

As Introduced

127th General Assembly
Regular Session
2007-2008

S. B. No. 286

Senator Cates

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A BILL

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: 23

(1) "Designated agents" means a team of two persons who are 24
members of different political parties, including law enforcement 25
officers or employees or agents of a county board of elections who 26
have taken an oath to uphold the laws and Constitution of Ohio, 27
including an oath that they will directly, promptly, and securely 28
collect the voted ballots from the polling places and deliver them 29
to the board of elections. 30

(2) "Midday" means the period beginning at noon and ending at 31
three p.m. on the day of an election. 32

(3) "Optical scan ballot" has the same meaning as in section 33
3506.21 of the Revised Code. 34

(B) Notwithstanding division (D) of section 3506.21 of the 35
Revised Code or any other provision of the Revised Code to the 36
contrary, a board of elections that voted, prior to February 1, 37
2008, to tabulate the unofficial results of optical scan ballots 38
voted in a precinct polling place at the March 4, 2008, primary 39
election at a central location may do both of the following: 40

(1) Tabulate the unofficial results of optical scan ballots 41
voted on election day at a central location; 42

(2) Arrange to have voted ballots collected and delivered to 43
the office of the board of elections at any time during midday. 44
Voted ballots that have been properly sealed in locked containers 45
shall be collected and delivered to the board by members of the 46
board or by their designated agents. 47

(C) If a board of elections chooses to conduct a midday 48
ballot collection under this section, the presiding judge of each 49
precinct shall, by proclamation, announce that a midday collection 50
of the ballots for delivery to the board of elections shall be 51
conducted. 52

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 84
ballots under division (C)(3) of this section until the number of 85
those ballots is determined and the certification required under 86
division (C) of this section has been completed, signed, and 87
tendered to the designated agents along with the voted ballots for 88
midday collection, no judge in the precinct shall separate or 89
leave the polling place, except from unavoidable necessity. An 90
"unavoidable necessity," under this division includes illness, 91
death of a family member, or other incapacitation that would 92
prevent the judge from observing or assisting in the midday ballot 93
reconciliation and collection of the voted ballots. At no time 94
shall more than one half of the judges of elections conducting a 95
midday ballot reconciliation under division (C) of this section be 96
members of the same political party. 97

(E) After the judges have completed the midday reconciliation 98
of the voted ballots and signed the certification required under 99
division (C) of this section, the judges shall, in the presence of 100
the designated agents, place all voted ballots to be collected by 101
the designated agents and delivered to the board of elections in a 102
sealed container that cannot be opened without breaking the seal. 103
The container and its seal shall each bear a number that 104
corresponds to a recorded key or list of such numbers that the 105
board of elections maintains. The number on the container and its 106
seal shall be verified and recorded on the key or list when the 107
voted ballots are delivered midday to the board of elections. 108

Before leaving the polling location, the designated agents 109
shall sign a receipt, which shall be maintained by the judges of 110
that precinct, acknowledging that the designated agents have 111
received the voted ballots, forms, certifications, and any other 112
materials prescribed the secretary of state for midday delivery to 113
the board of elections. A plain indication that the items are to 114
be delivered midday to the board of elections shall appear in a 115

prominent location on the outside of the items. 116

The designated agents shall deliver the voted ballots, forms, 117
certifications, and any other materials prescribed by the 118
secretary of state for midday delivery to the director and deputy 119
director of the board of elections, who shall record their 120
delivery as provided in this division and in the manner prescribed 121
by the secretary of state. 122

(F) The secretary of state, by directive, shall provide 123
requirements for all of the following regarding the midday 124
collection and delivery of voted ballots to a board of elections 125
under this section: 126

(1) Persons to serve as designated agents; 127

(2) The manner of handling ballots during collection and 128
delivery; 129

(3) Maintenance of ballot boxes for each precinct; 130

(4) Secure delivery of the voted ballots to the board of 131
elections; 132

(5) Ballot reconciliations with the pollbook or poll lists 133
that are transported to and from a polling location. 134

Sec. 3506.21. (A) As used in this section, "optical scan 135
ballot" means a ballot that is marked by using a specified writing 136
instrument to fill in a designated position to record a voter's 137
candidate, question, or issue choice and that can be scanned and 138
electronically read in order to tabulate the vote. 139

(B)(1) In addition to marks that can be scanned and 140
electronically read by automatic tabulating equipment, any of the 141
following marks, if a majority of those marks are made in a 142
consistent manner throughout an optical scan ballot, shall be 143
counted as a valid vote: 144

(a) A candidate, question, or issue choice that has been circled by the voter;	145 146
(b) An oval beside the candidate, question, or issue choice that has been circled by the voter;	147 148
(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;	149 150 151
(d) A candidate, question, or issue choice that has been marked with a writing instrument that cannot be recognized by automatic tabulating equipment.	152 153 154
(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.	155 156 157 158
<u>(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 may properly 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 properly cast.</u>	159 160 161 162 163 164 165 166
(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.	167 168 169 170 171
<u>(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</u>	172 173 174 175

location. 176

(2) A board of elections that provides for the tabulation of 177
the unofficial results of optical scan ballots for a precinct in a 178
precinct polling place, and then, at a central location, combines 179
those precinct ballot totals with the ballot totals from other 180
precincts shall not be considered to be tabulating the unofficial 181
results of optical scan ballots at a central location for the 182
purpose of division (D)(1) of this section. 183

Sec. ~~3505.25~~ 3599.07. No judge of elections, observer, or 184
police officer admitted into the polling rooms at the election, at 185
any time while the polls are open, shall have in the individual's 186
possession, distribute, or give out any ballot or ticket to any 187
person on any pretense during the receiving, counting, or 188
certifying of the votes, or have any ballot or ticket in the 189
individual's possession or control, except in the proper discharge 190
of the individual's official duty in receiving, counting, or 191
canvassing the votes. This section does not prevent the lawful 192
exercise by a judge of elections or observer of the individual 193
right to vote at such election. 194

Section 2. That existing sections 3505.25 and 3506.21 of the 195
Revised Code are hereby repealed. 196

Section 3. Section 3505.25 of the Revised Code is hereby 197
repealed, effective May 1, 2008. 198

Section 4. This act is hereby declared to be an emergency 199
measure necessary for the immediate preservation of the public 200
peace, health, and safety. The reason for such necessity is to 201
ensure an orderly and timely election process for the March 4, 202
2008, primary. Therefore, this act shall go into immediate effect. 203

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