

ELECTION CODE

TITLE 14. ELECTION CONTESTS

SUBTITLE A. INTRODUCTORY PROVISIONS

CHAPTER 221. GENERAL PROVISIONS

Sec. 221.001. APPLICABILITY OF TITLE. This title does not apply to:

(1) a general or special election for the office of United States senator or United States representative;

(2) an election on a measure that is for advisory purposes only; or

(3) a presidential primary election.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, Sec. 35, eff. Sept. 1, 1987.

Sec. 221.002. JURISDICTION. (a) Except as otherwise provided by this section, the district court has exclusive original jurisdiction of an election contest.

(b) The senate and the house of representatives, in joint session, have exclusive jurisdiction of a contest of a general election for governor, lieutenant governor, comptroller of public accounts, commissioner of the general land office, or attorney general.

(c) The senate has exclusive jurisdiction of a contest of a general or special election for state senator.

(d) The house of representatives has exclusive jurisdiction of a contest of a general or special election for state representative.

(e) The governor has exclusive jurisdiction of a contest of the election of presidential electors.

(f) The court of appeals has appellate jurisdiction of contests originating in the district court.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1989, 71st Leg., ch. 163, Sec. 8, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch.1423, Sec. 6.04, eff. Sept. 1, 1997.

Sec. 221.003. SCOPE OF INQUIRY. (a) The tribunal hearing

an election contest shall attempt to ascertain whether the outcome of the contested election, as shown by the final canvass, is not the true outcome because:

(1) illegal votes were counted; or

(2) an election officer or other person officially involved in the administration of the election:

(A) prevented eligible voters from voting;

(B) failed to count legal votes; or

(C) engaged in other fraud or illegal conduct or made a mistake.

(b) In this title, "illegal vote" means a vote that is not legally countable.

(c) This section does not limit a provision of this code or another statute expanding the scope of inquiry in an election contest.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 221.004. DEFAULT JUDGMENT NOT ALLOWED. A default judgment may not be rendered in an election contest.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 221.005. DATE OF DETERMINATION OF OFFICIAL RESULT OF ELECTION. Except as provided by Section [242.003](#), in this title the date the official result of an election is determined is the date the final canvassing authority for the election completes its canvass for the office or measure involved in the contest. If a new canvass is conducted following a recount, the date of the official result is the date the authority completes its canvass on the basis of the recount.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 7.13, eff. Aug. 28, 1989.

Sec. 221.006. EFFECT OF CONTEST ON CANVASS. Except as otherwise provided by this title, the filing of an election contest before the canvass of the contested election is completed does not affect the canvassing process, and the result of the election shall be determined and certified as if the contest had not been filed.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 221.007. CONTESTEE IN CONTEST FILED BEFORE FINAL CANVASS. (a) If a contest is filed before the official result of the contested election is determined, the contestant may name as contestee the person shown by the election returns at the time of filing to be the appropriate contestee as determined under Subtitle B or C.

(b) If the final canvass reveals that a necessary contestee as determined under Subtitle B or C has not been named, the contestant must name that contestee within the time limit prescribed for filing the petition. Action taken before the necessary contestee is named shall be set aside if it denies to the contestee any right to which a contestee is entitled.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 221.008. EXAMINATION OF SECURED BALLOTS AND EQUIPMENT. A tribunal hearing an election contest may cause secured ballot boxes, voting machines, or other equipment used in the election to be unsecured to determine the correct vote count or any other fact that the tribunal considers pertinent to a fair and just disposition of the contest.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1997, 75th Leg., ch. 1078, Sec. 21, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1315, Sec. 55, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1107 (H.B. [2309](#)), Sec. 2.17, eff. January 1, 2006.

Sec. 221.009. COMPELLING VOTER TO REVEAL VOTE. (a) A voter who cast an illegal vote may be compelled, after the illegality has been established to the satisfaction of the tribunal hearing the contest, to disclose the name of the candidate for whom the voter voted or how the voter voted on a measure if the issue is relevant to the election contest.

(b) If the number of illegal votes is equal to or greater than the number of votes necessary to change the outcome of an

election, the tribunal may declare the election void without attempting to determine how individual voters voted.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1997, 75th Leg., ch. 864, Sec. 228, eff. Sept. 1, 1997.

Sec. 221.010. SECONDARY EVIDENCE FOR UNAVAILABLE BALLOTS. If an examination of ballots is needed in an election contest and the ballots are lost, destroyed, or otherwise beyond the reach of the tribunal, the voters who cast the ballots may testify as to how they voted.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 221.011. ILLEGAL VOTES SUBTRACTED. (a) If the tribunal hearing an election contest can ascertain the candidate or side of a measure for which an illegal vote was cast, the tribunal shall subtract the vote from the official total for the candidate or side of the measure, as applicable.

(b) If the tribunal finds that illegal votes were cast but cannot ascertain how the voters voted, the tribunal shall consider those votes in making its judgment.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 221.012. TRIBUNAL'S ACTION ON CONTEST. (a) If the tribunal hearing an election contest can ascertain the true outcome of the election, the tribunal shall declare the outcome.

(b) The tribunal shall declare the election void if it cannot ascertain the true outcome of the election.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 221.013. COSTS OF CONTEST WHEN ELECTION DECLARED VOID. (a) If a contested election is declared void, the tribunal shall assess the costs of the contest equally against the contestant and the contestee unless the tribunal, for good cause stated in the order assessing the costs, determines that they should be assessed otherwise.

(b) Subsection (a) does not authorize assessment of costs against a contestee who is exempt from payment of costs by this

title.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 221.014. EXPENSES OF NEW ELECTION ORDERED IN ELECTION CONTEST. (a) Except as provided by Subsections (b) and (c), the expenses of a new election ordered by a tribunal in an election contest are paid from the same fund and by the same authority that paid the expenses of the contested election.

(b) The county shall pay the expenses of a new election ordered in the contest of a local option election that was financed from money deposited by the applicants for the petition requesting the election.

(c) In any other case in which petitioners for a contested election were required to make a deposit to be used, conditionally or unconditionally, for paying the election expenses, the district court shall determine the allocation of the expenses of the contested election and new election.

(d) The secretary of state shall prescribe procedures for payment of the expenses of a court-ordered primary election.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1235 (S.B. 1970), Sec. 23, eff. September 1, 2009.

Sec. 221.015. RIGHT TO OCCUPY OFFICE INVOLVED IN CONTEST.

(a) If the official result of a contested election shows that the contestee won, on qualifying as provided by law the contestee is entitled to occupy the office after the beginning of the term for which the election was held, pending the determination of the contest. If the final judgment does not change the official result, the contestee is entitled to continue in office without again qualifying for the office.

(b) If a final judgment declaring the contestant elected is rendered after the beginning of the term for which the contested election was held, on qualifying as provided by law the contestant shall assume office as soon as practicable after the judgment becomes final.

(c) A contestee occupying the office is entitled to the emoluments of the office that accrue during the period of occupancy. A contestant who gains the office is not entitled to emoluments for any period before the contestant assumes office.

(d) If the final judgment declares the election void, the vacancy is created as of the later of the date of the judgment or the first day of the term for which the contested election was held. A person who occupies the office pending the outcome of the new election, either as a constitutional holdover from the prior term or through other law, is entitled to receive the emoluments of office until the successor qualifies for the office after the new election.

(e) The person elected at the new election must qualify for the office as if no contest had occurred.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 759, Sec. 5, eff. Sept. 1, 1993.

Sec. 221.016. PRESERVATION OF CONTEST PAPERS. (a) The papers of a contest in the district court shall be preserved under the rules applicable to the papers in a civil suit.

(b) The papers of a contest in a tribunal other than a court shall be preserved for 10 years after the date the contest is disposed of and shall then be transferred to the state library.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 221.017. EFFECT OF STATUTES OUTSIDE CODE. A statute outside this code that relates to contests of a particular type of election supersedes this code to the extent of any conflict.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Sec. 221.018. EXAMINATION OF CERTAIN CONFIDENTIAL INFORMATION. (a) Notwithstanding Section 84.0021(b), the tribunal hearing an election contest may examine the information contained in an application under Section 84.0021 relating to the address at which the applicant is registered to vote.

(b) Information may be examined under this section only for the purpose of hearing an election contest.

Added by Acts 2007, 80th Leg., R.S., Ch. 1295 (S.B. [74](#)), Sec. 9,
eff. June 15, 2007.