 Identification Required When Voting Absentee.....	6
§ 807 Curing Provisional Ballots Created by the Failure to Verify the Voter’s Registration	7
§ 808 Assessment of Validity of Photo Identification Submitted Postelection	8
§ 809 County Clerk to Provide Verification of Voter Registration to Election Commission	8

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, 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.

¹⁰Ark. 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.

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: S3/16/23

A Bill

HOUSE BILL 1407

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

RECEIVED

FEB 13 2024

BLR

For An Act To Be Entitled

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

Subtitle

23 TO CREATE THE VOTER REGISTRATION AND
24 SECURE VOTER RECORDS ACT OF 2023; TO
25 AMEND ARKANSAS CONSTITUTION, AMENDMENT
26 51; AND TO AMEND THE DUTIES OF THE
27 SECRETARY OF STATE.

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

31
32 SECTION 1. DO NOT CODIFY. Title.

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

35
36 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 ~~(D)~~ 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