

Stricken language would be deleted from and underlined language would be added to present law.
Act 544 of the Regular Session

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: H3/9/23 H3/30/23
A Bill

HOUSE BILL 1513

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

For An Act To Be Entitled

AN ACT TO CREATE THE ELECTION INTEGRITY UNIT WITHIN THE ATTORNEY GENERAL'S OFFICE; TO AMEND THE DUTIES OF THE STATE BOARD OF ELECTION COMMISSIONERS; TO AMEND THE LAW CONCERNING VIOLATIONS OF ELECTION LAW; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ELECTION INTEGRITY UNIT WITHIN THE ATTORNEY GENERAL'S OFFICE; TO AMEND THE DUTIES OF THE STATE BOARD OF ELECTION COMMISSIONERS; AND TO AMEND THE LAW CONCERNING VIOLATIONS OF ELECTION LAW.

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

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

7-1-109. Enforcement of election laws.

(a) Following a written complaint concerning any election law violation or irregularity to the county board of election commissioners, the written complaint shall be sent by the county board of election commissioners



to the State Board of Election Commissioners and the Election Integrity Unit for evaluation and investigation.

(b) A complaint submitted under subsection (a) of this section shall be included by the unit in the Arkansas Election Integrity Database.

SECTION 2. Arkansas Code § 7-4-120(b)(7), concerning complaints of election law violations, is amended to read as follows:

(7)(A) If a complaint is filed as required by this section, the State Board of Election Commissioners shall investigate the alleged violation and notify the Election Integrity Unit to enter the complaint into the Arkansas Election Integrity Database.

(B) If at the conclusion of the investigation, the State Board of Election Commissioners find that there is probable cause to believe there has been a criminal violation of the voter registration laws or election laws, the State Board of Election Commissioners may forward the complaint to the prosecuting attorney for criminal prosecution.

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

~~(C)~~(D) 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, and the complaint has not been referred to the prosecuting attorney, the State Board of Election Commissioners may set a public hearing.

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

Subchapter 3 – Election Integrity Unit

7-4-301. Title.

This subchapter shall be known and cited as the “Election Integrity Unit Act of 2023”.

7-4-302. Election Integrity Unit.

(a) There is created within the Attorney General’s Office the Election

Integrity Unit.

(b) The purpose of the Election Integrity Unit is to aid the Secretary of State and the State Board of Election Commissioners in the completion of their duties related to the investigation of election crimes and the security of elections.

(c) The director of the Election Integrity Unit shall be known as the "Director of the Election Integrity Unit" and shall be appointed by the Attorney General.

(d) The Attorney General may also appoint staff to ensure the efficient operation of the Election Integrity Unit, including without limitation:

- (1) Assistants;
- (2) Nonsworn investigators;
- (3) Professional staff; and
- (4) Clerical staff.

(e) The Election Integrity Unit shall be based in Little Rock, Arkansas.

7-4-303. Definitions.

As used in this subchapter:

(1) "Election laws" means the United States Constitution, the Arkansas Constitution, and the statutes, final court decisions of general applicability, and rules of the United States and the State of Arkansas 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; and

(2) "Voter registration laws" means those laws under the United States Constitution, the Arkansas Constitution, and the statutes, final court decisions, and rules promulgated by the United States and the State of Arkansas concerning voter registration laws.

7-4-304. Duties of the Election Integrity Unit.

(a) The Election Integrity Unit shall establish the Arkansas Election Integrity Database that shall be maintained by the Election Integrity Unit, with secure access provided to the Secretary of State and the State Board of

Election Commissioners.(b) The Election Integrity Unit shall:

(1) Track all alleged violations, complaints, and investigations in the Arkansas Election Integrity Database;

(2) Oversee the Attorney General's election law violations hotline under § 7-4-305;

(3) Respond to notifications or complaints generated by election officials or any other person alleging a violation of voter registration laws or election laws;

(4) Refer all notifications of complaints to the State Board of Election Commissioners for investigation of any potential civil or criminal acts related to a violation of election law and violations concerning election security reported under §7-4-120 or this subchapter;

(5) To institute civil proceedings for the purpose of enforcing the provisions of this chapter and as specifically enumerated in § 7-4-306.

(6) Receive sworn statements and issue subpoenas to compel the production of records and other documents pursuant to § 25-16-705; and

(7) Enforce the provisions of this subchapter and perform such other functions as may be incidental to the powers and duties set forth in this subchapter.

(c) If during the course of an investigation, the State Board of Election Commissioners determines that there may be a criminal violation of voter registration laws or election laws, the findings of the investigation:

(1)(A) May be turned over to the appropriate prosecutorial agency for criminal prosecution.

(B) A prosecuting attorney having jurisdiction over a violation of voter registration laws or election laws may designate an attorney employed by the Attorney General's office as a special deputy prosecutor to prosecute any charges related to a violation of voter registration laws or election laws or any other charges that may arise from the same factual allegations or may be properly joined under state law.

(C)(i) Under Arkansas Constitution, Amendment 80, § 20 and § 16-21-103, only a prosecuting attorney has the duty and authority to commence and prosecute any criminal action under state law.

(ii) A special deputy prosecuting attorney's power to prosecute a criminal action under this section is derivative from the

prosecuting attorney; and

(2) Shall be heard by the State Board of Election Commissioners if the potential violation is a civil violation.

(d) This subchapter does not limit the jurisdiction of any other state entity empowered by law to investigate, act upon, or dispose of alleged violations of state voter registration and election laws.

(e)(1) By August 1 of each year, the State Board of Election Commissioners shall submit a report of all closed investigations of the previous calendar year to the:

(A) Governor;

(B) Attorney General; and

(C) Joint Performance Review Committee.

(2) The report required under subdivision (e)(1) of this section shall:

(A) Provide a summary of information on each closed investigation of an alleged violation of election laws conducted during the prior calendar year;

(B) Include the total number of:

(i) Complaints received;

(ii) Independent investigations initiated; and

(iii) Number of complaints referred for criminal

prosecution; and

(C) The current status of any resulting criminal case.

7-4-305. Election law violation – Hotline.

(a)(1) The Attorney General shall establish and publish procedures to receive complaints concerning violations of election law.

(2) The procedures shall include the operation of a toll-free hotline and may include procedures to receive written complaints through the mail, email, or fax.

(3) Knowingly filing a false claim of a violation of election law is a Class A misdemeanor punishable under § 7-1-103(c).

(b)(1) The State Board of Election Commissioners shall report all complaints received through the election law violation hotline to the Joint Performance Review Committee in the report required under § 7-4-304.

(2) The report may contain preliminary findings by the State

Board of Election Commissioners as to the validity of the complaint if the full investigation is not complete.

§ 7-4-306. Civil actions by Attorney General

(a) Whenever the Attorney General has reason to believe that a person or entity is engaging, has engaged, or is about to engage in any act or practice declared unlawful by § 7-1-103 or § 7-1-104, the Attorney General may bring an action in the name of the state against that person or entity.

(b) An action under subsection (a) of this section may be brought to:

(1) Obtain a declaratory judgment that the act or practice violates the provisions of § 7-1-103 or § 7-1-104;

(2) Enjoin any act or practice that violates the provisions of § 7-1-103 or § 7-1-104 by issuance of a temporary restraining order or preliminary or permanent injunction, without bond, upon the giving of appropriate notice;

(3) Recover on behalf of the state and its agencies actual damages for loss incurred either directly or indirectly; and

(4) Recover civil penalties of at least one thousand dollars (\$1,000) per violation of § 7-1-103 or § 7-1-104, or any injunction, judgment issued or entered into under the provisions of § 7-1-103 or § 7-1-104 and reasonable expenses, investigative costs, and attorney's fees.

SECTION 4. Arkansas Code § 7-5-202(c)(1)(F)(ii), concerning public notice of elections, is amended to read as follows:

(ii) Information about the availability of the Attorney General's election law violation hotline, including without limitation the hotline telephone number of the Attorney General's election law violation hotline established under § ~~25-16-717~~ 7-4-305;

SECTION 5. Arkansas Code § 25-16-717 is repealed.

~~25-16-717. Election law violation—Hotline.~~

~~(a)(1) The Attorney General shall establish and publish procedures to receive complaints concerning violations of election law.~~

~~(2) The procedures shall include the operation of a toll-free hotline and may include procedures to receive written complaints through the mail, email, or fax.~~

~~(3) Knowingly filing a false claim of a violation of election law is a Class A misdemeanor punishable under § 7-1-103(e).~~

~~(b)(1) The Attorney General shall report all complaints received to the Joint Performance Review Committee within forty five (45) days following the certified election results of a general election.~~

~~(2) The report may contain preliminary findings by the Attorney General as to the validity of the complaint.~~

~~(3) The Joint Performance Review Committee may call a meeting within thirty (30) days of receipt of the report for the purpose of investigating election law violations.~~

~~(c)(1) If the Attorney General receives a complaint and finds it is likely that a violation of election law has occurred, the Attorney General shall forward the complaint to the Joint Performance Review Committee for preliminary investigation and may forward the complaint to the appropriate prosecuting attorney.~~

~~(2) The prosecuting attorney may deputize the Attorney General to act on the prosecuting attorney's behalf if the prosecuting attorney has a conflict of interest in the investigation.~~

~~(3) If the Attorney General is deputized by the prosecuting attorney, the Attorney General may investigate or prosecute the alleged violation of election law.~~

/s/McCollum

APPROVED: 4/11/23