

Corrected
SESSION OF 2004

SUPPLEMENTAL NOTE ON SENATE BILL NO. 479

As Recommended by Senate Committee on
Elections and Local Government

Brief*

SB 479 implements certain provisions of the federal Help America Vote Act (HAVA) of 2002 into state election laws and requires additional voter identification information

The bill includes the following provisions:

Voter Identification (ID)

- Defines "first-time voter" as one who has not previously voted in any election in the county in which the voter desires to vote. Includes a person whose name was removed from the county registration list and who has re-registered. (Sections 4 and 13)
- Requires identification from all first-time voters in the county, including both those voting in advance (Section 4) and those voting in person (Section 13). The first-time voter must provide one of the following: a current, valid Kansas driver's license (DL), nondriver's ID card, utility bill, bank statement, paycheck, government check, or other government document containing the voter's current name and address as indicated on the registration book (or poll book, in the case of those voting in person). In the case of a person applying for an advance voting ballot to be transmitted by mail, the voter may include his/her DL number, nondriver's ID card number, the last four digits of his/her Social Security number, or a copy of one of the accepted forms of ID.
- Permits a first-time voter unable or unwilling to provide current, valid ID, or for whom name and address do not match the registration book entry, to vote a provisional ballot. Requires valid

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

form of ID be provided in this case to the county election officer, in person or by mail or electronic means, before the meeting of the county board of canvassers. Requires the ballot be counted if the county board of canvassers determines a voter's ID is valid and the provisional ballot was properly cast. (Sections 4 and 13)

- Prohibits making public the voter ID information required of a voter applying for an advance ballot. (Section 4)
- Requires county election officer to compare the DL number, nondriver's ID card number, social security number or copy of other valid ID provided by a first-time voter to the voter registration list verified by the Division of Motor Vehicles in accordance with federal law. Prohibits the county election officer from transmitting an advance voting ballot if no ID was provided by the first-time voter or the information does not match the information on the voter registration list. (Section 6)
- Prohibits a ballot cast by a first-time voter, either in advance or at the polling place, from being counted if the voter fails to provide valid ID. (Section 14)
- Permits the Secretary of State to adopt rules and regulations to define valid forms of ID. (Section 13)

Voter Affirmation Requirements

- Rewords the affidavit that must be signed by a voter whose *primary election* vote is challenged. Signature line is preceded by a declaration "under penalty of perjury" that the statement signed is true and correct. (Section 1)
- Prescribes wording for the voter's affirmation required if an election judge challenges a voter based on KSA 25-414 (changed addresses within the same county or the registration list indicates incorrectly the voter has moved). Requires election judges to provide written information stating how the challenged voter may ascertain whether his/her provisional vote was counted and, if not, why not. (Section 2)

- Refines the wording of the “Declaration,” which applies generally to elections and to which the voter attests when he/she signs the poll book. (Section 10)

Provisional Ballots for Votes Cast after Regular Hours

- Entitles a person voting after hours pursuant to a court or other order to cast a provisional ballot. (Section 3)
- Requires provisional ballot envelopes containing ballots cast after polling place hours pursuant to court or other order to be separated from those provisional envelopes containing ballots cast along with the voter’s application for registration. (Section 15)

Federal Services Absentee Voters

- Expands the period during which an application of a person qualified and eligible to vote by federal services absentee ballot is valid. Current law specifies this period as applying to any application made before an election to be held in August of even-numbered years, as well as the November election of that year. SB 479 expands this period to include any election for which the voter is otherwise entitled to vote between the date of application through the *next two regularly scheduled general elections for national or state office*. (Section 7)
- Designates the Secretary of State (Kansas’ chief state election official) as the officer responsible for disseminating federal services voting information and accepting ballot applications. (Section 8)

Additional Voter Registration Provisions (Section 9)

- Allows the person registering the option of providing his/her DL number or nondriver’s ID number, instead of the last four digits of their social security number.
- Requires the application for voter registration to (1) Contain boxes to check to indicate whether the applicant is a U.S. citizen and will be 18 years of age on or before election day; (2) Instruct those who are not U.S. citizens or who will not be 18 on or before

election day to not complete the application form; and (3) contain a statement that the applicant may be required to provide ID when voting.

- Requires the county election officer to send the application back to the applicant if the applicant failed to answer as to whether he/she is a U.S. citizen, along with notice of incompleteness that specifies a period of time during which the applicant may complete the application and be eligible to vote in the next election.

Information to be Posted at Each Polling Place

- Adds to the printed instructions county election officers must furnish to election boards, to include a sample ballot, notification of the election date, and the polling place hours. (Section 11)

Training for Election Board Judges and Clerks

- Makes provision of instruction by the county election officer, formerly permissive for election board judges only, mandatory for both election board judges and clerks before each election. (Section 12)
- Requires county election officers to receive instruction on their election duties, including procedures for complying with federal and state laws and regulations; and requires the form and content of the instruction to be determined by the Secretary of State. (Section 16)

Administrative Complaint Procedure

- Establishes the *Help America Vote Act of 2002 Administrative Complaint Act*, which provides a formal administrative complaint procedure to address alleged violations or possible future violations of provisions of Title 3 of HAVA (Sections 17 through 32). Specifically, the act would:
 - ✓ Require complaints be in writing, signed and notarized (Section 21).
 - ✓ Set guidelines for timely filing (Section 22).

- ✓ Require the Kansas Department of Administration to handle any complaint when the Secretary of State is the respondent (Section 22).
- ✓ Allow the Secretary of State to consolidate complaints when they relate to the same actions or events, or when they raise common questions of law or fact (Section 23).
- ✓ Prescribe content of official complaint record, which must be maintained by the Secretary of State (Section 24).
- ✓ Require the Secretary of State to conduct a hearing on the record to review the complaint, if requested by the complainant. Require the Secretary of State or designee to serve as the hearing officer (Section 25).
- ✓ Prescribe hearing requirements (Section 26) and allows for informal conferences in certain circumstances (Section 27).
- ✓ Prescribe duties in concluding complaint proceedings, including alternative actions in the event no hearing is held. (Section 29)
- ✓ Prescribe actions relating to appropriate remedy for resolving grievances (Section 30) and actions to take if the Secretary of State does not render a final determination within 90 days after the complaint is filed (Section 31).
- ✓ Authorize the Secretary of State to adopt rules and regulations to administer the act (Section 32).

Background

In 2002, the 107th Congress passed the Help America Vote Act (HAVA), the goal of which was to reform election procedures in the United States. HAVA addressed a number of reforms, including some addressing voting machines, election records and information, voter access, and information required of first-time voters. The federal act also authorized funding to states to assist in implementing the reforms.

Specific federal HAVA provisions include the following:

- Requires ID from first-time voters in the jurisdiction who registered by mail and wish to vote by advance ballot or at the polling place. The federal ID requirement may be met by providing a current and valid photo ID or a current utility bill, bank statement, government check, or other government document that shows the name and address of the person.

- Requires information dealing with citizenship, age, and voter ID to be included on a current voter registration application to determine voter eligibility.
- Requires affidavits be signed by those voting provisional ballots.
- Allows voters to cast a provisional ballot if the polling hours are extended by a court or other order. Requires these ballots be separated from other provisional ballots cast during normal polling hours.
- Requires a poster be posted in every polling place that includes the following information: a sample ballot, the date of the election, polling place hours, and information dealing with voters' rights and responsibilities.
- Changes application procedures for federal services absentee ballots; requires these ballots be considered effective for two consecutive general elections for national and state offices.

Proponents of the bill included the Secretary of State and a representative of the Governor. Both indicated the bill was the second attempt at passing a state HAVA implementation bill, since 2003 HB 2288 was vetoed by the Governor. Last year's HB 2288 was vetoed specifically because of the voter identification requirements contained in the bill. HB 2288 required identification of all voters in all elections. This year's SB 479, reported the Secretary of State and the Governor's representative, was the result of negotiation between the two offices. Without a state bill, reported the Secretary of State representative, Kansas cannot implement the required HAVA reforms.

Also testifying were representatives from Kansas Advocacy and Protective Services, the Statewide Independent Living Council of Kansas, and the Kansas Commission on Disability Concerns. These representatives requested amendments to clarify responsibilities and procedures relating to disabled voters.

The fiscal note issued by the Division of the Budget indicated funding for the bill is not included in the *FY 2005 Governor's Budget Report*.

Expenditures are to be made from federal HAVA funding (95 percent) and state/local match (5 percent). The Secretary of State is not seeking separate appropriation for SB 479 costs or for other HAVA activities.

The fiscal note reported the following FY 2005 costs associated with the bill:

Activity	FY 2005 State	FY 2005 Federal	FY 2005 Total - Each Activity
Updated provisional ballots, information to provisional voters	\$6,600	\$0	\$6,600
Updated voter registration application, procedures	\$10,000	\$20,000	\$30,000
Voter information posters for polling places	\$0	\$2,000	\$2,000
Training	\$71,000	\$0	\$71,000
Administrative hearings (per hearing)	Regular ...\$155 Interpreter..\$50 0 Braille document \$100	\$0 \$0 \$0	\$155/hearing \$500/hearing \$100/hearing

Additionally, the Secretary of State representative reported the state match for federal funding in FY 2005 would be \$535,000. Following is the federal, state, and county funding information associated with implementing HAVA, as provided by the Secretary of State's Office:

HELP AMERICA VOTE ACT 2002 (HAVA)

<u>Type</u>	<u>Federal Appropriation</u>	<u>State Match</u>	<u>State Match %</u>	<u>County Match</u>	<u>County Match %</u>	<u>TOTAL</u>
Title 1 (FY 03)	\$ 5,000,000	\$ 0	0%	\$ 0	0%	\$ 5,000,000
Title III (FY 04)	7,500,000	225,000	3%	150,000	2%	7,875,000
Title III (FY 05)	17,850,000	535,000	3%	357,000	2%	18,742,000
Federal Grant (FY 04)	<u>110,057</u>	<u>0</u>	0%	<u>0</u>	0%	<u>110,057</u>
TOTAL	\$ 30,460,057	\$ 760,000		\$ 507,000		\$ 31,727,057

Title III Appropriations: Congress originally planned to appropriate the Title III money over three fiscal years. Instead, the entire amount was appropriated in FY 04 and FY 05. The omnibus bill appropriating the FY 05 money is awaiting the President's signature.

Source: Kansas Secretary of State's Office.