What a 2020 and 2021!

• Most significant changes to Kentucky election law since 1891 Constitution:
  • 2020: Photo ID to Vote
  • 2020: Temporary emergency powers to change “manner” of election
  • 2021: Omnibus election reform including early voting
Photo ID to Vote

• Kentucky law previously required confirmation of voter identity by poll workers through “personal acquaintance or by a document, such as a motor vehicle operator’s license, Social Security card, or credit card.” (prior version of KRS 117.227)

• KRS 117.227 as of July 15, 2020:
  • “Except as otherwise provided [poll workers] shall confirm the identity of each voter by proof of identification as defined in KRS 117.375.”
Proof of Identification: KRS 117.375(12)

- Proof of identification means a document that was issued by:

  - (a) The United States or the Commonwealth of Kentucky, and the document contains:
    
    1. The name of the individual to whom the document was issued; and
    
    2. A photograph of the individual to whom the document was issued;

  - (b) The United States Department of Defense, a branch of the uniformed services, the Merchant Marines, or the Kentucky National Guard, and if the document contains:
    
    1. The name of the individual to whom the document was issued; and
    
    2. A photograph of the individual to whom the document was issued;

  - (c) A public or private college, university, or postgraduate technical or professional school located within the United States, and contains:
    
    1. The name of the individual to whom the document was issued; and
    
    2. A photograph of the individual to whom the document was issued; or

  - (d) Any city government, county government, urban-county government, charter county government, consolidated local government, or unified local government, which is located within this state, and the document contains:
    
    1. The name of the individual to whom the document was issued; and
    
    2. A photograph of the individual to whom the document was issued.
Q. What does “Except as otherwise provided” mean?

A. Exceptions for:

- Voters at state-licensed care facility
- Personal recognizance (with oath by poll worker)
- Reasonable impediment (with oath by voter)
- Provisional ballots (Help America Vote Act)
Voters at state-licensed care facility

• KRS 117.225(2): ”A voter who votes in person at a precinct polling place that is located at a state-licensed care facility where the voter resides is not required to provide proof of identification, as defined in KRS 117.375, before voting in a primary or an election.”
Personal Recognizance

• KRS 117.228(4):

• “If the voter is personally known to the election officer, the election officer may execute an election officer affirmation, on a form prescribed and furnished by the State Board of Elections pursuant to administrative regulations promulgated under KRS Chapter 13A, affirming the voter’s identification as being personally known to him or her. Once the affirmation is executed by the election officer, the voter shall sign the precinct signature roster and shall proceed to cast his or her vote in a ballot completion area. For purposes of this subsection, ‘personally known’ means that the election officer knows the voter’s name and that the voter is a resident of the community.”
Reasonable Impediment

- KRS 117.228(1):
- “[I]f a voter is unable to provide proof of identification . . . a voter may cast a ballot if the individual:
  - (a) Is eligible to vote under KRS 116.025;
  - (b) Is entitled to vote in that precinct; and
  - (c) In the presence of the election officer, executes a voter’s affirmation, on a form prescribed and furnished by the State Board of Elections pursuant to administrative regulations promulgated under KRS Chapter 13A, affirming:
    - 1. The voter is a citizen of the United States;
    - 2. The voter’s date of birth to the best of the voter’s knowledge and belief;
    - 3. The voter is qualified to vote in this precinct under KRS 116.025;
    - 4. The voter’s name, and that the voter is generally known by that name, or the name is as stated on his or her voter registration card;
    - 5. The voter has not voted and will not vote in any other precinct;
    - 6. The voter’s current residential address, including the street address number and, if different from the voter’s current address, the voter’s residential address prior to the close of the registration books under KRS 116.045, and the date the voter moved;
    - 7. The voter understands that making a false statement on the affirmation is punishable under penalties of perjury; and
    - 8. The voter has one (1) of the following impediments to procure proof of identification as defined in Section 41 of this Act:
      - a. Lack of transportation;
      - b. Inability to obtain his or her birth certificate or other documents needed to show proof of identification;
      - c. Work schedule;
      - d. Lost or stolen identification;
      - e. Disability or illness;
      - f. Family responsibilities;
      - g. The proof of identification has been applied for, but not yet received; or
      - h. The voter has a religious objection to being photographed.
Reasonable Impediment: Non-Photo ID

- KRS 117.228(2):
- “In addition to the requirements of subsection (1) of this section, to cast a ballot, the voter who is unable to provide proof of identification shall provide to an election officer:
  - (a) The voter’s Social Security Card;
  - (b) Any identification card issued by a county in this state which has the name of the voter stated and has been approved in writing by the State Board of Elections pursuant to administrative regulations promulgated under KRS Chapter 13A;
  - (c) Any identification card with the voter's photograph and the name of the voter stated;
  - (d) Any food stamp identification card, electronic benefit transfer card, or supplemental nutrition assistance card, that is issued by this state and has the name of the voter stated; or
  - (e) A credit or debit card with the name of the voter stated.”
Provisional Ballots

- KRS 117.228: “[I]f a voter is unable to provide proof of identification, as required under KRS 117.225 and as defined under KRS 117.375, or the voter fails to meet the requirements of KRS 117.228, the voter may cast a provisional ballot for the federal elective office of President, Vice President, United States Senator, and United States House of Representative [sic] if the individual conforms to the provisional voting requirements in accordance with the Help America Vote Act of 2002.”
2020 Emergency Powers for Elections

• KRS 39A.100(l) as of March 2020:

• “Upon the recommendation of the Secretary of State, to declare by executive order a different time or place for holding elections in an election area for which a state of emergency has been declared for part or all of the election area. The election shall be held within thirty-five (35) days from the date of the suspended or delayed election. The State Board of Elections shall establish procedures for election officials to follow.”
2020: Emergency Powers for Elections

• KRS 39A.110(l) (April 2020-February 2021):

• “Upon the recommendation of the Secretary of State, [the Governor may] declare by executive order a different time, place, or manner for holding elections in an election area for which a state of emergency has been declared for part or all of the election area. The election shall be held within thirty-five (35) days from the date of the suspended or delayed election. The State Board of Elections shall establish procedures for election officials to follow. Any procedures established under this paragraph shall be subject to the approval of the Secretary of State and the Governor by respective executive orders.”
2020 Emergency Powers for Elections

• KRS 39A.100(k) as it currently reads:
• “Upon the recommendation of the Secretary of State, to declare by executive order a different time or place for holding elections in an election area for which a state of emergency has been declared for part or all of the election area. The election shall be held within thirty-five (35) days from the date of the suspended or delayed election. The executive order shall remain in effect until the date of the suspended or delayed election regardless of the time limitations in Section 2 of this Act and shall not be changed except by action of the General Assembly. The State Board of Elections shall establish procedures for election officials to follow. Any procedures established under this paragraph shall be subject to the approval of the Secretary of State and the Governor by respective executive orders[.]”
2021: Permanent Election Reform (effective June 28, 2021)

- The 2020 pandemic election was
  - Safe – no spike in Covid cases
  - Secure – the predicted vote fraud didn’t materialize
  - Successful – over 2 million votes cast in general election, the most ever in a Kentucky election
What did we keep?

• Three days of early voting
• Countywide voting locations (optional)
• Absentee ballot portal
• Absentee ballot cure process
What did we add?

• Ban on ballot harvesting
• Additional authority to remove nonresident voters
• Transition toward universal paper ballots
Early Voting

- KRS 117.085(2):
- “In-person absentee voting shall be conducted in the county clerk’s office or other place designated by the county board of elections and approved by the State Board of Elections during normal business hours on the Thursday, Friday, and Saturday immediately preceding the day of a primary or an election. Any voter who is qualified to vote on election day in the county of his or her residence may choose to cast an in-person absentee ballot while in-person absentee voting is being conducted during the days listed in this subsection.”
Vote Centers

- KRS 117.066(1): “The county board of elections may . . . designate a single voting location for more than one (1) precinct if the voting location is equipped with voting equipment capable of providing or accepting separate ballots without endangering the integrity of the ballots or without violating any other election law.”

- KRS 117.066(3): “(3) The county board of elections may petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote. The petition shall be on a form prescribed by the State Board of Elections in administrative regulations promulgated under KRS Chapter 13A and shall include:
  - (a) A list of all precincts designated to vote at the voting location;
  - (b) The address and type of facility of the voting location;
  - (c) The number and type of voting systems or voting equipment to be used at the voting location;
  - (d) The number of registered voters in each precinct designated to vote at the voting location;
  - (e) An explanation of the reasons why the consolidation is desirable;
  - (f) The plan for additional precinct officers at the voting location, the manner in which they will be assigned, and whether the voting location will be fully staffed with election officials;
  - (g) The plan for how the county clerk will publicize the location for where the voting shall occur, in addition to how each location shall be noted conspicuously to residents of the county as a ‘Vote Center’; and
  - (h) The plan for how the voting location will serve as a focal point to meet the needs of a diverse community.”
Absentee Portal

- KRS 117.085:
  - “(a) All requests for a mail-in absentee ballot shall be requested through a secure online portal established by the State Board of Elections, except for:
    - 1. Voters identified in KRS 117.077;
    - 2. Disabled voters;
    - 3. Covered voters in paragraph (i) of this subsection;
    - who have the additional option of requesting a mail-in absentee ballot application through the county clerk.
  - (b) Acquiring a mail-in absentee ballot by means of the online portal shall require the voter to input personally identifiable information for verification.
  - (c) For those voters who do not have the means of accessing the online portal, the county clerk shall fulfill a request for a mail-in absentee ballot by taking the voter’s information over the telephone or in person and directly inputting that information into the secure online portal.
  - (d) The online portal shall have the capacity to ensure the identity of the voter through proof of identification as required under Section 30 of this Act or by means of Section 31 of this Act. . . .”
Absentee Ballot Cure Process

• KRS 117.087(3)(c)(5.):

• “If a signature match cannot be made, the county board of elections, central counting board, or the county clerk shall make a reasonable effort to contact the voter and provide notice to the voter with a timeframe and manner in which the voter may cure his or her signature relative to the mail-in absentee ballot signature. All signature cures shall be completed before the closing of the polls on the day of a primary or an election[.]”
Ballot Harvesting: new section of KRS 117

• (1) No person shall knowingly collect, gain possession of, deliver, or exercise control over a mail-in absentee ballot, except for:
  • (a) A voter personally casting his or her ballot by means of mail-in absentee ballot;
  • (b) An election official engaged in official duties as prescribed in KRS Chapters 116 to 120;
  • (c) A United States postal service worker or any other person who is allowed by law to transmit United States mail if the worker or other person is engaged in official duties;
  • (d) A family member of the voter:
    • 1. Who shall be related to the voter as set forth in KRS 6.611(16)(a), or as established by marriage, adoption, or legal guardianship; and
    • 2. Who is designated by the voter to assist in the mail-in absentee voting process;
  • (e) A person:
    • 1. Who shares the same residence of the voter; and
    • 2. Is designated by the voter to assist in the mail-in absentee voting process; and
  • (f) A caregiver:
    • 1. Who provides medical or healthcare assistance to the voter in a residence, nursing care institution, hospice facility, assisted living center, assisted living facility, assisted living home, residential care institution, adult day healthcare facility, or adult foster home; and
    • 2. Who is designated by the voter to assist in the mail-in absentee voting process.

• (2) For paragraphs (d), (e), and (f) of subsection (1) of this section, the person designated by the voter shall not have been:
  • (a) Declared mentally disabled by a court of competent jurisdiction, which adjudication has not been set aside; or
  • (b) Convicted of an election law offense whose civil rights have not been restored by the Governor.
Cleanup of Voter Rolls

- KRS 116.113(4):

  “Upon receipt of notification from a local or state jurisdiction that a voter has registered to vote in the new local or state jurisdiction outside of the Commonwealth, the State Board of Elections shall within five (5) days cause the removal of the name of that person from the voter registration records that it maintains, except that no voter’s name may be removed during the period of time the registration books are closed for any primary, regular election, or special election.”
Paper Ballots

• KRS 117.125:
• “Except for voting equipment that has been certified and in use on or before the effective date of this Act, no voting system shall be approved for use after the effective date of this Act by the State Board of Elections, either upon initial examination or reexamination, unless the system has been certified under Section 43 of 24 this Act and is so constructed that it shall:

  • (1) Ensure secrecy to the voter in the act of voting so that no person can see or know for whom any other voter has voted or is voting, except for those voters requiring assistance under Section 34 of this Act;

  • (2) Permit votes to be cast for any candidate entitled to have his or her name printed upon the ballots at any primary, regular election, or special election, and for or against any public question entitled to be placed upon the ballots;

  • (3) Except at a primary, permit a voter to vote for all the candidates of one (1) party or for one (1) or more candidates of every party having candidates entitled to be voted for, or for one (1) or more independent, political organization, or political group candidates;

  • (4) Permit a voter to vote for as many persons for an office as the voter is lawfully entitled to vote for, and no more;

  • (5) Prevent a voter from voting for more persons for any office than the voter is entitled to vote for, and from voting for the same person, or for or against the same question, more than once;

  • (6) Permit a voter to vote for or against any question the voter may have the right to vote on, but no other;

  • (7) Provide for a nonpartisan ballot;

  • (8) Be capable of being adjusted for use in a primary so that a voter may not vote for any person except those seeking nomination as candidates of the voter’s party, as candidates for a nonpartisan office, or as candidates for an office of the Court of Justice;

  • (9) Permit each voter to vote for all the candidates for presidential electors of any party by one (1) operation;

  • (10) Permit each voter to vote, in any regular or special election, for any person for whom the voter desires to vote whose name does not appear upon the ballot by providing a method of write-in voting;
Paper Ballots

- (11) Be safe, efficient, and accurate in the conduct of elections, and correctly register and accurately count all votes cast for each person, and for or against each public question;
- (12) (a) Provide each voter an opportunity to verify votes recorded on the permanent paper ballot, either visually or using assistive voting technology, by producing a voter-verified paper audit trail;
  - (b) Provide each voter an opportunity to change votes or correct any error before the voter’s ballot is cast and counted; and
  - (c) Provide a voter who spoils his or her ballot another ballot as provided under this chapter;
- (13) Use an individual, discrete, permanent, paper ballot cast by the voter for tabulating purposes;
- (14) Preserve the paper ballot as an official record available for use in any audit or recount;
- (15) Be suitably designed for the purpose used, constructed of a durable material, and safely transportable;
- (16) Be capable of determining whether the voting equipment has been unlocked and operated or adjusted in any manner after once being locked;
- (17) Have a public counter with a register which is visible from the outside of the counter or device that will show at all times during an election how many persons have voted;
- (18) Have a protective cumulative counter indicating the number of votes cast for each person, and the votes cast for or against each public question which cannot be seen, reset, or tampered with without unlocking a covering device by a key or other security apparatus that cannot unlock any other part of the equipment, and which prevents changes to the cumulative counter once the system has been put into operation on the day of any election;
- (19) Provide for the tabulating of votes at the precinct as required under Section 36 of this Act;
- (20) Provide locks or other security apparatus by which the operation of the voting equipment may be locked before the time for opening the polls and after the time for closing the polls;
- (21) Permit a voter to readily learn the method of operating it, to expeditiously cast a vote for all candidates and on all questions of the voter’s choice, and when operated properly, register and record correctly and accurately every vote cast;
- (22) Bear a number or other unique designation that will distinguish it from any other voting equipment or voting system;
- (23) Produce a real-time audit log record for the voting system, and produce a paper record with a manual audit capacity which shall be available as an official record for any recount conducted related to any primary or election in which the system is used;
- (24) Be accessible for individuals with impairments, including nonvisual accessibility for the blind or visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters;
- (25) Meet or exceed the standards for a voting system established by the Election Assistance Commission, as amended from time to time, and those approved under 4 Section 43 of this Act; and
- (26) Meet such other requirements as may be established by the State Board of Elections in administrative regulations promulgated under KRS Chapter 13A to reflect changes in technology to ensure the integrity and security of voting systems
Additional reforms: Political Nondiscrimination for Poll Workers

• KRS 117.045(4)(f):

“Nothing in this subsection shall prevent the selection of any registered and qualified voter who is not registered with either of the two (2) political parties to serve as a precinct election officer in a precinct in which the officer resides or as otherwise provided in this subsection.”

That is, now Independents, Libertarians, etc. can be poll workers (we implemented this policy through emergency powers in 2020)
Additional Reforms: Ballot Dropboxes

- KRS 117.086(2):
  - “(a) The county clerk shall provide a minimum of one (1) secure ballot drop-box to receive voted mail-in absentee ballots for each primary, regular election, or special election. Public notice of all secure ballot drop-box locations shall be given in the same manner as provided under subsection (5) of this section, and posted to the Web site of the county clerk.

- (b) The county board of elections may seek the State Board of Elections’ approval of a ballot receptacle to receive voted mail-in absentee ballots for each primary, regular election, or special election. Public notice of all secure ballot receptacle locations shall be given in the same manner as provided under subsection (5) of this section, and posted to the Web site of the county clerk. Before any mail-in absentee ballot shall be allowed to be deposited inside a receptacle, the county board of elections shall inform the State Board of Elections of:
  - 1. The number of receptacles to be used;
  - 2. The type of each receptacle to be used; and
  - 3. The receptacle location.

- (c) Any drop-box or receptacle located outside of the county clerk’s office shall be:
  - 1. Placed in a well-lit and easily accessible location;
  - 2. Secured to ensure immobility while in use;
  - 3. Under video surveillance at all times;
  - 4. Tamper resistant;
  - 5. Conspicuously noted as a mail-in absentee ballot drop-off location.

- (d) A drop-box or receptacle located inside the county clerk’s office shall be under direct supervision of the staff of the county clerk at all times and be accessible to the public.”
Threshold for Election Recanvass

- KRS 117.305:
- “A candidate’s written request for a recanvass shall be insufficient to compel the recanvass unless the difference between the number of votes received by the requesting candidate and the number of votes received by any other candidate or candidates for the same office is less than one percent (1%) of the total votes which were cast for such office.”
Candidate Substitution

• KRS 118.105(3):

• “If a vacancy occurs in the nomination of an unopposed candidate or in a nomination made by the primary before the certification of candidates for the regular election made under KRS 118.215, because of death, withdrawal, disqualification to hold the office sought, or severe disabling condition which arose after the nomination, the governing authority of the party may provide for filling the vacancy, but only following certification to the governing authority, by the Secretary of State, that a vacancy exists for a reason specified in this subsection. When such a nomination has been made, the certificate of nomination shall be signed by the chair and secretary of the governing authority of the party making it, and shall be filed in the same manner as certificates of nomination at a primary.”
Government Neutrality in Ballot Referenda (amending KRS 132.017, adding new sections of KRS chapters 48 and 65)

• “Local, state, and federal tax dollars shall not be used to advocate, in partial terms, for or against any public question that appears on the ballot. For purposes of this section, ‘local’ means and includes any city, county, urban-county government, consolidated local government, unified local government, charter county government, or special district.”
Automatic Recount (new section of KRS chapter 120)

“(1) In any regular election or special election for any member of the General Assembly, the United States Senate or the United States House of Representatives, Governor and Lieutenant Governor, Treasurer, Auditor of Public Accounts, Commissioner of Agriculture, Labor and Statistics, Secretary of State, and Attorney General, a recount of the vote shall be required when a candidate is defeated by a margin of not more than one-half of one percent (0.5%) of the votes cast for the office. . . .”