

As Amended by House Committee

Session of 2017

HOUSE BILL No. 2158

By Representative Miller

1-25

1 AN ACT concerning elections; dealing with advance voting procedures;
2 amending K.S.A. 25-1132, 25-1133, 25-1134 and 25-1136 and K.S.A.
3 2016 Supp. 25-3107 and repealing the existing sections.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 25-1132 is hereby amended to read as follows: 25-
7 1132. (a) All advance voting ballots which are received in the office of the
8 county election officer not later than the hour for closing of the polls on
9 the date of any election specified in ~~subsection (b)~~ of K.S.A. 25-1122(f),
10 and amendments thereto, shall be delivered by the county election officer
11 to the appropriate special election board provided for in K.S.A. 25-1133,
12 and amendments thereto.

13 (b) *Subject to the deadline for receipt by the office of the county*
14 *election officer as set forth in this subsection, all advance voting ballots*
15 *received by mail by the office of the county election officer after the*
16 *closing of the polls on the date of any election specified in K.S.A. 25-*
17 *1122(f), and amendments thereto, and which are postmarked or are*
18 **otherwise indicated by the United States postal service to have been**
19 **mailed on or before the date of the election, shall be delivered by the**
20 *county election officer to a special election board or the county board of*
21 *canvassers, as determined by the secretary of state, for canvassing in a*
22 *manner consistent, as nearly as may be, with other advance voting ballots.*
23 *The deadline for the receipt by mail of the advance voting ballots by the*
24 *office of the county election officer shall be the last delivery of mail by the*
25 *United States postal service on the ~~fourth~~ third day following the date of*
26 *the election, unless additional time is permitted by the secretary. The*
27 *secretary of state shall adopt rules and regulations to implement this*
28 *subsection.*

29 Sec. 2. K.S.A. 25-1133 is hereby amended to read as follows: 25-
30 1133. (a) The county election officer of every county, which does not use
31 voting machines, optical scanning systems or electronic or
32 electromechanical voting systems, shall establish a special election board.
33 ~~Such~~ The special election board shall consist of the election board
34 members in the precinct in which is located the office of the county
35 election officer or the members of such additional election boards of the
36 county as the county election officer may designate. ~~Such~~ The special

1 election board shall meet at the voting place in the precinct in which is
2 located the office of the county election officer on election day, *or as*
3 *provided by rules and regulations adopted by the secretary of state as*
4 *authorized by K.S.A. 25-1132(b), and amendments thereto.*

5 (b) In counties where voting machines, optical scanning systems or
6 electronic or electromechanical voting systems are used, the county
7 election officer shall appoint a special election board consisting of at least
8 three members. Such members shall be registered voters of ~~such~~ *the*
9 county. ~~Such~~ *The* special election board shall meet in the office of the
10 county election officer on election day or at such time before election day
11 as the county election officer deems necessary, *or as provided by rules and*
12 *regulations adopted by the secretary of state as authorized by K.S.A. 25-*
13 *1132(b), and amendments thereto.*

14 Sec. 3. K.S.A. 25-1134 is hereby amended to read as follows: 25-
15 1134. (a) The county election officer in counties which have a special
16 election board established under K.S.A. 25-1133, and amendments thereto,
17 shall deliver all advance voting ballots to the special election board when
18 ~~such~~ *the* special election board convenes, and thereafter as advance voting
19 ballots are received during election day, until the time for closing of the
20 polls, *or as provided by rules and regulations adopted by the secretary of*
21 *state as authorized by K.S.A. 25-1132(b), and amendments thereto.*

22 (b) The special election board may conduct the original canvass of
23 advance voting ballots when the board convenes, but shall not complete
24 final tabulation prior to election day.

25 Sec. 4. K.S.A. 25-1136 is hereby amended to read as follows: 25-
26 1136. (a) The vote of any advance voting voter may be challenged in the
27 same manner as other votes are challenged, as nearly as may be, and the
28 judges of the special election board shall determine the validity of each
29 advance voting ballot. Whenever the judges determine that the form
30 accompanying an advance voting ballot is insufficient, or that the voter is
31 not a registered voter, or the challenge is otherwise sustained, the advance
32 voting ballot envelope shall not be opened. In all such cases, the judges
33 shall endorse on the back of the envelope the word "provisional" and state
34 the reason for sustaining the challenge.

35 (b) Any advance voting ballot envelope which has not been signed
36 shall not be opened, and no vote on the ballot therein shall be counted.
37 ~~Such~~ *The* envelope or ballot shall be challenged in the same manner in
38 which other votes are challenged.

39 (c) Whenever it shall be made to appear to the judges of a special
40 election board by sufficient proof that an advance voting voter has died,
41 the envelope containing the advance voting ballot of ~~such~~ *the* deceased
42 voter shall not be opened. In all such cases, the judges shall endorse on the
43 back of the envelope the word "provisional" and the reason for sustaining

1 the challenge.

2 (d) If objection is made to an advance voting ballot because of form,
3 condition, or marking thereof, the ballot shall be marked "void" if the
4 judges uphold the objection to the entire ballot, and otherwise shall be
5 marked on the back thereof, "objected to" with a statement of the
6 substance of the objection.

7 (e) Void, provisional and objected to advance voting ballots shall be
8 transmitted to the county election officer in the same manner as personally
9 cast provisional ballots are transmitted but shall be placed in separate
10 envelopes or sacks, appropriately labeled and sealed. Votes contained in
11 void and provisional advance voting ballots shall not be included in the
12 total of votes certified by the special election board. Void, provisional and
13 objected to advance voting ballots shall be reviewed by the board of
14 county canvassers, and ~~such~~ *the* board shall finally determine the
15 acceptance or rejection of each void, provisional or objected to ballot.

16 (f) *Procedures for canvassing and challenging advance voting ballots*
17 *received by mail after the closing of the polls pursuant to K.S.A. 25-*
18 *1132(b), and amendments thereto, shall be as set forth in rules and*
19 *regulations adopted by the secretary of state as authorized by K.S.A. 25-*
20 *1132(b), and amendments thereto.*

21 Sec. 5. K.S.A. 2016 Supp. 25-3107 is hereby amended to read as
22 follows: 25-3107. (a) At the time of commencement of any canvass by the
23 county board of canvassers the county election officer shall present to the
24 county board of canvassers the preliminary abstracts of election returns,
25 together with the ballots and records returned by the election boards *and,*
26 *as provided by rules and regulations adopted by the secretary of state as*
27 *authorized by K.S.A. 25-1132(b), and amendments thereto, advance voting*
28 *ballots received after the closing of the polls pursuant to K.S.A. 25-*
29 *1132(b), and amendments thereto.* The county board of canvassers shall
30 inspect and check the records presented by the county election officer and
31 shall hear any questions which the county election officer believes
32 appropriate for determination of the board. The county board of canvassers
33 shall do what is necessary to obtain an accurate and just canvass of the
34 election and shall finalize the preliminary abstract of election returns by
35 making any needed changes, and certifying its authenticity and accuracy.
36 The certification of the county board of canvassers shall be attested by the
37 county election officer. Neither the county board of canvassers nor the
38 county election officer shall open or unseal sacks or envelopes of ballots,
39 except as is required by K.S.A. 25-409, 25-1136 and 25-1337, and
40 amendments thereto, or other specific provision of law or as is authorized
41 to carry out a recount under subsection (b), *or as authorized under*
42 *subsection (e).*

43 (b) If a majority of the members of the county board of canvassers

1 shall determine that there are manifest errors appearing on the face of the
2 poll books of any election board, which might make a difference in the
3 result of any election, or if any candidate shall request the recount of the
4 ballots cast in all or in only specified voting areas for the office for which
5 ~~such~~ the person is a candidate, or if any registered elector who cast a ballot
6 in a question submitted election requests a recount in all or only specified
7 voting areas to determine the result of the election, the county board of
8 canvassers shall cause a special election board appointed by the county
9 election officer to meet under the supervision of the county election officer
10 and recount the ballots with respect to any office or question submitted
11 specified by the county board of canvassers or requested by ~~such~~ the
12 candidate or elector. If a recount is required in a county that uses optical
13 scanning systems as defined in K.S.A. 25-4601 et seq., and amendments
14 thereto, or electronic or electromechanical voting systems, as defined in
15 K.S.A. 25-4401, and amendments thereto, the method of conducting the
16 recount shall be at the discretion of the person requesting ~~such~~ the recount.
17 The county election officer shall not be a member of ~~such~~ the special
18 election board. Before the special election board meets to recount the
19 ballots upon a properly filed request, the party who makes the request shall
20 file with the county election officer a bond, with security to be approved
21 by the county or district attorney, conditioned to pay all costs incurred by
22 the county in making ~~such~~ the recount. In the event that the candidate
23 requesting the recount is declared the winner of the election as a result of
24 the recount, or if as a result of the recount a question submitted is
25 overturned, no action shall be taken on the person's bond and the county
26 shall bear the costs incurred for the recount. Any recount must be
27 requested in writing and filed with the county election officer not later than
28 5 p.m. on the day following the meeting of the county board of canvassers.
29 The request shall specify which voting areas are to be recounted. The
30 county election officer shall immediately notify any candidate involved in
31 the election for which ~~such~~ the recount is requested, or shall notify the
32 county chairperson of each candidate's party. Any ~~such~~ the recount shall be
33 initiated not later than the following day and shall be completed not later
34 than 5 p.m. on the fifth day following the filing of the request for a
35 recount, including Saturdays, Sundays and holidays. Upon completion of
36 any recount under this subsection, the election board shall package and
37 reseal the ballots as provided by law and the county board of canvassers
38 shall complete its canvass. The members of the special election board shall
39 be paid as prescribed in K.S.A. 25-2811, and amendments thereto, for time
40 actually spent making the recount.

41 (c) (1) The provisions of this subsection shall apply to candidates at
42 any election for:

43 (A) Any state or national office elected on a statewide basis;

- 1 (B) the office of president or vice president of the United States;
- 2 (C) the office of members of United States house of representatives;
- 3 (D) office of members of state senate or house of representative
- 4 whose district is located in two or more counties; and
- 5 (E) office of members of state board of education.

6 (2) Any candidate may request a recount in one or more counties.
7 Any such recount must be requested in writing and filed with the secretary
8 of state not later than 5 p.m. on the second Friday following the election.
9 The request shall specify which counties are to be recounted. If a recount
10 is required in a county that uses optical scanning systems as defined in
11 K.S.A. 25-4601, and amendments thereto, or electronic or
12 electromechanical voting systems, as defined in K.S.A. 25-4401, and
13 amendments thereto, the method of conducting the recount shall be at the
14 discretion of the person requesting ~~such~~ *the* recount. Except as provided by
15 this subsection and subsection (d), the person requesting the recount shall
16 file with the secretary of state a bond, with security to be approved by the
17 secretary of state, conditioned to pay all costs incurred by the counties and
18 the secretary of state in making ~~such~~ *the* recount. The amount of the bond
19 shall be determined by the secretary of state. A candidate described in
20 ~~paragraphs (D) and (E) of subsection (c)(1)(D) and (E)~~ may post a bond as
21 provided by subsection (b) in lieu of the bond required by this subsection.
22 In the event that the candidate requesting the recount is declared the
23 winner of the election as a result of the recount, no action shall be taken on
24 the candidate's bond and the counties shall bear the costs incurred for the
25 recount.

26 (3) The secretary of state immediately shall notify each county
27 election officer affected by the recount and any candidate involved in the
28 election for which ~~such~~ *the* recount is requested. If the candidate cannot be
29 reached, then the secretary of state shall notify the state chairperson of
30 such candidate's party. Any such recount shall be conducted under the
31 supervision of the county election officers at the direction of the secretary
32 of state, and shall be initiated not later than the following day and shall be
33 completed not later than 5 p.m. on the fifth day following the filing of the
34 request for a recount, including Saturdays, Sundays and holidays. Each
35 county election officer involved in the recount shall appoint a special
36 election board to recount the ballots. The members of the special election
37 board shall be paid as prescribed in K.S.A. 25-2811, and amendments
38 thereto, for time actually spent making the recount. Upon completion of
39 any recount under this subsection, the special election board in each
40 county shall package and reseal the ballots as provided by law and the
41 county board of canvassers shall complete its canvass. The county election
42 officer in each county immediately shall certify the results of the recount
43 to the secretary of state.

1 (d) (1) The provisions of this subsection shall apply to candidates at
2 general elections for:

3 (A) Any state or national office elected on a statewide basis;

4 (B) the office of president or vice president of the United States;

5 (C) the office of members of United States house of representatives;

6 (D) office of members of state senate or house of representative; and

7 (E) office of members of state board of education.

8 (2) Whenever the election returns reflect that a candidate for office
9 was defeated by $\frac{1}{2}$ of 1% or less of the total number of votes cast and if
10 ~~such~~ *the* candidate requests a recount in one or more counties of the
11 ballots, the state shall bear the cost of any recount performed using the
12 method by which ~~such~~ *the* ballots were counted originally.

13 (3) Not later than 60 days following a recount conducted pursuant to
14 this subsection, the board of county commissioners of each county in
15 which the recount occurred shall certify to the secretary of state the
16 amount of all necessary direct expenses incurred by the county. Payment
17 for such expenses shall be made to the county treasurer of the county upon
18 warrants of the director of accounts and reports pursuant to vouchers
19 approved by the secretary of state. Upon receipt of such payment and
20 reimbursements, the county treasurer shall deposit the entire amount
21 thereof in the county election fund, if there is one and if there is not then to
22 the county general fund.

23 (4) The secretary of state, with the advice of the director of accounts
24 and reports, shall determine the correctness of each amount certified under
25 this section and adjust any discrepancies discovered before approving
26 vouchers for payment to any county.

27 *(e) Procedures for canvassing and challenging advance voting*
28 *ballots received by mail after the closing of the polls pursuant to K.S.A.*
29 *25-1132(b), and amendments thereto, shall be as set forth in rules and*
30 *regulations adopted by the secretary of state as authorized by K.S.A. 25-*
31 *1132(b), and amendments thereto.*

32 Sec. 6. K.S.A. 25-1132, 25-1133, 25-1134 and 25-1136 and K.S.A.
33 2016 Supp. 25-3107 are hereby repealed.

34 Sec. 7. This act shall take effect and be in force from and after its
35 publication in the statute book.