

# AN ACT

To amend section 3506.21; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 3505.25 (3599.07); and to enact new section 3505.25 of the Revised Code to clarify that an optical scan ballot with more than the proper number of selections for a particular office, issue, or question is invalidated only for that office, issue, or question; to permit midday collection and delivery to the board of elections of optical scan ballots that will be counted at a central location for the March 4, 2008, primary election; to generally prohibit the central counting of optical scan ballots; to terminate the provisions of this act authorizing the midday collection and delivery of optical scan ballots on May 1, 2008, by repealing section 3505.25 of the Revised Code on that date; and to declare an emergency.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 3506.21 be amended, section 3505.25 (3599.07) be amended for the purpose of adopting a new section number as indicated in parentheses, and new section 3505.25 of the Revised Code be enacted to read as follows:

Sec. 3505.25. (A) As used in this section:

(1) "Designated agents" means a team of two persons who are members of different political parties, including law enforcement officers or employees or agents of a county board of elections who have taken an oath to uphold the laws and Constitution of Ohio, including an oath that they will directly, promptly, and securely collect the voted ballots from the polling places and deliver them to the board of elections.

(2) "Midday" means the period beginning at noon and ending at three p.m. on the day of an election.

(3) "Optical scan ballot" has the same meaning as in section 3506.21 of the Revised Code.

(B) Notwithstanding division (D) of section 3506.21 of the Revised Code or any other provision of the Revised Code to the contrary, a board of elections that voted, prior to February 1, 2008, to tabulate the unofficial results of optical scan ballots voted in a precinct polling place at the March 4, 2008, primary election at a central location may do both of the following:

(1) Tabulate the unofficial results of optical scan ballots voted on election day at a central location;

(2) Arrange to have voted ballots collected and delivered to the office of the board of elections at any time during midday. Voted ballots that have been properly sealed in locked containers shall be collected and delivered to the board by members of the board or by their designated agents.

(C) If a board of elections chooses to conduct a midday ballot collection under this section, the presiding judge of each precinct shall, by proclamation, announce that a midday collection of the ballots for delivery to the board of elections shall be conducted.

Two judges of elections, who shall be members of different political parties, shall do all of the following in the presence of any observers before the designated agents who have been assigned by the board of elections to collect and deliver the voted ballots collect those ballots from the polling location for midday delivery to the board of elections:

(1) Count the number of electors who have voted, as shown in the pollbook or poll list;

(2) Insert the number determined under division (C)(1) of this section on the report forms in the pollbook or poll list;

(3) Count the number of voted ballots. If the number of voted ballots exceeds the number determined under division (C)(1) of this section, the presiding judge shall enter in the pollbook or poll list an explanation of that discrepancy. If the remaining judges agree with the explanation, they shall subscribe their signatures in the pollbook or poll list along with the explanation. Any judge with a different explanation shall enter that explanation in the pollbook or poll list and subscribe the judge's signature with that explanation.

(4) Separately retain spoiled ballots for reconciliation following the close of the polls.

Once the judges have determined the number of electors who have voted under division (C)(1) of this section and the number of ballots that have been voted under division (C)(3) of this section, the judges shall certify that information to the board of elections as of the time the presiding judge

has proclaimed for the midday collection and delivery of ballots. The certification shall be made by a summary statement prepared by the judges in duplicate, on forms provided by the board of elections and prescribed by the secretary of state.

(D) From the time the voted ballots are removed from the ballot box for the purpose of determining the number of voted ballots under division (C)(3) of this section until the number of those ballots is determined and the certification required under division (C) of this section has been completed, signed, and tendered to the designated agents along with the voted ballots for midday collection, no judge in the precinct shall separate or leave the polling place, except from unavoidable necessity. An "unavoidable necessity," under this division includes illness, death of a family member, or other incapacitation that would prevent the judge from observing or assisting in the midday ballot reconciliation and collection of the voted ballots. At no time shall more than one half of the judges of elections conducting a midday ballot reconciliation under division (C) of this section be members of the same political party.

(E) After the judges have completed the midday reconciliation of the voted ballots and signed the certification required under division (C) of this section, the judges shall, in the presence of the designated agents, place all voted ballots to be collected by the designated agents and delivered to the board of elections in a sealed container that cannot be opened without breaking the seal. The container and its seal shall each bear a number that corresponds to a recorded key or list of such numbers that the board of elections maintains. The number on the container and its seal shall be verified and recorded on the key or list when the voted ballots are delivered midday to the board of elections.

Before leaving the polling location, the designated agents shall sign a receipt, which shall be maintained by the judges of that precinct, acknowledging that the designated agents have received the voted ballots, forms, certifications, and any other materials prescribed the secretary of state for midday delivery to the board of elections. A plain indication that the items are to be delivered midday to the board of elections shall appear in a prominent location on the outside of the items.

The designated agents shall deliver the voted ballots, forms, certifications, and any other materials prescribed by the secretary of state for midday delivery to the director and deputy director of the board of elections, who shall record their delivery as provided in this division and in the manner prescribed by the secretary of state.

(F) The secretary of state, by directive, shall provide requirements for

all of the following regarding the midday collection and delivery of voted ballots to a board of elections under this section:

- (1) Persons to serve as designated agents;
- (2) The manner of handling ballots during collection and delivery;
- (3) Maintenance of ballot boxes for each precinct;
- (4) Secure delivery of the voted ballots to the board of elections;
- (5) Ballot reconciliations with the pollbook or poll lists that are transported to and from a polling location.

Sec. 3506.21. (A) As used in this section, "optical scan ballot" means a ballot that is marked by using a specified writing instrument to fill in a designated position to record a voter's candidate, question, or issue choice and that can be scanned and electronically read in order to tabulate the vote.

(B)(1) In addition to marks that can be scanned and electronically read by automatic tabulating equipment, any of the following marks, if a majority of those marks are made in a consistent manner throughout an optical scan ballot, shall be counted as a valid vote:

- (a) A candidate, question, or issue choice that has been circled by the voter;
- (b) An oval beside the candidate, question, or issue choice that has been circled by the voter;
- (c) An oval beside the candidate, question, or issue choice that has been marked by the voter with an "x," a check mark, or other recognizable mark;
- (d) A candidate, question, or issue choice that has been marked with a writing instrument that cannot be recognized by automatic tabulating equipment.

(2) Marks made on an optical scan ballot in accordance with division (B)(1) of this section shall be counted as valid votes only if that optical scan ballot contains no marks that can be scanned and electronically read by automatic tabulating equipment.

(3) If automatic tabulating equipment detects that more marks were made on an optical scan ballot for a particular office, question, or issue than the number of selections that a voter is allowed by law to make for that office, question, or issue, the voter's ballot shall be invalidated for that office, question, or issue. The ballot shall not be invalidated for any other office, question, or issue for which the automatic tabulating equipment detects a vote to have been cast, in accordance with the law.

(C) The secretary of state may adopt rules under Chapter 119. of the Revised Code to authorize additional types of optical scan ballots and to specify the types of marks on those ballots that shall be counted as a valid vote to ensure consistency in the counting of ballots throughout the state.

(D)(1) A board of elections of a county that uses optical scan ballots and automatic tabulating equipment as the primary voting system for the county shall not tabulate the unofficial results of optical scan ballots voted on election day at a central location.

(2) A board of elections that provides for the tabulation at each precinct of voted ballots, and then, at a central location, combines those precinct ballot totals with ballot totals from other precincts, including optical scan ballots voted by absent voters, shall not be considered to be tabulating the unofficial results of optical scan ballots at a central location for the purpose of division (D)(1) of this section.

Sec. ~~3505.25~~ 3599.07. No judge of elections, observer, or police officer admitted into the polling rooms at the election, at any time while the polls are open, shall have in the individual's possession, distribute, or give out any ballot or ticket to any person on any pretense during the receiving, counting, or certifying of the votes, or have any ballot or ticket in the individual's possession or control, except in the proper discharge of the individual's official duty in receiving, counting, or canvassing the votes. This section does not prevent the lawful exercise by a judge of elections or observer of the individual right to vote at such election.

SECTION 2. That existing sections 3505.25 and 3506.21 of the Revised Code are hereby repealed.

SECTION 3. Section 3505.25 of the Revised Code is hereby repealed, effective May 1, 2008.

SECTION 4. (A) Notwithstanding division (D)(1) of section 3506.21 of the Revised Code, optical scan ballots required to be provided for the March 4, 2008, primary election at each precinct pursuant to Directive 2008-01, issued by the Secretary of State, may be counted at a central location.

(B) As used in this section, "optical scan ballot" has the same meaning as in section 3506.21 of the Revised Code.

SECTION 5. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to ensure an orderly and timely election process for the March 4, 2008, primary. Therefore, this act shall go into immediate effect.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Am. S. B. No. 286

127th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_