

As Passed by the House

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Am. S. B. No. 286

Senator Cates

**Cosponsors: Senators Fedor, Roberts, Harris, Miller, R., Spada, Wilson
Representatives Beatty, Boyd, Brown, Budish, Chandler, DeBose, Domenick,
Dyer, Foley, Garrison, Luckie, Mallory, McGregor, J., Redfern, Stewart, D.,
Szollosi, Williams, B., Yates, Yuko**

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A B I L L

To amend section 3506.21; to amend, for the purpose 1
of adopting a new section number as indicated in 2
parentheses, section 3505.25 (3599.07); and to 3
enact new section 3505.25 of the Revised Code to 4
clarify that an optical scan ballot with more than 5
the proper number of selections for a particular 6
office, issue, or question is invalidated only for 7
that office, issue, or question; to permit midday 8
collection and delivery to the board of elections 9
of optical scan ballots that will be counted at a 10
central location for the March 4, 2008, primary 11
election; to generally prohibit the central 12
counting of optical scan ballots; to terminate the 13
provisions of this act authorizing the midday 14
collection and delivery of optical scan ballots on 15
May 1, 2008, by repealing section 3505.25 of the 16
Revised Code on that date; and to declare an 17
emergency. 18

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:

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

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

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

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

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

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

(C) If a board of elections chooses to conduct a midday ballot collection under this section, the presiding judge of each precinct shall, by proclamation, announce that a midday collection of the ballots for delivery to the board of elections shall be conducted. 48
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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: 53
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(1) Count the number of electors who have voted, as shown in the pollbook or poll list; 59
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(2) Insert the number determined under division (C)(1) of this section on the report forms in the pollbook or poll list; 61
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(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. 63
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(4) Separately retain spoiled ballots for reconciliation following the close of the polls. 72
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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 74
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the midday collection and delivery of ballots. The certification 79
shall be made by a summary statement prepared by the judges in 80
duplicate, on forms provided by the board of elections and 81
prescribed by the secretary of state. 82

(D) From the time the voted ballots are removed from the 83
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 145
circled by the voter; 146

(b) An oval beside the candidate, question, or issue choice 147
that has been circled by the voter; 148

(c) An oval beside the candidate, question, or issue choice 149
that has been marked by the voter with an "x," a check mark, or 150
other recognizable mark; 151

(d) A candidate, question, or issue choice that has been 152
marked with a writing instrument that cannot be recognized by 153
automatic tabulating equipment. 154

(2) Marks made on an optical scan ballot in accordance with 155
division (B)(1) of this section shall be counted as valid votes 156
only if that optical scan ballot contains no marks that can be 157
scanned and electronically read by automatic tabulating equipment. 158

(3) If automatic tabulating equipment detects that more marks 159
were made on an optical scan ballot for a particular office, 160
question, or issue than the number of selections that a voter is 161
allowed by law to make for that office, question, or issue, the 162
voter's ballot shall be invalidated for that office, question, or 163
issue. The ballot shall not be invalidated for any other office, 164
question, or issue for which the automatic tabulating equipment 165
detects a vote to have been cast, in accordance with the law. 166

(C) The secretary of state may adopt rules under Chapter 119. 167
of the Revised Code to authorize additional types of optical scan 168
ballots and to specify the types of marks on those ballots that 169
shall be counted as a valid vote to ensure consistency in the 170
counting of ballots throughout the state. 171

(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 location. 172
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(2) A board of elections that provides for the tabulation at each precinct of voted ballots, and then, at a central location, combines those precinct ballot totals with ballot totals from other precincts, including optical scan ballots voted by absent voters, shall not be considered to be tabulating the unofficial results of optical scan ballots at a central location for the purpose of division (D)(1) of this section. 177
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Sec. ~~3505.25~~ 3599.07. No judge of elections, observer, or police officer admitted into the polling rooms at the election, at any time while the polls are open, shall have in the individual's possession, distribute, or give out any ballot or ticket to any person on any pretense during the receiving, counting, or certifying of the votes, or have any ballot or ticket in the individual's possession or control, except in the proper discharge of the individual's official duty in receiving, counting, or canvassing the votes. This section does not prevent the lawful exercise by a judge of elections or observer of the individual right to vote at such election. 184
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Section 2. That existing sections 3505.25 and 3506.21 of the Revised Code are hereby repealed. 195
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Section 3. Section 3505.25 of the Revised Code is hereby repealed, effective May 1, 2008. 197
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Section 4. (A) Notwithstanding division (D)(1) of section 3506.21 of the Revised Code, optical scan ballots required to be 199
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provided for the March 4, 2008, primary election at each precinct 201
pursuant to Directive 2008-01, issued by the Secretary of State, 202
may be counted at a central location. 203

(B) As used in this section, "optical scan ballot" has the 204
same meaning as in section 3506.21 of the Revised Code. 205

Section 5. This act is hereby declared to be an emergency 206
measure necessary for the immediate preservation of the public 207
peace, health, and safety. The reason for such necessity is to 208
ensure an orderly and timely election process for the March 4, 209
2008, primary. Therefore, this act shall go into immediate effect. 210
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