

Stricken language would be deleted from and underlined language would be added to present law.
Act 1253 of the Regular Session

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: H3/19/15 H3/27/15
A Bill

HOUSE BILL 1865

By: Representative Lemons

For An Act To Be Entitled

AN ACT TO CREATE THE ELECTION COMMISSIONS INTEGRITY ACT; TO AMEND THE LAW CONCERNING COUNTY BOARDS OF ELECTION COMMISSIONERS; TO APPLY UNIFORM STANDARDS FOR ALL ELECTION COMMISSIONERS; TO CLARIFY THE ACCEPTABLE PERMISSIBLE POLITICAL ACTIVITY OF AN ELECTION COMMISSIONER; TO STRENGTHEN THE COMPLAINT PROCEDURE WITH AND DISCIPLINARY AUTHORITY OF THE STATE BOARD OF ELECTION COMMISSIONERS; AND FOR OTHER PURPOSES.

Subtitle

THE ELECTION COMMISSIONS INTEGRITY ACT.

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

SECTION 1. Arkansas Code § 7-4-109 is amended to read as follows:

7-4-109. Qualifications of state and county commissioners, election officials, poll workers, and certified election monitors.

(a)(1) A member of the State Board of Election Commissioners, a county election commissioner, and an election official shall be a qualified elector of this state, able to read and write the English language, and shall not have been found guilty or pleaded guilty or nolo contendere to the violation of an election law of this state.

(2) An election official, as defined in § 7-1-101, shall not be a candidate for an office to be filled at an election while serving as an election official.

(3) A member of the county board of election commissioners shall



not be disqualified from serving as a member of the county board by the appearance on the ballot as a candidate for a position in his or her political party.

(b)(1) A member of a county board shall be a resident of the county in which he or she serves at the time of his or her appointment or election.

(2)(A) An election official shall be a resident of the precinct in which he or she serves at the time of his or her appointment.

(B) However, if at the time of posting election officials the county board votes unanimously and certifies to the county clerk that it is impossible to obtain a qualified election official from any precinct in the county, another qualified citizen of the county may be designated to serve in the precinct.

(c)(1) A person who is a paid employee of a political party or of a candidate for office on that county's ballot shall not be a member of a county board or an election official.

(2)(A) *Except as provided in subdivision (c)(2)(B) of this section, a person serving on the county board shall not participate in the campaign of a any candidate listed on ~~that county's~~ a ballot or of a write-in candidate seeking election in that county that falls under their jurisdiction or authority.*

(B)(i) A member of the county board shall not:

(a) Manage a campaign;

(b) Perform labor for a campaign;

(c) Solicit on behalf of a candidate or campaign;

(d) Pass out or place handbills, signs, or other literature concerning a candidate's campaign;

(e) Assist a candidate's campaign at a rally or parade; or

(f) Display candidate placards or signs on an automobile.

(ii) A member of the county board may ~~make~~:

(a) Make a financial contribution to a candidate;

(b) Attend a political party's state, district, or county meeting where a candidate or issue advocate speaks as a

member of the audience; or

(c) Participate in a political party convention.

(3) A person employed with a company that has a business dealing, contract, or pending contract with a county board to which he or she seeks appointment shall not be a candidate for the county board.

(d) A person shall not serve as an election official if:

(1) The person is married to or related within the second degree of consanguinity to a candidate running for office in the election; and

(2) Another person makes an objection to his or her service to the county board within ten (10) calendar days after posting the list of officials.

~~(e)(1) Prior to the regularly scheduled preferential primary election, each of the following, each member of the county board of election commissioners, poll worker, and certified election monitor shall attend election training coordinated by the state board:~~

~~(A) A member of the county board of election commissioners;~~

~~(B) A county clerk or his or her designee;~~

~~(C) A poll worker; and~~

~~(D) A certified election monitor.~~

~~(2) The state board shall determine the method and amount of compensation for attending the training.~~

~~(3) A deputy county clerk, employee of the county clerk, or other worker that will assist with early voting may be trained by the county clerk or his or her designee.~~

SECTION 2. Arkansas Code § 7-4-118 is repealed:

~~7-4-118. Complaints of election law violations.~~

~~(a)(1) The State Board of Election Commissioners may investigate alleged violations, render findings, and impose disciplinary action according to this subchapter for violations of election and voter registration laws, except:~~

~~(A) For the provisions in § 7-1-103(a)(1)-(4), (6), and (7); and~~

~~(B) For any matters relating to campaign finance and~~

~~disclosure laws that the Arkansas Ethics Commission shall have the power and authority to enforce according to §§ 7-6-217 and 7-6-218.~~

~~(2) For purposes of subdivision (a)(1) of this section, the board may file a complaint.~~

~~(3) A complaint must be filed with the board in writing within thirty (30) days of an alleged voter registration violation or the election associated with the complaint.~~

~~(4) A complaint must clearly state the alleged election irregularity or illegality, when and where the alleged activity occurred, the supporting facts surrounding the allegations, and the desired resolution.~~

~~(5) A complaint must be signed by the complainant under penalty of perjury.~~

~~(6)(A) Filing a frivolous complaint is considered a violation of this subchapter.~~

~~(B) For purposes of this section, "frivolous" means clearly lacking any basis in fact or law.~~

~~(b)(1) Upon receipt by the board of a written complaint signed under penalty of perjury stating facts constituting an alleged violation of election or voter registration laws under its jurisdiction, the board shall proceed to investigate the alleged violation.~~

~~(2) The board may determine that:~~

~~(A) The complaint can be disposed of through documentary submissions; or~~

~~(B) Further investigation is necessary.~~

~~(3) The board may forward the complaint, along with the information and documentation as deemed appropriate, to the proper authority.~~

~~(4)(A) If the board determines that an investigation is necessary, the board shall provide a copy of the complaint with instructions regarding the opportunity to respond to the complaint to the party against whom the complaint is lodged.~~

~~(B) The board may administer oaths for the purpose of taking sworn statements from any person thought to have knowledge of any facts pertaining to the complaint.~~

~~(C) The board may request the party against whom the complaint is lodged to answer allegations in writing, produce relevant evidence, or appear in person before the board.~~

~~(D) The board may subpoena any person or the books, records, or other documents relevant to an inquiry by the board that are being held by any person and take sworn statements.~~

~~(E) The board shall provide the subject of the subpoena with reasonable notice of the subpoena and an opportunity to respond.~~

~~(F) The board shall advise in writing the complainant and the party against whom the complaint is lodged of the final action taken.~~

~~(c) If the board finds that probable cause exists for finding a violation of election or voter registration laws under its jurisdiction, the board may determine that a full public hearing be called.~~

~~(d) If the board finds a violation of election or voter registration laws under its jurisdiction, then the board may do one (1) or more of the following:~~

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

~~(2) Impose a fine of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000) for each negligent or intentional violation;~~

~~(3) Report its findings, along with the information and documents as it deems appropriate, and make recommendations to the proper law enforcement authorities; or~~

~~(4) Assess costs for the investigation and hearing.~~

~~(e)(1) The board shall adopt rules governing the imposition of the fines in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

~~(2)(A) The board may file suit in the Pulaski County Circuit Court or in the circuit court of the county in which the debtor resides or in the small claims division of any district court in the State of Arkansas to obtain a judgment for the amount of any fine imposed according to its authority.~~

~~(B) The action by the court shall not involve further judicial review of the board's actions.~~

~~(C) The fee normally charged for the filing of a suit in any of the circuit or district courts in the State of Arkansas shall be waived on behalf of the board.~~

~~(3) All moneys received by the board in payment of fines shall be deposited into the State Treasury as general revenues.~~

~~(f)(1) The board shall complete its investigation of a complaint filed according to this section and take final action within one hundred eighty (180) days of the filing of the complaint.~~

~~(2) However, if a hearing under subsection (e) of this section is conducted, all action on the complaint by the board shall be completed within two hundred forty (240) days.~~

~~(3) Any final action of the board under this section shall constitute an adjudication for purposes of judicial review under § 25-15-212.~~

~~(g)(1) The board shall keep a record of all inquiries, investigations, and proceedings.~~

~~(2) Records relating to investigations by the board are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., until a hearing is set or the investigation by the Director of the Board of Election Commissioners is closed.~~

~~(3) The board may disclose, through its members or staff, otherwise confidential information to proper law enforcement officials, agencies, and bodies as may be required to conduct its investigation.~~

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

7-4-120. Complaints of election law violations.

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

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

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

or

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

(b)(1) A complaint shall be filed with the State Board of Election Commissioners in writing within thirty (30) days of:

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

or

(B) The election associated with the complaint;

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

(3)(A) A complaint shall clearly:

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

(ii) State when the alleged violation occurred; and

(iii) State the location of the alleged violation.

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

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

(a) The State Board of Election Commissioners shall notify the complainant that a desired resolution is not specified; and

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

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

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

(6) A person shall not file a frivolous complaint.

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

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

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

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

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

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

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

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

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

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

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

(A) A copy of the complaint; and

(B) Instructions for filing a response.

(3) The State Board of Election Commissioners may:

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

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

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

(4) The State Board of Election Commissioners shall:

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

(B) Advise the complainant and the person who is the

subject of the complaint in writing of the final action of the State Board of Election Commissioners.

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

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

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

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

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

or

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

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

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

(2) Final action taken and sanctions issued by the State Board of Election Commissioners; and

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

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

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

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

(A) Pulaski County Circuit Court;

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

(C) Small claims division of a district court.

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

(4) All moneys received by the State Board of Election

Commissioners in payment of fines shall be deposited into the State Treasury as general revenues.

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

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

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

(k) As used in this section:

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

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

(3) "Voter registration laws" means those laws under Arkansas Constitution, Amendment 51 and the rules promulgated pursuant to Arkansas Constitution, Amendment 51.

/s/Lemons

APPROVED: 04/08/2015