


STATEMENT OF EMERGENCY

31 KAR 5:025E

This emergency administrative regulation is necessary following the General Assembly's passage of House Bill 574 in the 2021 regular legislative session, enacted in Kentucky Acts Chapter 197, effective June 29, 2021. The Kentucky Constitution requires free and fair elections; Chapter 197 mandates that the State Board of Elections promulgate certain new administrative regulations to help ensure that this requirement is met. Though there are no regularly scheduled elections in 2021, a special election could be required at any time after the effective date of June 29, 2021. This administrative regulation is being filed on an emergency basis pursuant to KRS 13A.190(1)(a)(3) in order to guarantee that should a special election become necessary after June 29, 2021, the new administrative regulations required by Chapter 197 are in place. This emergency administrative regulation is temporary in nature will be replaced by an ordinary administrative regulation as the regulations required under Chapter 197 will be statutorily required in perpetuity, absent any further action from the General Assembly. The companion ordinary administrative regulation is identical to this emergency administrative regulation.



ANDY BESHEAR
Governor



JARED DEARING
Director, State Board of Elections

1 **STATE BOARD OF ELECTIONS**

2 **(New Emergency Administrative Regulation)**

3 **31 KAR 5:025E. Ballot Standards and Election Security.**

4 RELATES TO: KRS 117.001, 117.085, 117.086, 117.087, 117.145, 117.225, 117.228

5 STATUTORY AUTHORITY: KRS 117.015(1)(a)

6 NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State
7 Board of Elections to promulgate administrative regulations necessary to properly carry
8 out its duties. Several Kentucky Revised Statutes require the State Board of Elections to
9 promulgate administrative regulations that provide for measures that establish standards
10 for the ballots used during elections, as well as, measures that ensure that votes cast
11 during an election are done so in a free, fair, and secure manner. This administrative
12 regulation provides for those measures.

13 Section 1. In addition to the requirements for printed ballots outlined in KRS
14 117.145, ballots caused to be printed by the county clerk of each county shall meet quality
15 and size standards specific to the voting systems certified by both the State Board of
16 Elections and the United States Election Assistance Commission.

17 Section 2. The outer envelope of all mail-in absentee ballots shall bear a barcode
18 or other label that is unique to the individual voter and capable of being read by an

1 electronic optical scanner. The unique barcode or label for each mail-in absentee ballot
2 outer envelope shall be issued by the State Board of Elections.

3 Section 3. Upon the time of certification of each candidate and each question to
4 be voted upon, all printed paper ballots shall be secured by the county clerk of each
5 county, under lock and key, in an area under the direct control of the county clerk and
6 approved by the county board of elections. The possession of all printed ballots shall be
7 accounted for on SBE Form 76, "Ballot Accountability Statement." Upon the need for
8 paper ballots to be printed at a county clerk's office, an accounting of the printed ballots
9 shall be made on either the SBE Form 76, "Ballot Accountability Statement" or by the
10 printing equipment. Upon the transfer of ballots from the area under the direct control
11 of the county clerk to a polling location, the transfer shall be noted on the SBE Form 76,
12 "Ballot Accountability Statement." Beginning with the casting of ballots during the period
13 described in KRS 117.085(2), each voted ballot shall remain in a locked and sealed
14 receptacle, until the conclusion of the period described in KRS 117.295(1). At the
15 conclusion of each day of voting, an accounting of the number of all voted, unvoted, and
16 spoiled ballots shall be recorded on the SBE Form 76, "Ballot Accountability Statement."
17 All ballots and election materials not secured in an area under the direct control of the
18 county clerk after the close of polls shall be secured on location by the county sheriff, in
19 coordination with the county board of elections, from the time described in KRS
20 117.085(2) until the conclusion of voting on the day of an election. As mail-in absentee

1 ballots are received by county clerks, they shall have their unique barcode or label
2 scanned. Upon each mail-in absentee ballot being processed, the unique barcode or label
3 shall be scanned again. If a mail-in absentee ballot is found to be without the need for a
4 signature cure, or a mail-in absentee ballot has been returned along with a completed
5 SBE Form 77, "Missing or Discrepant Mail-in Absentee Signature," the ballot shall be
6 recorded into an optical scanner, to be deposited in a locked and sealed receptacle for
7 the period described in KRS 117.295(1). Any completed SBE Form 76, "Ballot
8 Accountability Statement" shall be turned over to the Commonwealth's Attorney along
9 with any other materials required under KRS 117.365.

10 Section 4. Any voter who is disabled may request a mail-in absentee ballot via an
11 online accessible ballot portal which shall conform to web accessible design standards as
12 set forth by the W3C Web Accessibility Initiative.

13 Section 5. Upon receipt of a valid mail-in ballot request, through the online request
14 portal or other valid request method, the request of the voter shall be noted in the Voter
15 Registration System, and reflected in the electronic pollbooks used by precinct election
16 officers. Should a voter noted to have requested a mail-in absentee ballot appear at a
17 polling location in order to vote in-person, the precinct election officer shall communicate
18 with the county clerk, who shall make a determination as to whether the requested mail-
19 in absentee ballot has been completed and returned as a cast ballot by the voter. If the
20 mail-in absentee ballot is found to have been completed and returned as a cast ballot,

1 the voter shall not be permitted to cast an in-person vote. If the mail-in absentee ballot
2 is found not to have been completed and returned as a cast ballot and the ballot has been
3 returned to the county clerk no later than seven (7) days prior to the date of the election
4 as required by KRS 117.085(11), the county clerk shall immediately cancel the issued ballot
5 in the Voter Registration System and allow the voter to cast an in-person ballot after the
6 voter completes Form SBE 32, "Oath of Voter," copies of which shall be forwarded to the
7 Commonwealth's Attorney.

8 Section 6. A voter, or an individual identified by KRS 117.0861(1), may deliver a
9 mail-in absentee ballot to the office of the county clerk in the county where the voter is
10 registered, or to a secure drop-off location if one is maintained by the county clerk in the
11 county where the voter is registered, rather than mailing the ballot via the United States
12 Postal Service. Any county choosing to use a receptacle for ballot drop-off other than a
13 drop-box provided by the State Board of Elections, must formally seek the State Board of
14 Elections' approval of the receptacle before any ballot shall be allowed to be deposited
15 inside. Any county choosing to utilize a drop-off receptacle, including those provided by
16 the State Board of Elections, shall inform the State Board of Elections of the number of
17 receptacles being used, the type of each receptacle being used, and the location of each
18 drop-off location. Any receptacle located outside a County Clerk's Office shall be placed
19 in a well-lit, easily accessible location, be bolted down, and be under video surveillance at
20 all times. Any drop-box located inside, shall be under direct supervision of the staff of

1 the county clerk at all times that it is accessible to the public. All drop-boxes used for the
2 receipt of ballots shall be clearly marked as for use by voters in the election, so as to
3 differentiate the drop-box from any other that may be in use in the area. Any other non-
4 elections related drop-box in use by a county clerk for any other official business shall
5 clearly indicate that the other drop-box is not for the return of election material. Each
6 county clerk utilizing one or more ballot drop-off receptacle shall empty each receptacle
7 at least once each business day of the county clerk's office, and secure the absentee
8 ballots therein in a manner consistent with KRS 117.086(7); however, county clerks shall
9 empty receptacles more frequently than daily, as needed, so as to reasonably
10 accommodate the volume of voter-delivered absentee ballots.

11 Section 7. After the receipt of a mail-in absentee ballot by the county clerk and
12 the examination of the signatures located on the outer envelope and the detachable flap,
13 as well as, the voter's signature of record, if a signature match cannot be made, the county
14 board of elections, central counting board, or the county clerk shall make a reasonable
15 effort to contact the voter, which shall, at minimum, include the mailing of Form SBE 77,
16 "Missing or Discrepant Mail-in Absentee Signature," to provide notice to the voter that
17 they may cure their signature before the closing of the polls on the day of the election.
18 Upon the county board of elections, central counting board, or the county clerk noting
19 the need for a signature cure, the ballot shall be noted in the Voter Registration System,
20 which shall prompt the facilitation of the printing of the SBE 77. The State Board of

1 Elections shall facilitate the printing of the SBE 77 on behalf of the counties with a state-
2 approved vendor, the cost of which shall be borne by the county required to contact the
3 voter.

4 Section 8. A voter unable to provide proof of identification as required under KRS
5 117.225, and as defined under KRS 117.001, shall meet the requirements of KRS
6 117.228(1)(c) by executing SBE Form 71, "Voter Affirmation Form." A voter personally
7 known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon
8 the election officer executing SBE Form 72, "Election Officer Affirmation Form." Both the
9 SBE 71 and SBE 72 shall be forwarded to the Commonwealth's Attorney following the
10 election.

11 Section 9. Incorporated by Reference. (1) The following material is incorporated
12 by reference:

- 13 (a) "Oath of Voter," SBE Form 32, 06/2021;
- 14 (b) "Ballot Accountability Statement," Form SBE 76, 06/2021;
- 15 (c) "Missing or Discrepant Mail-in Absentee Signature," Form SBE 77, 06/2021;
- 16 (d) "Voter Affirmation Form," Form SBE 71, 06/2021;
- 17 (e) "Election Officer Affirmation Form" Form 72, 06/2021;

18 (2) This material may be inspected, copied, or obtained, subject to applicable
19 copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky
20 Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.



Jared Dearing

Executive Director, State Board of Elections

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this temporary emergency administrative regulation shall be held on August 31, 2021, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Taylor Brown, 140 Walnut Street, Frankfort, Kentucky 40601, Phone: (502) 782-9499, Email: TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

31 KAR 5:025E Contact Person: Taylor Brown, phone: 502-782-9499, email: TaylorA.Brown@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of several of the Kentucky Revised Statutes amended by Kentucky Acts Chapter 197.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation will affect voters of the Commonwealth, county clerks, and the State Board of Elections.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. To comply with this administrative regulation, voters may need to complete a form or follow absentee ballot delivery instructions, while county clerks and the State Board of Elections will need to take steps to ensure the security of their elections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit all in ensuring that all elections conducted in the Commonwealth are done so in a free, fair, and secure manner.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Forms incorporated by reference.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the SBE Forms that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

31 KAR 5:025E Contact Person: Taylor Brown, phone: 502-782-9499, email: TaylorA.Brown@ky.gov

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Elections and the Commonwealth's county clerks will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.001, 117.015, 117.085, 117.086, 117.087, 117.145, 117.225, 117.228, as amended by Kentucky Acts Chapter 197, require and authorize the actions taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

"Oath of Voter," SBE Form 32, 06/2021; is the ½-page form signed by a voter and precinct election officer if a question arises as to the legality of a voter voting in-person.

"Voter Affirmation Form," Form SBE 71, 06/2021, is the 1-page form that a voter without proof of identification, as defined by KRS 117.001, will need to complete in order to vote in accordance with KRS 117.228(1)(c).

"Election Officer Affirmation Form" Form 72, 06/2021, is the 1-page form that a voter personally known to an election officer will need to complete in order to vote in accordance with KRS 117.228(4).

"Ballot Accountability Statement," Form SBE 76, 06/2021, is the 1-page form to be used to track all voted, unvoted, or spoiled ballots from their printing until the conclusion of an election.

"Missing or Discrepant Mail-in Absentee Signature," Form SBE 77, 06/2021, is the 1-page form to be used by the county board of elections, central counting board, or the county clerk to contact a voter to provide notice to the voter that they may cure their signature before the closing of the polls on the day of the election.

OATH OF VOTER

- Voter moved to new precinct/new address. Not listed on current precinct roster. Update registration.
- Election Officer/Challenger dispute voter's qualifications
- Request to vote in-person after mail-in ballot request

Precinct Name/No. _____

I, _____, hereby state, under oath, that I am duly registered as a
(Name: Please Print)

_____ voter in this precinct in _____ County, Kentucky.
(Political Party Preference) (County)

I currently reside at _____
(Current Residence Street Address, City, and Zip Code)

My previous address was _____ in this county.
(Previous Residence Street Address, City, and Zip Code)

I know of no legal disqualifications which could prevent my vote from being cast and counted in this election and I affirm that I have not voted and will not vote in another precinct or by absentee ballot in this state during this election. I understand that any person who falsely signs and verifies any form requiring verifications shall be guilty of perjury and subject to the penalties therefore. I further understand that if I execute the Oath and am not a registered voter at the current address stated above or attempt to vote more than once, I have committed a criminal act.

Voter must sign here

Date of Birth

Date

Signature of Election Officer/Challenger: _____

**Return to county clerk. To be delivered to Commonwealth's Attorney for investigation

OATH OF VOTER

- Voter moved to new precinct/new address. Not listed on current precinct roster. Update registration.
- Election Officer/Challenger dispute voter's qualifications
- Request to vote in-person after mail-in ballot request

Precinct Name/No. _____

I, _____, hereby state, under oath, that I am duly registered as a
(Name: Please Print)

_____ voter in this precinct in _____ County, Kentucky.
(Political Party Preference) (County)

I currently reside at _____
(Current Residence Street Address, City, and Zip Code)

My previous address was _____ in this county.
(Previous Residence Street Address, City, and Zip Code)

I know of no legal disqualifications which could prevent my vote from being cast and counted in this election and I affirm that I have not voted and will not vote in another precinct or by absentee ballot in this state during this election. I understand that any person who falsely signs and verifies any form requiring verifications shall be guilty of perjury and subject to the penalties therefore. I further understand that if I execute the Oath and am not a registered voter at the current address stated above or attempt to vote more than once, I have committed a criminal act.

Voter must sign here

Date of Birth

Date

Signature of Election Officer/Challenger: _____

**Return to county clerk. To be delivered to Commonwealth's Attorney for investigation

Voter Affirmation Form

I, _____, do hereby affirm that the name I have given here is the name that I am generally known by or the name I have given here is as stated on my voter registration.

I further affirm that:

To the best of my knowledge and belief, my date of birth is _____.

My current residential address, including the street address number is:

_____, if my address changed in the twenty-eight (28) days prior to the date of this election, I affirm that I moved on _____ and that my prior address was:

_____ I am a citizen of the United States;

_____ I am qualified to vote in this precinct under current Kentucky laws related to voter eligibility;

_____ I have not voted and will not vote in any other precinct during this election;

The following impediment has prevented me from procuring proof of identification as defined under KRS 117.001:

_____ Lack of transportation;

_____ Inability to obtain my birth certificate or other documents needed to show proof of identification;

_____ Work schedule;

_____ Lost or stolen identification;

_____ Disability or illness;

_____ Family responsibilities;

_____ Proof of identification has been applied for, but not yet received;

_____ I have a religious objection to being photographed.

I understand that making a false statement as to any of the affirmations on this form is punishable under penalties of perjury.

Signature

Date

Commonwealth of Kentucky – State Board of Elections
Election Officer Affirmation Form

In accordance with K.R.S. 117.228(4), I _____, do hereby
affirm the identity of _____, an individual wishing to
vote in this election, as this individual is known to me by name and I know this individual to be a
resident of this community.

Signed Name of Election Officer

Date

SBE 72 (06/2021)

Commonwealth of Kentucky – State Board of Elections
Election Officer Affirmation Form

In accordance with K.R.S. 117.228(4), I _____, do hereby
affirm the identity of _____, an individual wishing to
vote in this election, as this individual is known to me by name and I know this individual to be a
resident of this community.

Signed Name or Election Officer

Date

SBE 72 (06/2021)



KENTUCKY STATE BOARD OF ELECTIONS

Ballot Accountability Statement

County

Ballot Batch Numbers			
FROM		TO	

Date Ballots Received by Clerk or Date Printed by Clerk:	
---	--

Date Ballots Transferred to Polling Place:	
---	--

Day of Voting	Number of Ballots Cast During Polling	Number of Unvoted Ballots	Number of Ballots Spoiled
Thursday			
Friday			
Saturday			
Tuesday			

<<INSERT SBE LETTERHEAD HERE>>

<<Date>>

<<Voter name>>

<<Mailing address>>

<<City>>, <<State>> <<Zip>>

Re: Missing or Discrepant Mail-in Absentee Signature

Dear <<Voter name>>,

We have received your voted ballot for the <<insert date and name of election>>. Kentucky Election Law requires the County Board of Elections to compare the signature on your return envelope with a signature of record in order to verify your identity. Unfortunately, the County Board was unable to verify your signature with those on file.

If you have not already been contacted by your county and addressed this matter, in order for your ballot to count, you must complete, sign, and return the enclosed form to your county clerk's office **by <<insert date of election>>**. Please note that you will also be required to return a photocopy or photo of your identification. You may return this form and a copy of your ID by mail, email, fax or in-person. It is also acceptable to take a photo of both the completed form and your ID and email that to your county clerk using the email listed below.

If you indicate that you have not voted a ballot, or if you fail to return the enclosed form, we will not count this ballot. If your ballot contained a signature that was not verifiable, and you do not affirm on the enclosed form that you voted a ballot, we will also turn over this discrepancy to the Commonwealth Attorney's Office for investigation.

If you have questions, please contact your county clerk's office at <<insert phone number>>.

Thank you for your assistance.

<<Name>>

County Clerk

<<County Name>> County, Kentucky

<<insert county clerk email address>>

<<insert county clerk fax number>>

<<insert county clerk address >>

Signature Affidavit Form

Complete, sign and return this form to your County Clerk's Office.

For County Office Use Only:

Date of Receipt: _____

Clerk or DC Name: _____

Voter ID #: _____

1. Select a box (you must select one)

Yes, I returned my voted ballot



You must return a copy of acceptable ID with this form.

You can find a list of acceptable IDs at the bottom of this form.

Proceed to Section 2.

OR

No, I did not return my voted ballot



You are not required to include a copy of ID when you return this form. **Proceed to Section 2.**

2. Sign. If you are unable to sign, make a mark and have a witness to the mark sign on witness line.

If Yes is selected above: I state under penalty of perjury that I am an eligible voter; that my signature and name are as shown on this form; that I have only cast one ballot in this election in accordance with the provisions of the Kentucky Revised Statute.

If No is selected above: I affirm that the information I have provided on this form is true and correct to the best of my knowledge.

Your signature or mark

Today's date (mm/dd/yyyy)

Witness (A witness is only needed if you are unable to sign and must make a mark.)

Today's date (mm/dd/yyyy)

3. Return this form

Return this form and a copy of your ID, if applicable, to your County Clerk's office **by <<insert date of election>>**.

You may return it by:

1. Emailing it to: <<insert county clerk email address>>
2. Faxing it to: <<insert county clerk fax number>>
3. Mailing or delivering it to : <<insert county clerk address >>

You may also fill this form out and take a photo of both it and your acceptable ID and email that to your county clerk using the email listed above.

Acceptable Forms of Identification

- A document containing your name and photo, issued by: the United States or Commonwealth of Kentucky; the United States Department of Defense, branch of the uniformed services, Merchant Marines, or Kentucky National Guard; a public or private college, university, or postgraduate technical or professional school located in the United States; or any city government, county government, urban-county government, charter county government, consolidated local government, or unified local government, located in Kentucky; or
- A completed form SBE 71 (attached) along with your Social Security Card; an approved County ID Card; any ID card displaying your name and photo; a food stamp identification card, electronic benefit transfer card, or supplemental nutrition assistance card issued by Kentucky displaying your name; or a credit/debit card displaying your name.