

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
94th General Assembly  
Regular Session, 2023

As Engrossed: S3/27/23 S3/29/23  
**A Bill**

SENATE BILL 235

By: Senator C. Tucker

### **For An Act To Be Entitled**

AN ACT TO CREATE THE ARKANSAS ABSENTEE VOTER INTEGRITY ACT OF 2023; TO AMEND THE LAW CONCERNING COUNTING ABSENTEE BALLOTS; TO AMEND THE LAW CONCERNING ELECTIONS; TO AMEND THE LAW CONCERNING THE DUTIES OF THE SECRETARY OF STATE; AND FOR OTHER PURPOSES.

### **Subtitle**

TO CREATE THE ARKANSAS ABSENTEE VOTER INTEGRITY ACT OF 2023; TO AMEND THE LAW CONCERNING COUNTING ABSENTEE BALLOTS; TO AMEND THE LAW CONCERNING ELECTIONS; AND TO AMEND THE LAW CONCERNING THE DUTIES OF THE SECRETARY OF STATE.

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

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Arkansas Absentee Voter Integrity Act of 2023."

SECTION 2. Arkansas Code § 7-5-416 is amended to read as follows:

7-5-416. Counting of absentee ballots.

(a)(1) The election officials for absentee ballots may meet in a place designated by the county board of election commissioners no earlier than the Tuesday before the election for the purpose of opening the outer envelope, processing, and canvassing of absentee ballot paper work of the outer



envelope and no earlier than 8:30 a.m. on election day for the purpose of opening the inner absentee ballot envelope and counting the absentee ballots.

(2) The absentee ballots shall be tabulated or counted no earlier than 8:30 a.m. on election day.

(3) The county board of election commissioners shall give public notice of the time and location of the opening, processing, canvassing, and counting of absentee ballots and early voting ballots as provided in § 7-5-202.

~~(3)~~(4) The county clerk shall provide the county board of election commissioners with a daily count of absentee applications received, to be reported weekly or upon request of the county board of election commissioners.

~~(4)~~(5) The county clerk shall provide the county board of election commissioners with a daily count of absentee ballots received, to be reported weekly or upon request of the county board of election commissioners.

~~(5)~~(6) The county clerk shall forward the following items to the election officials designated by the county board of election commissioners to open, process, canvass, and count absentee ballots:

(A) The absentee ballot applications sorted alphabetically and by precinct;

(B) The absentee ballots; and

(C) A written report containing the following information:

(i) The number of absentee ballot applications received by the county clerk;

(ii) The number of absentee ballots sent by the county clerk;

(iii) The number of absentee ballots returned to the county clerk;

(iv) The number of absentee ballots rejected by the county clerk and the reason for the rejection;

(v) The number of absentee ballots marked as received on the paper absentee ballot applications list; and

(vi) If the number of absentee ballots returned to the county clerk and the number of absentee ballots marked as received on the paper absentee ballot lists are different and the reason for the difference

is known, the reason for the difference.

~~(6)~~(7) The processing and counting of absentee ballots shall be open to the public, and candidates and authorized poll watchers may be present in person or by a representative designated in writing under § 7-5-312 during the opening, processing, canvassing, and counting of the absentee ballots as provided in this subchapter.

~~(7)(A)~~(8)(A) The county board of election commissioners shall begin tabulating absentee ballots and early votes before the polls close on election day and continue counting absentee votes until all absentee votes, except for overseas voters as otherwise provided under this section, and early votes are counted and completed before counting or tabulating election day votes ~~Absentee and early votes shall be counted prior to the closing of the polls on election day as provided under this section.~~

(B)(i) The county board of election commissioners shall report by precinct the initial count of early votes and absentee ballot votes to the Secretary of State as provided under § 7-5-701 as soon as practical after the polls close on election day.

(ii) No election results of the precinct shall be printed, posted, or released until after the polls close on election day.

~~(8)(A)~~(9)(A) After the outer envelope of an absentee ballot is opened, a county clerk and deputies of the county clerk shall not have access to:

- (i) The absentee ballots;
- (ii) Absentee ballot paperwork; or
- (iii) The inner envelope of an absentee ballot.

(B) The county board of election commissioners may grant a county clerk or deputies of the county clerk access to the absentee ballot materials in subdivision ~~(a)(8)(A)~~(a)(9)(A) of this section if the access is granted by an affirmative vote of the county board of election commissioners for a specific purpose and for a designated election.

(b)(1) ~~The opening, processing, counting, and canvassing of absentee ballots~~ ballot materials shall be ~~conducted~~ opened by two (2) election officials as follows:

(A) One (1) of the election officials shall open outer absentee ballot envelopes one by one and ~~verify the contents~~ locate the required voter materials;

~~(B) If the required materials are properly placed in the outer absentee ballot envelope, the election official shall proceed to read aloud from the voter statement the name of the voter; The election officials shall:~~

(i) Read aloud from the voter statement the name of the voter and the voting precinct in which the voter claims to be a legal voter;

(ii) List the name and voting precinct of the voter;

(iii) Compare the voter materials as provided under subdivision (b)(2) of this section; and

(iv) For first-time voters who registered by mail, compare the first-time voter's identification document unless the voter previously provided identification at the time of mailing the voter registration application;

~~(C) If the required materials are not properly placed in the outer absentee ballot envelope;~~

(i) a second election official shall open the inner absentee ballot envelope to ~~verify the contents~~ locate the required voter materials no earlier than 8:30 a.m. on election day; and

~~(D)(ii) If all required materials are present within one (1) or the other envelope, the~~ The election officials shall ~~put~~ place the absentee ballot materials, while preserving the secrecy of the voter's ballot within the inner absentee envelope, in the proper an envelope while preserving the secrecy of the voter's ballot and shall proceed to read aloud from the voter statement the name of the voter and the voting precinct in which the voter claims to be a legal voter; marked "provisional", and the absentee ballot shall be considered a provisional ballot; and

~~(E) As each outer envelope is opened and the name of the voter is read, the election officials for the absentee box shall list the name and voting precinct of the voter;~~

(D) If the required materials are properly placed in the outer absentee envelope, then the election officials shall compare the voter materials as provided under subdivision (b)(2) of this section.

(2)(A) After the opening of the absentee ballot materials, the two (2) election officials shall canvass and compare the absentee ballot materials as follows:

(i) The election officials shall compare all absentee ballot materials returned, except the voter's ballot, which shall be maintained within the inner absentee ballot envelope to preserve the secrecy of the ballot, including without limitation:

(a) Absentee ballot applications;

(b) Voter statements;

(c) A voter's voter identity documentation;

and

(d) Any additional information or documentation provided by the voter in the absentee ballot envelope;

(ii) The election officials shall review the absentee ballot materials to determine whether:

(a) The voter's name, residential voting address, date of birth, and signature are comparable;

~~(F)(i) After the election official reads aloud from the statement, the election officials shall compare the name, address, date of birth, and signature of the voter's absentee application with the voter's statement and, for first-time voters who registered by mail, the first-time voter's identification document unless the voter previously provided identification at the time of mailing the voter registration application.~~

~~(ii) If the county board of election commissioners determines that the absentee application and the voter's statement do not compare as to name, residential voting address, date of birth, and signature, the absentee ballot shall not be counted.~~

(b) The voter identification document, voter statement, and inner envelope containing the absentee ballot are present; and

(c) If a designated bearer, authorized agent, or administrator delivers the ballot, the name of the designated bearer, authorized agent, or administrator written on the absentee ballot application compares with the information on the voter statement;

(iii) The election officials shall place the absentee ballot materials, including the inner envelope containing the ballot, in an envelope marked "provisional", and the absentee ballot shall be considered a provisional ballot if:

(a) The absentee application and the voter's statement do not compare as to name, residential voting address, date of

birth, and signature; or

(b) A designated bearer, authorized agent, or administrator delivers the ballot, and the name of the designated bearer, authorized agent, or administrator does not compare with the information on the voter statement;

(iv) If a first-time voter fails to provide the required voter identification with the absentee ballot or at the time of mailing the voter registration application, then the absentee application, absentee ballot envelope, and voter's statement shall be placed in an envelope marked "provisional" and the absentee ballot shall be considered a provisional ballot; or if any other voter fails to provide the required voter identification with the absentee ballot, the election officials shall place the absentee ballot materials including the inner envelope containing the ballot in an envelope marked "provisional", and the absentee ballot shall be considered a provisional ballot;

~~(G)(i) The election officials shall compare the name and address of the bearer, agent, or administrator written on the absentee ballot return envelope with the information on the voter statement. If the information does not match, then the outer envelope, absentee application, secrecy envelope containing the ballot, and the voter's statement shall be placed in an envelope marked "provisional" and the absentee ballot shall be considered a provisional ballot.~~

~~(ii) The election officials shall compare the name of the bearer written on the absentee ballot application with the information on the voter statement, and if the information does not compare, the ballot shall be a provisional ballot.~~

~~(iii) An absentee ballot designated as a provisional ballot for the lack of a designation of, or name of, a designated bearer shall be counted only if the county board of election commissioners does not determine that the provisional ballot is invalid and should not be counted based on other grounds;~~

~~(H) If the absentee voter fails to return the voter statement, the vote shall not be counted;~~

(v) The ballot shall be designated to be counted or tabulated if:

(a) All required absentee ballot materials are

present;

(b) The voter's name, residential voting address, date of birth, and signature compare; and

(c) If a designated bearer, authorized agent, or administrator delivered the ballot, the name of the designated bearer, authorized agent, or administrator written on the absentee ballot application compares with the information on the voter statement; and

(vi) The absentee ballot materials shall be transmitted to the county board of election commissioners for additional review if:

(a) Any required absentee ballot materials are missing;

(b) The voter's name, residential voting address, date of birth, and signature do not compare; or

(c) If a designated bearer, authorized agent, or administrator delivers the ballot, the name of the designated bearer, authorized agent, or administrator does not compare with the information on the voter statement.

(B)(i) A member of a county board of election commissioners, acting in his or her individual capacity as an election official, may perform the duties under subdivision (b)(2)(A) of this section.

(ii) However, performance of the duties under subdivision (b)(2)(A) of this section by a member of the county board of election commissioners shall not satisfy or serve as performance of the duties of the whole county board of election commissioners under subdivision (b)(3) of this section.

(3) After canvassing and comparison by the election officials, the absentee ballot materials shall be canvassed and compared by the county board of election commissioners as follows:

(A)(i) The county board of election commissioners shall review the absentee ballot materials transmitted to it under subdivision (b)(2)(A)(vi) of this section.

(ii) The county board of election commissioners may:

(a) Review the absentee ballot materials that were designated to be counted or tabulated by the election officials before counting or tabulation; and

(b) Accept the designation of the election officials that the ballot is to be counted or reverse the designation of the election officials and mark the ballot as provisional;

(B)(i) A ballot shall be counted or tabulated if the:

(a) Required absentee ballot materials are present;

(b) Voter's name, residential voting address, date of birth, and signatures compare; and

(c) If a designated bearer, authorized agent, or administrator delivered the ballot, the name of the designated bearer, authorized agent, or administrator written on the absentee ballot application compares with the information on the voter statement.

(ii) The absentee ballot materials and the absentee ballot shall be placed in an envelope marked "provisional" and the absentee ballot shall be considered a provisional ballot if:

(a) The required absentee ballot materials are incomplete or missing;

(b) The voter's name, residential voting address, date of birth, and signature do not compare; or

(c) If a designated bearer, authorized agent, or administrator delivers the ballot, the name of the designated bearer, authorized agent, or administrator does not compare with the information on the voter statement;

~~(I)~~(C) Failure of the voter to submit the required absentee materials in the proper envelopes shall not be grounds for disqualifying the voter; and

(D)(i) An absentee ballot that has been designated provisional shall be cured according to the procedure set out in Arkansas Constitution, Amendment 51, § 13(b)(5)(A) and (B) if, upon a public vote, the county board of election commissioners determines that the absentee ballot:

(a) Does not include the required voter identification with the absentee ballot materials;

(b) Does not include the voter statement with the absentee ballot materials;

(c) Has a signature that does not compare; or

(d) Has an address on the voter statement that

is materially and substantially different from either the voting residence address of the voter or the address at which the voter requested to receive the absentee ballot by mail as set forth on the absentee ballot application.

(ii) An absentee ballot that has otherwise been designated provisional under this section may be cured by the voter:

(a) By noon the Monday following the election;

(b) In person or in writing to the county clerk, county board of election commissioners, or appropriately designated staff or election officials; and

(c) By:

(1) Providing or correcting the absentee ballot materials or verification, if the reason for designation as a provisional ballot was an incomplete submission;

(2) Verifying in writing under penalty of perjury that he or she voted the ballot received by the county clerk, if the reason for designation as a provisional ballot was that:

(A) The voter's name, residential voting address, except as set out under subdivision (b)(3)(D)(i) of this section, date of birth, and signature did not compare; or

(B) If a designated bearer, authorized agent, or administrator delivered the ballot, and the name of the designated bearer, authorized agent, or administrator did not compare with the information on the voter statement; or

(3) Reviewing the ballot located inside the inner envelope marked as provisional in a private and independent manner to verify that the ballot marked as provisional is the ballot submitted by the voter.

(iii) An absentee ballot shall not be counted if the absentee ballot has been marked provisional and is not cured under either subdivision (b)(3)(D)(i) or subdivision (b)(3)(D)(ii) of this section.

(iv) An absentee ballot designated as a provisional ballot for the lack of a designation of, or name of, a designated bearer, authorized agent, or administrator shall be counted only if the county board of election commissioners does not determine that the provisional ballot is invalid and should not be counted based on other grounds.

~~(J) If the voter statement does not authorize a bearer,~~

~~agent, or administrator to receive or return his or her absentee ballot and the ballot was received or returned by a bearer, agent, or administrator, the vote shall not be counted;~~

(4) Absentee ballot information is comparable or compares if after a review of the information available to the election official or county board of election commissioners, the election official or county board of election commissioners determines that the absentee ballot that was submitted was voted by the person in whose name the absentee ballot was submitted, after review of that person's address or other information that was submitted with the absentee ballot, absentee ballot application, voter statement, voter identification, or other documentation possessed by, on file with, or available to the county clerk or the county board of election commissioners.

(5)(A)(i) After an absentee ballot is designated by an election official or by the county board of election commissioners as provisional, the county board of election commissioners shall notify the voter of the deadline and process for curing his or her absentee ballot as soon as possible but no later than forty-eight (48) hours after the absentee ballot is designated as a provisional ballot.

(ii) The county board of election commissioners shall notify the voter of the deadline and process for curing his or her absentee ballot by email, telephone, and text message as soon as possible but no later than forty-eight (48) hours after the absentee ballot is designated as a provisional ballot if the voter's email address or telephone number is available.

(iii) If a voter has not provided an email address or telephone number, the county board of election commissioners shall notify the voter of the deadline and process for curing his or her absentee ballot by mail as soon as possible but no later than forty-eight (48) hours after the absentee ballot is designated as a provisional ballot.

(B) To "cure" a ballot means to remove or repair the issue causing a ballot not to be counted through the process set forth in this section, such that the ballot shall then be counted.

(C)(i) If an absentee ballot that was previously designated as needing additional review under subdivision (b)(2)(A)(vi) of this section is reviewed by the county board of election commissioners and

approved to be counted or tabulated without being designated as provisional, the county board of election commissioners shall, by email, telephone, and text message, if the voter's email address or telephone number is available, notify the voter as soon as possible but no later than forty-eight (48) hours after the absentee ballot is approved that he or she no longer needs to cure his or her ballot.

(ii) If a voter has not provided an email address or telephone number, the county board of election commissioners shall notify the voter by mail as soon as possible but no later than forty-eight (48) hours after the absentee ballot is approved that he or she no longer needs to cure his or her ballot.

(6)(A) After all of the outer envelopes have been opened, the election officials of the absentee box shall preserve all the statements of voters, the voters' identification documents, and all other materials submitted with the absentee ballot except the ballot itself and deliver them to the county clerk, who shall file and keep them for the same length of time after the election as is required for the retention of other ballots.

(B) The voter statements shall be made available for public inspection and copying during regular business hours no earlier than 8:30 a.m. on the day following the actual delivery of the statement of the number of outstanding ballots and provisional ballots to the Secretary of State, and declaration of preliminary and unofficial results of the election under § 7-5-701(a)(3)(C).

(C) The voters' identification documents shall not be subject to public inspection except as part of a recount or judicial proceeding to contest the election.

(7) The absentee ballots that have been designated to be counted or tabulated shall be opened and processed for counting or tabulation as follows:

~~(K)(A)~~ If no challenge is made by a qualified poll watcher, the election official shall remove the inner envelope, from the absentee ballot materials without opening the inner envelope containing the ballot, and place it in the ballot a box designated for ballots to be counted or tabulated without marking it in any way;

~~(L)(i) After all of the outer envelopes have been opened, the election officials of the absentee box shall preserve all the statements~~

~~of voters and the voters' identification documents and deliver them to the county clerk, who shall file and keep them for the same length of time after the election as is required for retention of other ballots.~~

(B) When all of the inner envelopes containing the ballots have been placed in the ballot box, the ballot box shall be shaken thoroughly to mix the ballots in such a way to ensure that the inner envelopes containing the ballots shall be randomized; and

(C) The ballot box shall be opened and the ballots shall be removed from the inner envelopes, canvassed, and counted.

(8) After the counting and tabulation, the county board of election commissioners shall preserve all absentee ballots and absentee ballot materials and shall retain them as election materials for the same length of time after the election as is required for retention of other ballots.

~~(ii) The voter statements shall be made available for public inspection and copying during regular business hours no earlier than 8:30 a.m. on the day following the actual delivery of the statement of the number of outstanding ballots and provisional ballots to the Secretary of State, and declaration of preliminary and unofficial results of the election under § 7-5-701(a)(3)(C).~~

~~(iii) The voters' identification documents shall not be subject to public inspection except as part of a judicial proceeding to contest the election;~~

(9)(A) If after review of the absentee ballot materials an election official or the county board of election commissioners suspects that an absentee ballot was fraudulently submitted, the county board of election commissioners shall:

(i) File complaints concerning the ballot with the State Board of Election Commissioners and the county prosecuting attorney no later than thirty (30) days after certification of the election;

(ii) Provide copies of the relevant absentee ballot materials, and the county clerk shall provide any relevant absentee ballot materials in their possession;

(iii) Fully assist all appropriate law enforcement agencies in the investigation; and

(iv) Notify all candidates of any affected race.

(B) A ballot is not automatically considered fraudulently submitted merely because it was not counted because:

(i) Not all the required voter materials were included;

(ii) The voter materials did not compare; or

(iii) A designated bearer, authorized agent, or administrator delivered the ballot, and the name of the designated bearer, authorized agent, or administrator did not compare with the information on the voter statement;

(C) A ballot is not automatically considered fraudulently submitted if the voter's actions did not indicate or evince an intention to violate the election laws of Arkansas or those of the United States government.

(D) A ballot is fraudulently submitted if a voter knowingly violates voting laws, including without limitation by submitting:

(i) More than one (1) ballot;

(ii) A ballot under a false identity; or

(iii) A ballot on behalf of another person without that person's lawful authorization.

~~(M) When all of the inner envelopes containing the ballots have been placed in the ballot box, the ballot box shall be shaken thoroughly to mix the ballots; and~~

~~(N) The ballot box shall be opened and the ballots canvassed and counted.~~

~~(2)~~(10) No election results shall be printed or released prior to the closing of the polls on election day.

(c) If any person casting an absentee ballot dies before the polls open on election day, his or her ballot shall be accepted by the county clerk if the absentee ballot is:

(1) Signed, dated, postmarked, and mailed before the date of death;

(2) Signed, dated, and delivered to the county clerk by a designated bearer, authorized agent, or administrator before the date of death; or

(3) The ballot of a member of the armed services or Arkansas National Guard in active duty or state active duty executed before the date

of death.

~~(d) It is the intent of this section to require the election officials for absentee ballots to meet and process, canvass, and count absentee ballots according to this section prior to the closing of the polls on election day.~~

~~(e)(1)~~(d)(1) Absentee votes shall be cast on paper ballots.

(2)(A) The ballots shall first be counted for write-in votes by the election officials.

(B) Then, at the discretion of the county board of election commissioners, the ballots may be either hand counted or counted on an electronic vote tabulating device.

~~(f)(1)~~(e)(1) Absentee ballots marked as "special runoff ballots" received from a qualified voter from one (1) of the categories in § 7-5-406(a) shall be opened for general primary elections and general runoff elections according to the procedures described in subsection (b) of this section.

(2) However, in counting the special runoff ballot, one (1) of the election officials shall open the envelope containing the special runoff ballot and read the numbers indicated next to the names of the two (2) candidates in the general primary election or in the general runoff election.

(3) The candidate with the highest ranking shall receive the vote.

(4) A special runoff ballot received with the preferential primary absentee ballot shall be counted in the general primary election, and a special runoff ballot received with the general election absentee ballot shall be counted in the general runoff election.

(5) The Secretary of State shall prepare instructions for opening, counting, and canvassing special runoff ballots and provide the instructions to each county board of election commissioners.

SECTION 3. Arkansas Code Title 7, Chapter 5, Subchapter 4, is amended to add an additional section to read as follows:

7-5-420. State Board of Election Commissioners – Rules.

(a) The State Board of Election Commissioners shall adopt rules that:

(1) Set procedures for the maintenance and storage of absentee ballot materials and absentee ballots;

(2) Set uniform methods for labeling ballot storage containers

that, at a minimum, document the:

(A) Chain of custody concerning the opening and closing of the sealed boxes; and

(B) Contents of the boxes in a readily identifiable manner;

(3) Set standards for the processes, software, and methods used to list and describe the contents of the ballots, including without limitation the appropriate use of spreadsheets and summaries;

(4) Prescribe forms for the lists that are required to be generated and maintained under § 7-5-416;

(5) Set the procedure for the handling of absentee ballots and voter materials such that the absentee ballots and voter materials are secured in such a manner that the boxes cannot be opened and the ballots cannot be handled, viewed, or tampered with except by authorized election officials; and

(6) Set the procedures for timely compliance with the Freedom of Information Act of 1967, § 25-19-101 et seq., that ensure the secrecy and integrity of the voter materials.

(b) The rules shall be promulgated under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

SECTION 4. DO NOT CODIFY. Rules.

(a) When adopting the initial rules required under this act, the State Board of Election Commissioners shall file the final rules with the Secretary of State for adoption under § 25-15-204(f):

(1) On or before January 1, 2024; or

(2) If approval under § 10-3-309 has not occurred by January 1, 2024, as soon as practicable after approval under § 10-3-309.

(b) The board shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2024, so that the Legislative Council may consider the rules for approval before January 1, 2024.

*/s/C. Tucker*