

1 AN ACT relating to elections.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 120.015 is amended to read as follows:

4 In any contest over the nomination or election of any state, county, city or district officer,
5 it may be alleged in the pleadings of the contestant that the provisions of KRS 121.025,
6 121.045, 121.055 or 121.310, have been violated by the contestee or by others in his or
7 her behalf with his or her knowledge, and it may likewise be alleged in the pleadings of
8 the contestee that such provisions have been violated by the contestant or by others in his
9 or her behalf with his or her knowledge. If it appears upon the trial of the contest that
10 such provisions have been violated by the contestant or by others in his or her behalf
11 with his or her knowledge, the contest action shall be dismissed and the contestant shall
12 have no further right to maintain the same. If no such violation by the contestant, or by
13 others in his or her behalf with his or her knowledge, appears, and it appears that such
14 provisions have been violated by the contestee or by others in his or her behalf with his
15 or her knowledge, the nomination or election of the contestee shall be declared void. In
16 the case of primary elections, if any candidate who is a party to the contest proceedings
17 has not violated the provisions of KRS 121.025, 121.045, 121.055 or 121.310, and all
18 candidates who received more votes than he or she did are also parties and are found to
19 have violated those provisions, such candidate shall be declared nominated.

20 ➔Section 2. KRS 120.055 is amended to read as follows:

21 **(1)** Any candidate for nomination to office at a primary held under the provisions of
22 KRS 118.015 to 118.035 and 118.105 to 118.255, or any candidate for nomination
23 to a city office at a primary for which the statutes do not otherwise provide for
24 determining contest elections, for whom a number of votes was cast equal to not
25 less than fifty percent (50%) of the votes cast for the successful candidate for
26 nomination to the office, may contest the right of the successful candidate, and of
27 any other candidate for nomination to the office, to the nomination.^[1]

- 1 **(2)** ***Any candidate qualified to contest the right of a successful candidate under***
2 ***subsection (1) of this section shall file***~~[by filing]~~ a petition in the Circuit Court
3 within ten (10) days from the day of the primary, stating the specific grounds relied
4 upon for the contest, and causing a summons to be issued, returnable in seven (7)
5 days.
- 6 **(a)** In the case of candidates for offices for the state at large, the petition shall be
7 filed in the Franklin Circuit Court.~~[.]~~
- 8 **(b)** In the case of other candidates it shall be filed in the Circuit Court of the
9 county in which the contestee resides.
- 10 **(3)** The summons may be personally served on the contestee in any county, or it may
11 be served by leaving a copy at his or her home with a member of his or her family
12 over sixteen (16) years of age, or by posting a copy on the door of his or her
13 residence.
- 14 **(4)** The contestee shall file his or her answer within seven (7) days after service of
15 summons. The answer may contain grounds of contest in favor of the contestee and
16 against the contestant, but the grounds shall be specifically set out. Any candidate
17 who would have been qualified to bring a contest action under this section, who is a
18 party to a recount proceeding brought under KRS 120.095, may, by filing an answer
19 in the recount proceeding within the time allowed by this section for filing grounds
20 of contest, set forth grounds of contest against the petitioner in the recount
21 proceeding.
- 22 **(5)** No ground of contest by either party shall be filed or made more definite by
23 amendment after the expiration of the time allowed by this section for filing the
24 original pleading. The contestant may file a reply within five (5) days after answer
25 is filed, which shall complete the pleading, and any affirmative matter in the reply
26 shall be treated as controverted.
- 27 **(6)** Upon return of the summons, properly executed, to the office of the circuit clerk of

1 the county in which the action is pending, the clerk shall immediately docket the
2 cause and notify the presiding judge of the court that the contest has been instituted,
3 and the judge shall proceed to a trial of the cause within five (5) days after the issue
4 was joined. In judicial circuits having more than one (1) Circuit Judge, the judge
5 who shall hear the cause shall be determined by lot.

6 ➔Section 3. KRS 120.065 is amended to read as follows:

7 **(1)** Each party to a contest instituted under KRS 120.055 shall be entitled, in the
8 production of evidence to be used on the trial thereof, to all the remedies allowed in
9 cases at law and in equity. In trying the contest the court shall hear and determine
10 all questions of law and fact without the intervention of a jury, and may examine
11 the witnesses orally or require or permit the parties to take the evidence by
12 depositions. If the evidence is taken orally either party may require it to be taken by
13 the official reporter for the court, to be taken and transcribed and paid for as
14 evidence in other civil actions.

15 **(2)** The court may require the contestant, or the person who has the burden of proof
16 under the issue joined, to complete his or her proof in not less than fifteen (15) days
17 after service of summons, and the contestee, or the person not having the burden, to
18 complete his or her proof in not less than ten (10) days after filing an answer. Each
19 party may be given one (1) day additional for producing evidence in rebuttal and no
20 greater time shall be extended, unless the court is satisfied that the ends of justice
21 demand it.

22 **(3)** ~~[The court shall,]~~Immediately after the evidence is concluded, **the court shall**
23 consider the contest and determine it. If it appears from an inspection of the whole
24 record that there has been such fraud, intimidation, bribery or violence in the
25 conduct of the election that neither contestant nor contestee can be adjudged to have
26 been fairly nominated, the court may adjudge that there has been no election.~~[,] In~~
27 **that**~~[which]~~ event, the nomination shall be deemed vacant. The judgment of the

1 court shall be filed in the office of the Circuit Court clerk.

2 ➔Section 4. KRS 120.075 is amended to read as follows:

- 3 (1) Any party may appeal to the Court of Appeals from a judgment entered under KRS
4 120.065. The appeal shall be in accordance with the Rules of Civil Procedure,
5 except that the notice of appeal shall be filed~~[and a supersedeas bond executed]~~ in
6 the Circuit Court, and the record shall be filed in the Court of Appeals, within ten
7 (10) days after the entry of the judgment, or within such other time as the Court of
8 Appeals may, for cause shown, permit. The entire original record shall be filed and
9 no designation of record shall be required.
- 10 (2) Upon the filing of the record, the clerk of the Court of Appeals shall immediately
11 deliver it to the chief judge.
- 12 (3) The Court of Appeals in its discretion may issue its mandate forthwith after
13 rendering its decision, but it shall be without prejudice to the right of the losing
14 party to file a petition for rehearing or the power of the court to recall the mandate
15 should the petition be sustained.
- 16 (4) If the judgment is reversed and the case remanded for trial or further action, the
17 proceedings shall continue in the Circuit Court in like manner as when originally
18 filed, beginning ten (10) days after the filing of the mandate with notice to the
19 adverse party.

20 ➔Section 5. KRS 120.095 is amended to read as follows:

- 21 (1) (a) Any candidate voted for at a primary held under KRS 118.015 to 118.035 and
22 118.105 to 118.255 may request a recount of the ballots by filing a petition
23 with the same court that contest petitions are required to be filed with, within
24 ten (10) days after the day of the primary.~~[, or, if the]~~
- 25 (b) Any candidate ~~is~~ qualified to bring a contest proceeding under KRS
26 120.055~~[,]~~ may also request a recount by including the~~[a]~~ request for a
27 recount in his or her petition instituting the contest proceedings.

1 (c) Any candidate who is a contestee in a contest proceeding under KRS 120.055
2 may request a recount in his or her answer filed in the contest proceeding, but
3 in that case the answer shall be filed within five (5) days after the service of
4 process on the petition.

5 (2) When a request for a recount is made, the State Board of Elections or the county
6 board of elections, whichever would issue the certificate of nomination, shall be
7 made a party defendant. The request shall specify which precinct or precincts are
8 to be recounted and it may include all or part of an elective district.
9 Simultaneously with the filing of the action, the petitioner shall make written
10 notice by regular mail to all candidates appearing on the ballot of the precinct or
11 precincts at issue that an action is being filed.

12 (3) An action filed in the Circuit Court of competent jurisdiction pursuant to this
13 section shall be heard summarily and without delay.

14 (4) The party requesting the recount shall execute a bond with approved surety for the
15 costs of the recount. The bond shall not be used as a penalty and shall be set as a
16 reasonable amount determined by the Circuit Judge to be proportionate to the
17 estimated cost of the recount. The bond shall be set within thirty (30) days and the
18 recount shall begin within fifteen (15) days of the bond being set, so long as the
19 bond has been paid.

20 (5) (a) The bond shall cover the areas requested in the recount and no other areas
21 may be added after the filing deadline unless the recount results change the
22 outcome of the election.

23 (b) If the recount results change the outcome of the election, the court shall
24 notify the other candidates in that race and a new filing deadline shall be
25 set ten (10) days from that judgment. During that time, other candidates
26 may request further recounting. If further recounting is required, the court
27 shall set a new bond in accordance with subsection (4) of this section, which

1 shall be paid by the requesting party.

2 (c) If the recount results do not change the outcome of the election, the court's
3 new election certification shall stand~~[, in an amount to be fixed by the Circuit~~
4 Judge].

5 (6) Upon the bond being filed, the clerk shall immediately notify the Circuit Judge of
6 the request and the filing of the bond, and the judge shall at once enter an order
7 directing custody of the keys, voting machines, voting equipment, or voting system,
8 the ballots, boxes, and all papers pertaining to the election to be transferred to the
9 Circuit Court, and fix a day for the recount proceedings to begin. The clerk of the
10 Circuit Court shall be designated by the court as the custodian of the materials
11 while the materials are in the possession of the Circuit Court.

12 (7) A copy of the order shall be served upon the parties or their counsel in the same
13 manner as notices are required to be served, which shall be deemed sufficient notice
14 of the proceeding.

15 (8) The Circuit Court may use the services of any law enforcement agency to
16 transport all of the materials described in subsection (6) of this section. All
17 materials ordered by the Circuit Court shall be sealed, to the extent possible, and
18 transmitted in a tamper-resistant manner. The chain of custody for the materials
19 shall be recorded, in writing, on a form prescribed by the State Board of Elections
20 in administrative regulations promulgated under KRS Chapter 13A to include the
21 identity of the person or persons transferring and receiving the materials, and the
22 date, time, and location of the transfer.

23 (9) The court shall designate commissioners to assist in the recount and there shall
24 be an equal number of commissioners to represent the contestant and the
25 contestee.

26 (10) ~~[On the day fixed,]~~Each political party represented on the county board of
27 elections may appoint a representative to be present, and each candidate subject

1 to the recount may be present either in person, by a representative, or both. The
2 attorneys representing the parties may be present at all hearings and at the
3 recount of the ballots. The court shall authorize representatives of the news media
4 to observe the recount.

5 (11) On the day fixed, the court shall proceed to recount the ballots if their integrity is
6 satisfactorily shown and shall complete the recount as soon as practicable, and file
7 and enter of record the results thereof, and direct the state board or county board,
8 whichever would issue the certificate of nomination, to issue a certificate to the
9 party entitled thereto as shown by the recount.

10 ~~(12)(2)~~ Any party may appeal from the judgment to the Court of Appeals, in the same
11 manner as provided in KRS 120.075, all of the provisions of which statute shall be
12 applicable.

13 ~~(13)(3)~~ If a proceeding for recount is asked and prosecuted in a contest proceeding, it
14 shall not await the preparation or trial of the contest in the Circuit Court or in the
15 Court of Appeals. The action of the courts shall be final, concluding the parties as
16 to the question of a recount of the ballots, and certificates shall then be issued to the
17 parties entitled thereto.

18 ➔Section 6. KRS 120.185 is amended to read as follows:

19 (1) (a) 1. Any candidate who was voted for at a regular election for any of the
20 offices to which KRS 120.155 applies, and who does not qualify for an
21 automatic recount under KRS 120.157, may request a recount of the
22 ballots by filing a petition with the same court where petitions of contest
23 are required to be filed.

24 2. If the candidate is qualified to institute a contest proceeding under KRS
25 120.155, the candidate may request a recount by including a recount
26 request in his or her petition instituting the contest proceeding.

27 (b) Any candidate who is a contestee in a contest proceeding under KRS 120.155

1 may request a recount in his or her answer filed in the contest proceeding, but
2 only if the answer containing the recount request is filed within five (5) days
3 after service of the petition upon the contestee.

4 (c) Any candidate under this subsection who would receive a certificate of
5 election from the county board of elections under KRS 118.425 shall file his
6 or her petition requesting a recount not later than ten (10) days after the day of
7 the election. The county board of elections shall be named a party defendant
8 in the petition.

9 (d) Any candidate under this subsection who would receive a certificate of
10 election from the State Board of Elections under KRS 118.425 shall file his or
11 her petition requesting a recount not later than the second Tuesday following
12 the election. The State Board of Elections shall be named a party defendant in
13 the petition. When a request for a recount is made, the request shall specify
14 which precinct or precincts are to be recounted, and it may include all or
15 part of an election district. Simultaneously with the filing of the action, the
16 petitioner shall make written notice by regular mail to all candidates
17 appearing on the ballot of the precinct or precincts at issue that an action is
18 being filed.

19 (e) An action filed in the Circuit Court of competent jurisdiction pursuant to
20 this section shall be heard summarily and without delay.

21 (f) The party requesting the recount shall execute bond with approved surety for
22 the costs of the recount. The bond shall not be used as a penalty and shall be
23 a reasonable amount determined by the Circuit Judge to be proportionate to
24 the estimated cost of the recount, and it may be filed by the state political
25 party, political organization, or political group, if any, to which the
26 candidate is affiliated. The bond must be set within thirty (30) days and the
27 recount shall begin within fifteen (15) days of the bond being set, so long as

1 the bond has been paid.

2 (g) 1. The bond shall cover the areas requested in the recount and no other
 3 areas may be added after the filing deadline unless the recount results
 4 change the outcome of the election.

5 2. If the recount results change the outcome of the election, the court
 6 shall notify the other candidates in that race and a new filing deadline
 7 shall be set ten (10) days from that judgment. During that time other
 8 candidates may request further recounting. If further recounting is
 9 required, the court shall set a new bond in accordance with subsection
 10 (1)(f) of this section, which shall be paid by the requesting party.

11 3. If the recount results do not change the outcome of the election, the
 12 court's new election certification shall stand, in an amount to be fixed
 13 by the Circuit Judge. The bond may be filed by the state political party,
 14 political organization, or political group, if any, to which the candidate
 15 is affiliated.

16 (h) Upon the bond being filed, the clerk shall immediately notify the Circuit
 17 Judge of the request and the filing of the bond, and the judge shall at once
 18 enter an order directing the keys, voting machines, voting equipment, or
 19 voting system, ballots, boxes, and all papers pertaining to the election be
 20 secured. The court shall further order that the voting equipment, voting
 21 system, and ballot boxes containing all paper ballots shall remain
 22 continuously locked as required by KRS 117.295 until the time set for the
 23 recount. The clerk of the Circuit Court shall be designated by the court as
 24 the custodian of the keys and materials while they are in the possession of
 25 the Circuit Court, and they shall remain in the custody and possession of the
 26 Circuit Court ~~county board of elections~~ until the time set for the recount.

27 (i)(f) The Circuit Court shall fix a day for the recount proceedings to begin. A

1 copy of the order shall be served upon the parties or their counsel in the same
2 manner as notices are required to be served, which shall be deemed sufficient
3 notice of the proceeding.

4 **(j) The Circuit Court may use the services of any law enforcement agency to**
5 **transport all of the materials described in subsection (1)(h) of this section.**
6 **All materials ordered by the Circuit Court shall be sealed, to the extent**
7 **possible, and transmitted in a tamper-resistant manner. The chain of**
8 **custody for the materials shall be recorded, in writing, on a form prescribed**
9 **by the State Board of Elections in administrative regulations promulgated**
10 **under KRS Chapter 13A to include the identity of the person or persons**
11 **transferring and receiving the materials, and the date, time, and location of**
12 **the transfer.**

13 **(k)(g) The court shall designate commissioners to assist in the recount and**
14 **there shall be an equal number of commissioners to represent the contestant**
15 **and the contestee.**

16 **(l)** At the recount, each political party represented on the county board of
17 elections may appoint a representative to be present, and each candidate
18 subject to the recount may be present, either in person or by a representative,
19 or both. **The attorneys representing the parties may be present at all**
20 **hearings and at the recount of the ballots.** The ~~court~~~~county board of~~
21 ~~elections~~ shall authorize representatives of the news media to observe the
22 recount.

23 **(m)(h)** On the day fixed by the court, the ~~court~~~~county board of elections~~ shall
24 meet and after confirming the integrity of the ballots, shall proceed to recount
25 the ballots.

26 **(n)(i)** The ~~court~~~~county board of elections~~ shall complete the recount as soon
27 as practicable, and shall **file and enter a judgment of record of the results**

1 ~~thereof~~ forward the results of the recount to the Circuit Court.

2 ~~(o)(j)~~ Upon ~~receipt of~~ the results of the recount, the court shall enter a
3 judgment setting out the results of the recount, and directing the State Board
4 of Elections or county board of elections, whichever would issue the
5 certificate of election, to issue the certificate to the party entitled thereto as
6 shown by the recount.

7 ~~(p)(k)~~ No certificate of election shall be issued by the State Board of Elections
8 or any county board of elections while any recount proceeding is pending, and
9 any certificate of election issued before the final judgment in any recount
10 proceeding shall be null and void.

11 ~~(q)(l)~~ Any party may appeal from the judgment issued under paragraph ~~(o)(j)~~
12 of this subsection to the Court of Appeals, in the same manner as provided in
13 KRS 120.075, and all of the provisions of that statute shall apply.

14 ~~(r)(m)~~ If a proceeding for recount is requested and prosecuted in a contest
15 proceeding, the recount shall not await the preparation or trial of the contest in
16 the Circuit Court or in the Court of Appeals. The action of the courts shall be
17 final as to the question of a recount of the ballots under this subsection, and
18 certificates shall then be issued to the parties entitled thereto.

19 (2) (a) Any slate of candidates for Governor and Lieutenant Governor, or any
20 candidate for the United States Senate or the United States House of
21 Representatives who was voted for at a regular election or a special election,
22 and who does not qualify for an automatic recount under KRS 120.157, may
23 request a recount of the ballots by filing a petition in the Franklin Circuit
24 Court.

25 (b) For any slate of candidates for Governor and Lieutenant Governor, the
26 petition requesting a recount shall be filed not later than the Tuesday
27 following the election. No recanvass under KRS 117.305 shall be conducted.

1 The court shall order the recount to commence at 9 a.m. local time not later
2 than a date thirty (30)~~five (5)~~ days following any election~~after the filing of~~
3 ~~the petition~~. The recount shall be completed by the court~~county board of~~
4 ~~elections~~ within fourteen (14) days of commencement of the recount,
5 Sundays excluded. The State Board of Elections shall be named a party
6 defendant in the petition.

7 (c) For any candidate for the United States Senate or the United States House of
8 Representatives, the petition requesting a recount shall be filed not later than
9 the second Tuesday following the election. The State Board of Elections shall
10 be named a party defendant in the petition.

11 (d) Except for the time requirements established under paragraphs (b) and (c) of
12 this subsection, the recount shall proceed as provided in subsection (1)~~(d)~~~~(e)~~
13 to (e)~~(i)~~ of this section.

14 (e) No appeal shall be taken from the findings issued by the Franklin Circuit
15 Court described in subsection (1)~~(e)~~~~(i)~~ of this section; however, any party
16 aggrieved by the findings or action of the court may file a petition for contest
17 to the General Assembly under KRS 120.195, and the General Assembly may
18 accept, modify, or disregard the findings of the court in its sole and absolute
19 discretion.

20 (f) No certificate of election shall be issued by the State Board of Elections while
21 any recount proceeding or contest proceeding is pending, and if issued before
22 entry of the findings described in paragraph (e) of this subsection shall be null
23 and void.

24 (g) Any candidate for the United States Senate or the United States House of
25 Representatives aggrieved by the findings or action of the court shall proceed
26 under the rules established by the United States Congress or federal law.

27 (3) (a) Any candidate for the General Assembly who was voted for at a regular

1 election or special election, and who does not qualify for an automatic recount
2 under KRS 120.157, may request a recount of the ballots by filing a petition in
3 the Circuit Court of the county where the requesting candidate resides.

4 (b) The petition requesting a recount shall be filed not later than the second
5 Tuesday following the election. The State Board of Elections shall be named a
6 party defendant in the petition.

7 (c) The recount shall proceed as provided in subsection (1)~~(d)~~~~(e)~~ to ~~(o)~~~~(j)~~ of
8 this section.

9 (d) No appeal shall be taken from the findings issued by the court described in
10 subsection (1)~~(o)~~~~(j)~~ of this section; however, any party aggrieved by the
11 findings or action of the court may file a petition for contest to the General
12 Assembly under KRS 120.195, and the General Assembly may accept,
13 modify, or disregard the findings of the court in its sole and absolute
14 discretion.

15 (e) No certificate of election shall be issued by the State Board of Elections while
16 any recount proceeding or contest proceeding is pending, and if issued before
17 entry of the findings described in subsection (1)~~(o)~~~~(j)~~ of this section shall be
18 null and void.