

THE OFFICE OF THE SECRETARY OF STATE
ADMINISTRATIVE CODE

CHAPTER 820-2-6
PROCEDURES FOR PROVISIONAL VOTING

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820-2-6-.01 Applicability Of The Help America Vote Act And Provisional Voting. This chapter is promulgated to comply with the requirements of the Help America Vote Act of 2002, Public Law 107-252, Section 302; and Acts of Alabama 2003-313 and 2006-281, mandating provisional voting in federal, state, county and municipal elections. The statutory requirement of provisional voting is codified in Section 17-10-2 et seq. Code of Ala. 1975 and replaces the state's previous voting practice utilizing challenged ballots. Copies of the Help America Vote Act may be obtained without charge from the Secretary of State's Office, State Capitol, Room S-105, Montgomery, Alabama 36130. The Help America Vote Act (HAVA) requires that provisional voting be utilized in Alabama elections after January 1, 2004.
Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown
Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.

History: **New Rule:** Filed May 27, 2004; effective July 1, 2004.
Amended: Filed May 20, 2010; effective June 24, 2010.

820-2-6-.02 **Provisional Voter.** During an election, a poll worker should direct a prospective voter to the provisional ballot officer for special assistance if the poll worker

(a) determines that the name of the individual does not appear on the official list of eligible voters for the precinct in which the individual seeks to vote,

(b) receives notice by an inspector that the individual is not entitled to vote at that precinct and challenges the individual,

(c) concludes that the individual is unable to meet the statutory requirements of voter identification, or

(d) believes that the individual applied for but did not return an absentee ballot for said election.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown
Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.
History: **New Rule:** Filed May 27, 2004; effective July 1, 2004.
Amended: Filed May 20, 2010; effective June 24, 2010.

820-2-6-.03 **Provisional Ballot Officer.** Each county appointing board or, in a municipal election, municipal governing body shall designate at least one election official in each precinct to serve as the provisional ballot officer. The provisional ballot officer shall administer all requirements of provisional voting in the precinct.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown
Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.
History: **New Rule:** Filed May 27, 2004; effective July 1, 2004.
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820-2-6-.04 **Voter Eligibility Verification.** In the event an individual's name does not appear on the list of eligible voters for the precinct, the provisional ballot officer shall in the presence of that individual use reasonable efforts to contact the county board of registrars and/or members of the appointing

board to determine whether the individual is eligible to vote in that precinct. In a municipal election, the provisional ballot officer shall first contact the city clerk to determine whether the individual is eligible to vote in that precinct. The individual may request voting assistance from another person and such person shall be allowed to accompany and assist the individual during the process of provisional voting. If the provisional ballot officer verifies the individual's registration and/or eligibility to vote in that precinct, the provisional ballot officer shall write the source of verification in the designated area of a voter reidentification form which shall be completed by the individual or by the person providing voting assistance to the individual. Then the individual shall be directed to the appropriate poll worker so that he or she can vote a regular ballot. The provisional ballot officer will give the poll worker the completed reidentification form so that the form will be maintained with other election materials as prescribed by state and federal law.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown

Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.

History: New Rule: Filed May 27, 2004; effective July 1, 2004.

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820-2-6-.05 **Notice To Provisional Voter.** A provisional ballot officer who cannot confirm an individual's registration or eligibility to vote in that precinct, shall inform the voter of his or her legal right to vote a provisional ballot. The provisional ballot officer shall explain to the individual the process of voting a provisional ballot.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown

Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.

History: New Rule: Filed May 27, 2004; effective July 1, 2004.

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820-2-6-.06 **Provisional Ballot Roster.** The voter shall sign a provisional ballot roster prescribed by the Secretary of State, which shall provide space for the name and number of the precinct, the name of the county, city, or town in which the election is being held, the name of the election, the date of the election, the voter's printed name and signature and, when a person provides assistance to the provisional voter, the printed name and signature of the person providing assistance. The roster shall also contain a statement to be completed and signed

by the provisional ballot officer certifying that the roster contains the names of all persons casting a provisional ballot in the precinct. The lines on the provisional ballot roster shall be numbered in a uniform manner. The line numbers shall include, in the case of primaries, party affiliation. Each voter's provisional ballot roster number shall be clearly written by the provisional ballot officer upon the respective provisional voter's provisional verification statement and upon the outer ballot envelope given to the provisional voter. Upon the closing of the polls, the provisional ballot officer shall sign each provisional roster to certify that the name of each person casting a provisional ballot appears on a provisional ballot roster.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown

Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.

History: New Rule: Filed May 27, 2004; effective July 1, 2004.

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820-2-6-.07 **Provisional Verification Envelope.**

(1) Before giving the provisional voter his or her provisional verification statement, which shall be prescribed by the Secretary of State, the provisional ballot officer shall write on said statement

- (a) the election date,
- (b) precinct number, and
- (c) ballot style.

(2) The provisional ballot officer shall then check the appropriate box next to the reason for issuing the provisional ballot. The list of reasons shall include:

- (a) voter's name does not appear on the list of registered voters,
- (b) voter's registration status cannot be determined by the provisional ballot officer,
- (c) voter is unable to provide identification,
- (d) the voter requested but has not returned an absentee ballot,

(e) an inspector has knowledge that the person is not entitled to vote at the precinct and challenges the person, or

(f) the ballot is cast after the legal time for closing the polls due to a federal or state court order extending polling hours.

(g) Voter objects to the political party identified for the voter on the list of registered voters for the primary runoff election.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown; Brent Beal; Clay Helms; David Brewer

Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.

History: New Rule: Filed May 27, 2004; effective July 1, 2004.

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820-2-6-.08 Provisional Voting Documents. The provisional ballot officer shall give the provisional voter the following documents, all prescribed by the Secretary of State:

- (a) a provisional verification statement,
- (b) a provisional ballot,
- (c) a provisional ballot inner envelope,
- (d) a provisional ballot outer envelope,
- (e) a voter reidentification form, and
- (f) an instructional sheet.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown

Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.

History: New Rule: Filed May 27, 2004; effective July 1, 2004.

Amended: Filed May 20, 2010; effective June 24, 2010.

820-2-6-.09 Provisional Ballot. Any ballot used as a provisional ballot shall be printed and plainly marked as a "Provisional Ballot". The provisional ballot officer shall disable the provisional ballot to ensure that the provisional

ballot is rejected by electronic tabulation equipment if the provisional voter places his or her provisional ballot in tabulation equipment on the day of the election. The provisional ballot may be disabled by 1) cutting or clipping the upper left corner of the provisional ballot, 2) placing an official provisional ballot label over the timing marks on the ballot, or 3) by shading or coloring in a bubble or other area on the ballot that will identify the ballot as a provisional ballot to the tabulation equipment.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown
Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.
History: New Rule: Filed May 27, 2004; effective July 1, 2004.
Amended: Filed May 20, 2010; effective June 24, 2010.

820-2-6-.10 **Provisional Voting Instruction Sheet.** The provisional voting instruction sheet shall explain the procedure for casting a provisional ballot and shall include information explaining when and where the provisional voter must forward documents of identification. The instructions shall contain user-friendly guidelines for the voter to follow when responding to the challenge of a poll inspector and how to determine whether or not his or her vote was counted.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown
Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.
History: New Rule: Filed May 27, 2004; effective July 1, 2004.
Amended: Filed May 20, 2010; effective June 24, 2010.

820-2-6-.11 **Sworn Statement Of Provisional Voter.** To cast a provisional ballot, the provisional voter shall complete and execute the provisional verification statement, including the written sworn affirmation prescribed by §17-10-2(b), Code of Ala., 1975.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown
Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.
History: New Rule: Filed May 27, 2004; effective July 1, 2004.
Amended: Filed May 20, 2010; effective June 24, 2010.

820-2-6-.12 **Provisional Voter Reidentification "Update" Form And Inspector Challenge Form.** The provisional voter shall complete a voter reidentification form. The provisional voter shall then return the completed but unsealed provisional

verification statement and the reidentification form to the provisional ballot officer. If the basis of the provisional ballot results from an inspector's challenge, the provisional ballot officer shall separate the multi-part challenge statement and place the original in the provisional ballot box, give one copy of the challenge statement to the provisional voter, and attach one copy of the challenge statement to the provisional verification statement.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown

Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.

History: New Rule: Filed May 27, 2004; effective July 1, 2004.

Amended: Filed May 20, 2010; effective June 24, 2010.

820-2-6-.13 **Provisional Ballot Completion.** The provisional voting officer shall then direct the provisional voter to a designated voting area where he or she shall cast a provisional ballot. After completing his or her ballot, the provisional voter shall place the provisional ballot in the provisional ballot inner envelope and seal the envelope. The provisional voter shall then place the sealed provisional ballot inner envelope in the provisional ballot outer envelope and seal the envelope. The provisional ballot officer shall direct the provisional voter to the location of the provisional ballot box. The provisional voter shall place the sealed provisional ballot outer envelope into the sealed ballot box for provisional ballots.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown

Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.

History: New Rule: Filed May 27, 2004; effective July 1, 2004.

Amended: Filed May 20, 2010; effective June 24, 2010.

820-2-6-.14 **Provisional Voting Poll Closing Procedure.** Upon the closing of the polls, the provisional ballot officer shall complete the administrative responsibilities of collecting the provisional verification statements, the provisional ballot roster or rosters, and related forms and shall place these documents in a precinct verification envelope which shall be given to the Sheriff, or the municipal clerk in a municipal election, and addressed to the county board of registrars. Before giving the Sheriff or the municipal clerk the provisional ballot box, the provisional ballot officer shall determine from the provisional ballot roster a tally of the number of provisional ballots cast and shall write the total number of

provisional ballots cast upon the sealed provisional ballot box. In the event no provisional ballots are cast in the precinct, the provisional ballot officer shall indicate that fact on the precinct verification envelope and on the provisional ballot roster. The provisional ballot officer shall then place the provisional ballot roster in the precinct verification envelope and seal.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown

Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.

History: New Rule: Filed May 27, 2004; effective July 1, 2004.

Amended: Filed May 20, 2010; effective June 24, 2010.

820-2-6-.15 **Provisional Voting Verification Procedure.**

(1) In an election for federal, state or county offices or proposed constitutional amendments or referenda, the Sheriff shall deliver the precinct verification envelope from each precinct in the county to the county board of registrars. In a municipal election, the municipal clerk shall deliver the precinct verification envelope from each precinct in the municipality to the board of registrars. Upon receipt of all the precinct verification envelopes, the board of registrars shall tally the number of provisional verification statements received in each precinct verification envelope. The number of provisional voters identified on the provisional ballot roster from the precinct should equal the total number of provisional verification statements. If the roster listing and tally correctly correspond, the board of registrars shall begin updating the state voter registration list using the voter reidentification form contained in each provisional verification envelope.

(2) When a discrepancy exists between the roster listing and tally, the board of registrars shall notify members of the county appointing board, or the municipal clerk in a municipal election, of the discrepancy and request assistance from the county appointing board or the municipal clerk, as appropriate, to resolve the matter. If the discrepancy remains unresolved at the time designated for the county board of registrars to deliver its findings to the judge of probate, or the municipal clerk in a municipal election, the appointing board, or the municipal clerk in a municipal election, shall create a written record of the discrepancy and a majority of the members of both the appointing board or the governing body in a municipal election and the county board of registrars shall

attest to the same. The written record of the discrepancy shall be provided to the canvassing board or the municipal governing body with a copy included in the container housing the records of the election as mandated by federal and state law.

(3) The board of registrars shall first identify all provisional ballots that were cast as a result of a challenge statement from an inspector. When all the provisional ballots resulting from a challenge statement are identified, the board of registrars shall promptly mail notice statements, as prescribed by the Secretary of State, addressed to each "inspector-challenged" provisional voter and provide him or her with additional information on how he or she may respond to the challenge from the poll inspector.

(4) The board of registrars shall use reasonable efforts to determine whether or not the ballot of each provisional voter shall be counted. The absentee election manager shall be contacted to resolve matters involving an absentee ballot request that triggered a provisional ballot. For provisional ballots cast in a municipal election, the board of registrars shall consult with the clerk of the municipality to resolve issues related to residency in the municipality. When a final determination is made that a vote shall or shall not be counted, a brief statement explaining the board of registrars' findings shall be written in the designated area of the provisional verification statement. If the board of registrars creates any work papers or other correspondence in the verification process, a copy of such papers and correspondence shall be attached to the provisional verification statement which shall be stored in the records of election. A majority of the members of the board of registrars shall sign the findings of the board by certification and such certification shall include the printed name and signature of each registrar signing the findings.

Authors: Roy Wylie Granger, III; Edward Packard; Jean Brown

Statutory Authority: Code of Ala. 1975, §§17-1-3(a), 17-10-2.

History: New Rule: Filed May 27, 2004; effective July 1, 2004.

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