

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

A Bill

HOUSE BILL 1803

5 By: Representatives Lowery, Wing
6 By: Senators K. Hammer, M. Johnson
7

For An Act To Be Entitled

9 AN ACT ESTABLISH THE ARKANSAS BALLOTING INTEGRITY ACT
10 OF 2021; TO AMEND ARKANSAS LAW CONCERNING ELECTION
11 EXPENSE ALLOCATION; TO AMEND THE COMPLAINT PROCESS
12 FOR ELECTION LAW VIOLATIONS; TO AMEND THE AUTHORITY
13 AND DUTIES OF THE STATE BOARD OF ELECTION
14 COMMISSIONERS; AND FOR OTHER PURPOSES.
15
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Subtitle

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18 TO ESTABLISH THE ARKANSAS BALLOTING
19 INTEGRITY ACT OF 2021.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. DO NOT CODIFY. Title.

25 This act shall be known and may be cited as the "Arkansas Balloting
26 Integrity Act of 2021".
27

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

29 7-4-120. Complaints of election law violations – Definitions.

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

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



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

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

6 (b)(1) A complaint shall be filed with the State Board of Election
 7 Commissioners in writing ~~within thirty (30) days of~~ no earlier than the date
 8 established by law for the delivery or mailing of absentee ballots to a voter
 9 and no later than thirty (30) days following the certification of an election
 10 by a county board of election commissioners of the following:

11 (A) An alleged violation of the ~~voter registration~~ laws
 12 regarding elections including without limitation:

- 13 (i) Voter registration;
- 14 (ii) Requests for absentee ballots;
- 15 (iii) Delivery of absentee ballots;
- 16 (iv) Casting of ballots;
- 17 (v) Ballot tabulation;
- 18 (vi) Certification of election results;
- 19 (vii) Administration of an election;
- 20 (viii) Election processes; or
- 21 (ix) Conduct of an election; or

22 (B) The election or elections affected or associated with
 23 the complaint~~+~~.

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

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

- 27 (i) Describe the alleged violation, including
 28 without limitation the supporting facts for the violation or incident;
- 29 (ii) State when or the approximate date that the
 30 alleged violation or incident occurred; and
- 31 (iii) State the location or locations of the alleged
 32 violation or incident.

33 (B)(i) The complaint may specify, suggest, or recommend a
 34 desired resolution to the complaint.

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

1 (a) The State Board of Election Commissioners
 2 ~~shall~~ may:

3 (1) ~~notify~~ Notify the complainant that
 4 a desired resolution is not specified;

5 (2) Inform the complainant that other
 6 formal or informal resolutions may be appropriate; and

7 (3) Inform the complainant that the
 8 State Board of Election Commissioners may initiate a lawful resolution,
 9 correction, or remedy as the State Board of Election Commissioners deems
 10 appropriate; and

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

13 (4)(A) If a complaint does not meet the requirements of this
 14 section, the complainant shall be notified that the complaint may be
 15 corrected by amendment in writing within ten (10) days and that a failure to
 16 make the necessary corrections shall result in the complaint ~~shall be~~ being
 17 dismissed.

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

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

22 (6)(A) If a complaint is filed as required by this section, the
 23 State Board of Election Commissioners shall investigate the alleged
 24 violation.

25 (B) Immediately upon beginning an investigation under this
 26 section, the State Board of Election Commissioners shall notify the person or
 27 persons under investigation of the fact of the investigation and the nature
 28 of the investigation.

29 (C) If at the conclusion of the investigation, the State
 30 Board of Election Commissioners finds that there is probable cause to believe
 31 there has been a violation of the voter registration laws or election laws,
 32 the State Board of Election Commissioners may set a public hearing.

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

35 (2) Except as provided in subdivisions (c)(3) and (4) of this
 36 section, records under this section are exempt from disclosure under the

1 Freedom of Information Act of 1967, § 25-19-101 et seq., until:

2 (A) A hearing by the State Board of Election Commissioners
3 is set; or

4 (B) The investigation by the State Board of Election
5 Commissioners is closed by the State Board of Election Commissioners.

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

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

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

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

21 (A) A copy of the complaint if a copy has not previously
22 been provided; and

23 (B) Instructions for filing a response.

24 (3) The State Board of Election Commissioners may:

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

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

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

32 (ii) The subpoena may direct any law enforcement
33 officer of the county concerned or the Director of the Division of Arkansas
34 State Police to seize any public record that is withheld.

35 (4) The State Board of Election Commissioners shall:

36 (A) Provide the person subpoenaed with reasonable notice

1 of the subpoena and an opportunity to respond; and

2 (B) Advise the complainant and the person who is the
3 subject of the complaint in writing of the final action of the State Board of
4 Election Commissioners.

5 (e) If the State Board of Election Commissioners finds a violation of
6 the voter registration laws or election laws under its jurisdiction, the
7 State Board of Election Commissioners may:

8 (1) Issue a public letter of caution, warning, ~~or~~ reprimand, or
9 a conditional warning of consequences that shall be imposed if corrective
10 action is not completed;

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

14 (3) Report the information obtained in the investigation and the
15 findings and determinations of the State Board of Election Commissioners to
16 the appropriate law enforcement authorities;

17 (4) Make expenditures and order ~~Order~~ payment of the costs of
18 the investigation and hearing;

19 (5) Combine any ~~of the~~ two (2) or more of the actions or
20 sanctions authorized under this section.

21 (f) The State Board of Election Commissioners shall advise the
22 complainant and the person who is the subject of the complaint of the:

23 (1) Finding of the State Board of Election Commissioners;

24 (2) Final action taken and sanctions issued by the State Board
25 of Election Commissioners against a person associated with the complaint and
26 a response thereto; and

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

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

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

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

36 (A) Pulaski County Circuit Court;

1 (B) Circuit court of the county in which the person
 2 resides; or

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

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

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

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

12 (2) The State Board of Election Commissioners shall announce its
 13 final action as a final administrative decision.

14 (3) However, if the State Board of Election Commissioners fails
 15 to take its final action within one hundred eighty (180) days, the final
 16 administrative action shall be effective within one hundred eighty (180) days
 17 of the filing of the complaint.

18 ~~(2)(4)~~ (4) If the State Board of Election Commissioners holds a
 19 hearing under this section, the State Board of Election Commissioners shall
 20 conclude all actions under this section within two hundred forty (240) days.

21 (j) A final action of the State Board of Election Commissioners under
 22 this section is an adjudication for purposes of judicial review under § 25-
 23 15-212.

24 (k) As used in this section:

25 (1) "Election laws" means the United States Constitution,
 26 Arkansas Constitution, and the statutes, final court decisions of general
 27 applicability, and rules of the United States and the State of Arkansas
 28 ~~statutes~~ concerning elections conducted by county boards of election
 29 commissioners and the rules promulgated by the State Board of Election
 30 Commissioners under § 7-4-101 concerning elections conducted by county boards
 31 of election commissioners;

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

34 (3) "Voter registration laws" means those laws under the United
 35 States Constitution, the Arkansas Constitution, Amendment 51, and the
 36 statutes, final court decisions, and rules promulgated by the United States

1 and the State of Arkansas concerning voter registration laws pursuant to
2 Arkansas Constitution, Amendment 51.

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4 SECTION 3. Arkansas Code § 7-5-104 is amended to read as follows:

5 7-5-104. Election expenses – Allocation.

6 (a)(1) All expenses of general elections and runoff elections for
7 presidential, congressional, state, district, county, township, or municipal
8 offices in this state shall be paid by the counties in which they are held.

9 (2) However, any city or incorporated town shall reimburse the
10 county board of election commissioners for the expenses of the elections in
11 an amount equal to a figure derived by multiplying fifty percent (50%) of the
12 total cost of each election by a fraction, the numerator of which shall be
13 the number of voters from the city or incorporated town casting ballots in
14 each election prepared by the county board of election commissioners, and the
15 denominator of which shall be the total number of voters casting ballots in
16 each election.

17 (b)(1) Except for the expense of party primary elections under § 7-7-
18 201 et seq., all expenses for special elections, including runoff elections
19 as required by law, for congressional, state, district, county, and township
20 offices shall be paid by the counties in which they are held.

21 (2) All expenses of special elections, including any runoff
22 elections as required by law, for municipal offices shall be paid by the city
23 or incorporated town calling for the elections.

24 (3) All expenses of special elections called by any county for
25 the purpose of referring a question or measure to the voters of the county
26 shall be paid by the county.

27 (4) All expenses of special elections called by any city or
28 incorporated town for the purpose of referring a question or measure to the
29 voters of the city or incorporated town shall be paid by the city or
30 incorporated town.

31 (c)(1) The county board of election commissioners shall determine the
32 expenses necessary to conduct a free, equal, and lawful election in order to
33 comply with the United States Constitution, laws of the United States,
34 Arkansas Constitution, and the laws of the State of Arkansas.

35 (2) The county board of election commissioners shall:

36 (A) Prepare an election budget estimate of the expenses of

1 all anticipated elections for the fiscal year of the county; and

2 (B) Transmit the election budget estimate during the same
 3 time and in the same manner as is required of other county departments and
 4 county elected officials in writing to:

5 (i) The county judge;

6 (ii) The county judge's designated comptroller or
 7 budget director; or

8 (iii) A person as may be directed by the county
 9 judge.

10 (3) The election budget estimate shall include without
 11 limitation the following cost of:

12 (A) The salaries and expenses of:

13 (i) Full-time employees with positions relating to
 14 elections; and

15 (ii) Additional permanent, temporary, seasonal, or
 16 part-time employees to include without limitation:

17 (a) Poll workers; and

18 (b) Election officials;

19 (B) Equipment;

20 (C) Supplies;

21 (D) Publication costs;

22 (E) Maintenance;

23 (F) Utilities;

24 (G) Insurance;

25 (H) Taxes;

26 (I) Other direct expenses to conduct elections during the
 27 calendar year following an appropriation by the quorum court; and

28 (J) Indirect expenses of conducting elections during the
 29 calendar year following appropriation by the quorum court.

30 (4) If the county board of election commissioners determines
 31 that an elected county official has made an appropriate determination of
 32 expenses necessary to conduct elections and has previously prepared a budget
 33 estimate of the expenses for all anticipated elections for the fiscal year of
 34 the county, the county board of election commissioners may fulfill its duties
 35 by identifying and requesting line item budget support in the formal budget
 36 and appropriation of the elected county official, by majority vote of the

1 county board of election commissioners, as set forth in its minutes annually.

2 (5) If the county board of election commissioners determines
3 that the expenses necessary to conduct free, equal, and lawful elections can
4 be met through in-kind support from other county departments, agencies, and
5 resources, the county board of election commissioners may accept in-kind
6 support and resources under the terms and conditions as may be acceptable to
7 the county board of election commissioners.

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