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SB 129 - Amendments Regarding Time Off for Advance Voting

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ELECTIONS

Elections and Primaries Generally: Amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, Relating to Primaries and Elections Generally, so as to Revise Provisions Related to Performance Review Boards; to Revise the Language That Must Be Used on Absentee Ballot Applications Distributed by Persons or Entities; to Provide for Time Off for Employees to Advance Vote; to Revise Provisions Related to Time Off for Employees to Vote on Election Day; to Revise the Latest Reporting Time for Required Election Night Reporting; to Mandate Audits Following All State-wide Primaries, Elections, or Runoffs; to Provide for Related Matters; to Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 21-2-106, -381, -404, -421, -498 (amended)
BILL NUMBER:	SB 129
ACT NUMBER:	341
GEORGIA LAWS:	2023 Ga. Laws 614
EFFECTIVE DATE:	July 1, 2023
SUMMARY:	The Act adds members of a county board of elections as persons who can comprise an independent performance review. The Act amends language found on the absentee ballot application. The Act includes a provision allowing employees to request time off for advance in-person voting. The Act gives election superintendents more time to report required information. The Act further specifies which elections may be audited.

History

Several factors obstruct the voting rights of United States citizens, such as shorter early voting times, laws that disenfranchise voters with prior felony convictions, restrictive identification requirements, and elector challenges.¹ Individuals also point to the inability to find time to get to a polling place as an obstruction to voting.² The United States Census Bureau found that 14.3% of registered voters (roughly 2.7 million people) mention busy schedules as a reason for not voting in the 2016 election.³ These factors often impact certain communities more than others—particularly Black, Indigenous, and People of Color (BIPOC) communities.⁴ Additionally, the inability to take time off from work to vote can disproportionately affect people of color, especially in light of the large earning disparities between BIPOC individuals and their white counterparts.⁵ Moreover, the United States Census estimates around thirteen million workers (nearly eight percent of the workforce) hold more than one job at a time; although, these numbers could be even higher due to constraints on who is defined as

1. Jacey Fortin, *Why Only Some Workers Get Time Off to Vote on Election Day*, N.Y. TIMES (Nov. 6, 2018), <https://www.nytimes.com/2018/11/06/us/politics/election-day-holiday.html> [https://perma.cc/2LLX-GC53]; Christopher Uggen, Ryan Larson, Sarah Shannon & Robert Stewart, *Locked Out 2022: Estimates of People Denied Voting Rights*, THE SENT’G PROJECT (Oct. 25, 2022), https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/?gad=1&gclid=Cj0KCQjwy9-kBhCHARIsAHpBjHi2jyr9l85hZA7itaMOjLddYS3XtrfeO1MbzxGmzeUwrYtlucJdmhoaAp-vEALw_wcB [https://perma.cc/428A-67FQ]; Mark Niese, *Thousands of Georgia Voters’ Eligibility Challenged Before Election*, ATLANTA J.-CONST. (Oct. 12, 2022), <https://www.ajc.com/politics/thousands-of-georgia-voters-eligibility-challenged-before-election-UA3LQGQUMZHATBELBGJNX6BDE/> [https://perma.cc/KK3W-7TJ6].

2. Fortin, *supra* note 1.

3. *Id.*; U.S. CENSUS BUREAU, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2016 (2017), <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html> [https://perma.cc/NQE4-SVAQ].

4. See, e.g., *The Impact of Voter Suppression on Communities of Color*, BRENNAN CTR. FOR JUST. (Jan. 10, 2022), <https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color> [https://perma.cc/6R5H-EPHG].

5. U.S. DEP’T OF LAB., OFF. OF FED. CONT. COMPLIANCE PROGRAMS, EARNING DISPARITIES BY RACE AND ETHNICITY (2020), <https://www.dol.gov/agencies/ofccp/about/data/earnings/race-and-ethnicity> [https://perma.cc/4J3D-D5X7] (examining statistics from 2017 to 2019 to find Black, Hispanic/Latino, and Indigenous workers earn roughly twenty-five percent less than their white counterparts).

a “multiple jobholder” and the lack of data on self-employment.⁶ Many of these individuals hold multiple jobs as a result of wages that do not match the rate of inflation and the rising cost of food, gas, housing, health insurance, and other necessities in the past year.⁷

The original legislation, Code section 21-2-404, provided individuals with time off from work to vote by stating:

Each employee in this state shall, upon reasonable notice to his or her employer, be permitted by his or her employer to take any necessary time off from his or her employment to vote in any municipal, county, state, or federal political party primary or election for which such employee is qualified and registered to vote on the day on which such primary or election is held; provided, however, that such necessary time off shall not exceed two hours; and *provided, further, that, if the hours of work of such employee commence at least two hours after the opening of the polls or end at least two hours prior to the closing of the polls, then the time off for voting as provided for in this Code section shall not be available.* The employer may specify the hours during which the employee may absent himself or herself as provided in this Code section.⁸

Although this law allowed Georgia to join the ranks of twenty-eight other states that require businesses to provide voting leave, the law’s

6. Michael Sainato, *I’m Selling My Blood’: Millions in US Can’t Make Ends Meet with Two Jobs*, THE GUARDIAN (Nov. 5, 2022), <https://www.theguardian.com/us-news/2022/nov/05/multiple-jobs-census-data-inflation-us> [https://perma.cc/T6NS-SRMM]; Julia Beckhusen, *About 13M U.S. Workers Have More Than One Job: Women More Likely to Have Multiple Jobs*, U.S. CENSUS BUREAU (June 18, 2019), https://www.census.gov/library/stories/2019/06/about-thirteen-million-united-states-workers-have-more-than-one-job.html?utm_campaign=20190618msacos1ccstors&utm_medium=email&utm_source=govdelivery [https://perma.cc/58TN-K5TQ].

7. Sainato, *supra* note 6; Tanner Garrity, *Why Do So Many Americans Have More Than One Job?*, INSIDEHOOK (Feb. 8, 2023), https://www.insidehook.com/daily_brief/health-and-fitness/americans-have-more-than-one-job#:~:text=That’s%2010%25%20of%20the%20United,responses%20from%20around%20the%20country [https://perma.cc/8YLK-Q3AF].

8. O.C.G.A. § 21-2-404 (1998) (emphasis added).

benefit was limited because the law only applied to Election Day.⁹ In addition, if an employee's work began two hours after the poll site opened or ended two hours before the poll site closed, the law did not apply.¹⁰ Thus, the statute only benefited a small group of individuals who work outside of traditional work hours, because most Georgia polls open at 7:00 a.m. and close at 7:00 p.m. on Election Day.¹¹ To demonstrate the application of the statute, the Department of Administrative Services provided examples.¹² Under Code section 21-2-404, an individual working from 7:00 a.m. to 5:30 p.m. would be eligible for voting leave because they do not have at least two hours while the polls are open before or after work to vote.¹³ However, an individual working from 8:30 a.m. to 5:00 p.m. would not be eligible for voting leave because their shift ends two hours before the polls close.¹⁴

In essence, any individual seeking to excuse themselves from work to vote on Election Day would need to work around nine hours, provide a reasonable notice to the employer, and the employer would still be able to determine the specific time the employee would be provided to vote "to avoid disrupting the workplace."¹⁵ Although Code section 21-2-404 had a very narrow application, the statute provided a small step toward making voting easier for Georgia constituents while respecting business practices.¹⁶

After Georgia Governor Brian Kemp (R) coined the phrase "easy to vote and hard to cheat," some citizens feared this expression meant the introduction of harsh voting laws that would staunch the flow of voter

9. See Chris Marr, *More Businesses Pledge Time Off to Vote as Leave Laws Stall (1)*, BLOOMBERG L., <https://news.bloomberglaw.com/daily-labor-report/more-businesses-pledge-time-off-to-vote-as-leave-laws-stagnate> [<https://perma.cc/BW8Y-PGMH>] (Oct. 26, 2022, 1:00 PM).

10. § 21-2-404.

11. Makayla Richards, *Voting Time Off Requirements in Georgia*, 11ALIVE, <https://www.11alive.com/article/news/politics/elections/verify-georgia-elections-time-off-vote-politics/85-32bc0dff-6383-4288-8fc3-f77a7bea4f92> [<https://perma.cc/P9JQ-48Z8>] (Nov. 4, 2022, 12:01 PM).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* ("Aside from [the restrictions of O.C.G.A. § 21-2-404], employers are allowed to say when their own voters take time off to avoid disrupting the workplace. [The Department of Administrative Services] also lists typical shifts that may or may not qualify for voting time off.").

16. See *id.*

turnout.¹⁷ Despite political debate over a recent flurry of voting bills, Democrats and Republicans found a small plot of common ground: individuals should be able to request time off from work to vote during the early voting period.¹⁸ This issue became a focal point in 2011 after the amendment of Code section 21-2-385, which reduced the early voting period in Georgia by more than half, decreasing the period from forty-five days to twenty-one days.¹⁹ In 2014, the Georgia Legislature further attempted to decrease the early voting period from twenty-one days to a mere six days in House Bill (HB) 891, but the bill failed to pass.²⁰

Bill Tracking of SB 129

Consideration and Passage by the Senate

Senator Rick Williams (R-25th) sponsored Senate Bill (SB) 129 in the Senate with Senator Max Burns (R-23rd), Senator Marty Harbin (R-16th), Senator Lee Anderson (R-24th), Senator Brandon Beach (R-21st), Senator John Albers (R-56th), Senator Carden Summers (R-13th), Senator Kay Kirkpatrick (R-32nd), Senator Chuck Hufstetler (R-52nd), Senator Mike Hodges (R-3rd), Senator Mike Dugan (R-30th), Senator Ed Setzler (R-37th), and Senator Russ Goodman (R-8th) cosponsoring.²¹ The bill was filed on February 9, 2023, and the Senate first read the bill on February 13, 2023.²² The Senate then

17. Warren Rojas, *Brian Kemp Tries to Head Off MAGA Republicans from Challenging His Likely Win in Tuesday's GOP Primary: 'In Georgia, It's Easy to Vote and Hard to Cheat'*, INSIDER (May 22, 2022, 1:35 PM), <https://www.businessinsider.com/brian-kemp-david-perdue-max-burns-georgia-election-integrity-2022-5> [<https://perma.cc/EPZ3-TFQP>]; Janelle Griffith, *'We're Very Concerned': Black Voters Fear Changes to Georgia Voting Laws*, NBC NEWS (Mar. 2, 2022, 1:10 PM), <https://www.nbcnews.com/politics/elections/-concerned-black-voters-fear-changes-georgia-voting-laws-rcna17391> [<https://perma.cc/2LJ4-KZDW>].

18. Virtual Interview with Sen. Rick Williams (R-25th) (June 12, 2023) [hereinafter Williams interview] (on file with the Georgia State University Law Review).

19. O.C.G.A. § 21-2-385 (2011); *Georgia Legislature Rejects Voting Measure to Substantially Reduce Early Voting*, LEGAL DEF. FUND (Mar. 21, 2014) [hereinafter *Georgia Rejects Early Voting Measure*], <https://www.naacpldf.org/press-release/georgia-legislature-rejects-voting-measure-to-substantially-reduce-early-voting/> [<https://perma.cc/SK4W-YYTS>].

20. *Georgia Rejects Early Voting Measure*, *supra* note 19.

21. Georgia General Assembly, SB 129, Bill Tracking [hereinafter SB 129, Bill Tracking], <https://www.legis.ga.gov/legislation/64202> [<https://perma.cc/6FY4-AQ3D>].

22. *Id.*; State of Georgia Final Composite Status Sheet, SB 129, May 9, 2023.

referred the bill to the Senate Ethics Committee that same day.²³ The Committee favorably reported the bill on February 16, 2023.²⁴

The Senate read the bill for the second time on February 21, 2023.²⁵ On February 27, 2023, the Senate read the bill for a third time.²⁶ Without amendment or substitution, the Senate passed the bill by a vote of 51 to 4.²⁷

Consideration and Passage by the House

Representative Rob Leverett (R-123rd) sponsored the bill in the House, and the House first read the bill on February 28, 2023.²⁸ The House also committed the bill to the House Committee on Governmental Affairs on February 28, 2023.²⁹ The House read the bill for a second time on March 1, 2023.³⁰ The Committee favorably reported the bill by substitute on March 16, 2023.³¹

The substitute included four new sections and further changes to the bill as passed in the Senate.³² The first change added language including “members of a county board of elections or county board of elections and registration” as potential appointees to a performance review board.³³ The second change provided grammatical revisions and new language to ensure that an absentee ballot application contained language clarifying that it was *not* a ballot.³⁴ The third change deleted language that limited the application of the Code section.³⁵ The fourth change altered the election superintendent’s required reporting time to “11:59 P.M.”³⁶ The fifth change included

23. SB 129, Bill Tracking, *supra* note 21.

24. State of Georgia Final Composite Status Sheet, SB 129, May 9, 2023.

25. *Id.*

26. *Id.*

27. Georgia Senate Voting Record, SB 129, #82 (Feb. 27, 2023); SB 129, Bill Tracking, *supra* note 21.

28. State of Georgia Final Composite Status Sheet, SB 129, May 9, 2023; SB 129, Bill Tracking, *supra* note 21.

29. SB 129, Bill Tracking, *supra* note 21.

30. State of Georgia Final Composite Status Sheet, SB 129, May 9, 2023.

31. *Id.*

32. *See generally* SB 129 (HCS), 2023 Ga. Gen. Assemb.

33. *Id.* § 1, p. 2, ll. 25–31.

34. *Id.* § 2, p. 4, ll. 76–90.

35. *Id.* § 3, p. 5, ll. 98–103.

36. *Id.* § 4, p. 5, l. 110.

grammatical revisions and language specifying the elections in which local election superintendents may conduct precertification tabulation or risk-limiting audits and deleted language discussing the Secretary of State's requirements of conducting a risk-limiting audit.³⁷

The House read the bill for the third time on March 23, 2023, and passed the bill on the same day by a vote of 161 to 9.³⁸ On March 27, 2023, the Senate agreed to the House substitute by a vote of 46 to 3.³⁹ The Senate sent the bill to Governor Brian Kemp (R) on April 5, 2023, and Governor Kemp signed the bill into law as Act 341 on May 4, 2023.⁴⁰ The Act's effective date is July 1, 2023.⁴¹

The Act

The Act amends the following portions of the Official Code of Georgia Annotated: Code section 21-2-106, "relating to performance review of local election official, role of the performance review board, and findings as grounds for removal"; Code section 21-2-381, "relating to making of application for absentee ballot, determination of eligibility by ballot clerk, furnishing of applications to colleges and universities, and persons entitled to make application"; Code section 21-2-404, "relating to affording employees time off to vote"; Code section 21-2-421, "relating to posting of required information after closing of polls and reporting to Secretary of State"; and Code section 21-2-498, "relating to precertification tabulation audits."⁴²

Section 1

Section 1 of the Act amends Code section 21-2-106(a), which relates to performance reviews of local election officials, defines the role of performance review boards, and addresses findings as grounds

37. *Id.* § 5, pp. 6–7, ll. 132, 140–44, 161–69.

38. State of Georgia Final Composite Status Sheet, SB 129, May 9, 2023; Georgia House of Representatives Voting Record, SB 129, #277 (Mar. 23, 2023).

39. State of Georgia Final Composite Status Sheet, SB 129, May 9, 2023; Georgia Senate Voting Record, SB 129, #309 (Mar. 27, 2023).

40. SB 129, Bill Tracking, *supra* note 21.

41. *Id.*

42. 2023 Ga. Laws 614, §§ 1–5, at 614–18.

for removal.⁴³ The Act describes the appointment of members to serve on the performance review board and provides that “no such appointee shall be a local election official or member of a county board of elections or county board of elections and registration for the county or municipality, as applicable, under review.”⁴⁴

Section 2

Section 2 of the Act amends subparagraph (C) of subsection (a) of Code section 21-2-381, which relates to applying for absentee ballots, eligibility determinations by ballot clerks, “furnishing of applications to colleges and universities,” and persons entitled to apply for absentee ballots.⁴⁵ The Act does so by rewriting a provision of subparagraph (C) of subsection (a) of Code section 21-2-381 that defines required language for absentee ballot applications distributed to any elector by any person or entity.⁴⁶ This language originally stated, “This is NOT an official government publication and was NOT provided to you by any governmental entity and this is NOT a ballot. It is being distributed by [insert name and address of person, organization, or other entity distributing such document or material].”⁴⁷

After this amendment, the required language now states, “This application is being distributed by [insert name and address of person, organization, or other entity distributing such document or material], not by any government agency or any state or local election office. THIS IS NOT A BALLOT.”⁴⁸ In rewriting this language, the Act retains most of the original ballot application language but replaces “[t]his is NOT an official government publication” with “not by any government agency or any state or local election office.”⁴⁹ The Act also clarifies, to the person receiving the document, that the document is strictly an application for an absentee ballot.⁵⁰

43. 2023 Ga. Laws 614, § 1, at 614–15 (codified at O.C.G.A. § 21-2-106 (2023)).

44. *Id.*

45. 2023 Ga. Laws 614, § 2, at 615–16 (codified at O.C.G.A. § 21-2-381 (2023)).

46. *Id.*

47. *Id.*; O.C.G.A. § 21-2-381(a)(1)(C)(ii) (2022).

48. 2023 Ga. Laws 614, § 2, at 616.

49. *Id.*; O.C.G.A. § 21-2-381(a)(1)(C)(ii) (2022).

50. 2023 Ga. Laws 614, § 2, at 616.

Section 3

Section 3 of the Act amends Code section 21-2-404, a section “relating to affording employees time off to vote.”⁵¹ The Act removes language that constrained when electors could take time off from work and added language that expands the days available for employees to utilize the time off to vote mechanism.⁵²

Section 4

Section 4 of the Act amends subsection (a) of Code section 21-2-421.⁵³ Code section 21-2-421 relates to the “posting of required information after closing of polls” and “reporting to the Secretary of State.”⁵⁴ The Act changes the time at which the election superintendent shall post and report certain information from “10:00 P.M. following the close of the polls” to “11:59 P.M. following the close of the polls.”⁵⁵

Section 5

Section 5 of the Act amends Code section 21-2-498, which relates to precertification tabulation audits.⁵⁶ Specifically, this section amends paragraph (1) of subsection (a) to use more concise language.⁵⁷

Subsection (b) adds an additional form of audit, a risk-limiting audit conducted by a local election superintendent, and limits these audits to the types of elections enumerated in subsection (b).⁵⁸ The language is amended from “for any federal or state general election” to “any election, special election, election runoff, special election runoff, primary, special primary, primary runoff, or special primary runoff with . . . state-wide contests.”⁵⁹

51. 2023 Ga. Laws 614, § 3, at 616.

52. *Id.* (codified at O.C.G.A. § 21-2-404 (2023)).

53. 2023 Ga. Laws 614, § 4, at 616.

54. O.C.G.A. § 21-2-421 (2023).

55. 2023 Ga. Laws 614, § 4, at 616 (codified at § 21-2-421(a)).

56. 2023 Ga. Laws 614, § 5, at 617.

57. *Id.* (codified at O.C.G.A. § 21-2-498(a)(1) (2023)).

58. *Id.* (codified at § 21-2-498(b)).

59. *Id.*

Lastly, Section 5 of the Act deletes subsection (c) in its entirety.⁶⁰ Subsection (c) discussed risk-limiting audits conducted by the Secretary of State.⁶¹

Analysis

Unresolved Issues of the Act

Although the Act serves as a substantial expansion of early voting rights for Georgia's citizens, some politicians questioned whether the Act went far enough or addressed deeply rooted voting issues.⁶² For example, Representative Rhonda Burnough (D-77th) pointed out that although the Act is a step in the right direction, the Act "would also be more acceptable if we could add at least ten drop boxes to each county, because we all don't have mailboxes at the end of our driveways."⁶³ Representative Burnough also added that "we have constituents that work different shifts and need more flexibility," pointing to systemic issues that electors face, even in light of expanding voting rights.⁶⁴

One such systemic issue is that constituents with hourly wages may refrain from taking time off to vote as prescribed by the Act due to extenuating circumstances. According to one study surveying one thousand United States hourly employees and employers in 2019, "even one missed shift means late payments on rent, utilities, and other basic necessities for almost half of the respondents surveyed."⁶⁵ Moreover, single parents especially feel the effects of missed hourly wages when confronted with other costs that they must shoulder alone, such as expenses for childcare, food, and clothes.⁶⁶

60. *Id.* at 617–18.

61. *Id.*

62. *See, e.g.*, Video Recording of House Proceedings at 1 hr., 54 min., 45 sec. (Mar. 23, 2023) (remarks by Rep. Rhonda Burnough (D-77th)), <https://www.youtube.com/watch?v=V6jqJm55QLc&t=1001s> [<https://perma.cc/8HWR-TU4D>].

63. *Id.*

64. *Id.*; *see also* 2023 Ga. Laws 614, § 3, at 616 (codified at O.C.G.A. § 21-2-404 (2023)).

65. Liz Frazier, *There Are Far-Reaching Financial Consequences for Missing Just a Single Shift, Study Shows*, FORBES (Feb. 4, 2019, 9:28 AM), <https://www.forbes.com/sites/lizfrazierpeck/2019/02/04/there-are-far-reaching-financial-consequences-for-missing-just-a-single-shift-study-shows/?sh=5c9963f633ba> [<https://perma.cc/9N3M-9BZF>].

66. *Id.*

Further, as one 2022 poll of two thousand employed Americans demonstrated, sixty-two percent of employed Americans admit they go to work in-person despite being sick and sixty-four percent reported that “taking a sick day would cause financial strain.”⁶⁷ This is coupled with the fact that sixty-seven percent of the polled Americans expressed financial security concerns with the growing economic inflation.⁶⁸ In addition, the minimum federal hourly wage is \$7.25, which comes out to approximately \$290 weekly and \$15,000 annually if an individual works forty hours each week.⁶⁹ According to the most recent report by the Bureau of Economic Analysis, the per capita personal consumption expenditure cost in Georgia was \$43,482 in 2021.⁷⁰ In comparison, the federal poverty level for individuals in 2023 is \$14,580.⁷¹ Finally, according to the United States Census, fourteen percent of Georgia citizens live in poverty.⁷² Because Georgia citizens that earn hourly wages must work nearly every hour to make ends meet, these individuals likely cannot afford to take two hours off of work to vote.

During one Georgia Senate session, Senator Tonya Anderson (D-43rd) asked, “Is it not true that I introduced a bill that will allow for Election Day to be a state holiday, which would allow for there to be no permission given but that everyone would have the day off to

67. SWNS, *62% of Americans Admit to Going to Work in Person Even While Sick*, N.Y. POST (Oct. 27, 2022, 10:35 AM), <https://nypost.com/2022/10/27/62-of-americans-admit-to-going-to-work-in-person-even-while-sick-poll/> [<https://perma.cc/LC3C-BM3H>].

68. *Id.*

69. Rachel Aragon, *Georgia Bill Would Increase State Minimum Wage to \$15 Per Hour*, ATLANTA NEWS FIRST (Feb. 9, 2023, 5:55 PM), <https://www.atlantaneewsfirst.com/2023/02/09/georgia-bill-would-increase-state-minimum-wage-15-per-hour/> [<https://perma.cc/ZUE9-6VJT>]; *Annual/Monthly/Weekly/Hourly Converter*, TALENT.COM, <https://www.talent.com/convert?salary=7.25&start=hour&end=year#:~:text=Annual%20%2F%20Monthly%20%2F%20Weekly%20%2F%20Hourly%20Converter&text=If%20you%20make%20%247.25%20per,Yearly%20salary%20would%20be%20%2415%2C080> [<https://perma.cc/YB2R-C9K5>].

70. BUREAU OF ECON. ANALYSIS, PERSONAL CONSUMPTION EXPENDITURES BY STATE 2021 (2021), <https://www.bea.gov/news/2022/personal-consumption-expenditures-state-2021> [<https://perma.cc/9PXS-7ELR>].

71. *Federal Poverty Level (FPL)*, HEALTHCARE.GOV, <https://www.healthcare.gov/glossary/federal-poverty-level-fpl/> [<https://perma.cc/2YYF-VYZJ>].

72. *QuickFacts, Georgia; United States*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/GA,US/IPE120221> [<https://perma.cc/7G6Y-3H7P>]. The percentages used in this Article are from the United States Census Bureau as of July 23, 2023.

vote?”⁷³ However, this proposed change would only be a partial solution as state employees typically get paid time off for state holidays; still, the same is not always true for individuals working at private businesses.⁷⁴ Another solution, then, is for the Georgia Legislature to add a provision to Code section 21-2-404 requiring all businesses and state offices to provide paid time off for employees to vote. However, this will likely not come to fruition as many Georgia politicians feel that the state cannot and should not provide monetary incentives for voting.⁷⁵ As Senator Rick Williams (R-25th) explained, individuals need to want to vote on their own accord, and a bill “mak[ing] sure they got paid time off to go vote” would be improper, stating that:

Then, you’re rewarding someone to vote. And that’s a final line that’s been in the voting laws and the Code section is that you can’t reward people to register to vote. You can’t reward them to vote. They’ve got to have that initiative in themselves to go vote and do so without any undue influence.⁷⁶

While this Act substantially expands time off for voting, questions still exist if hourly wage workers, a sizable portion of the Georgia population, will be able to use this mechanism. However, this issue may come into focus in the future in close-margin elections, such as the 2022 runoff between United States Senator Raphael Warnock

73. Video Recording of Senate Proceedings at 1 hr., 42 min., 20 sec. (Feb. 27, 2023) (remarks by Sen. Tonya Anderson (D-43rd)), <https://www.youtube.com/watch?v=kelkKQXPXGY> [<https://perma.cc/WC93-LHBF>].

74. *Holiday Leave*, GA. DEP’T OF PUB. SAFETY, <https://dps.georgia.gov/holiday-leave> [<https://perma.cc/L5EY-8B2C>]. See, e.g., Michael E. Kanell, *Juneteenth So Far Only Partially Embraced by Private Sector*, ATLANTA J.-CONST. (June 17, 2022), <https://www.ajc.com/news/georgia-news/juneteenth-so-far-only-partially-embraced-by-private-sector/CJ3GB7MXQVBFNJ5OY4OQBXUI7Q/> [<https://perma.cc/SP7A-CGCF>].

75. Williams Interview, *supra* note 18.

76. *Id.*

(D-GA) and Herschel Walker, which turned on a differential of only 96,613 votes.⁷⁷

Remedies for Violating Section 21-2-404

The Act does not discuss any potential employee remedies for employers that fail or refuse to grant time off to vote to employees who properly follow the procedure described in Code section 21-2-404.⁷⁸ However, Senator Williams indicated, “It’s not in the legislation. But, you know, there again, if someone denied someone the right to go vote, then the employee could seek relief, I’m sure, through some . . . legal action or something.”⁷⁹ While the Code does not provide any direct guidance in the remaining portions of the Chapter, Code section 21-2-598 may provide a legal avenue for employees to ensure employers abide by the requirements of Code section 21-2-404.⁸⁰ Code section 21-2-598 provides, “Except as otherwise provided by law, any person who violates any provision of this chapter shall be guilty of a misdemeanor.”⁸¹ Although this provision may provide the necessary teeth for statutory compliance, electors still need further judicial or legislative guidance on the criminal remedies and, if available, civil remedies.

Comparison to Other State Laws

Georgia joins the ranks of many other states in the country mandating employers to allow employees time off for voting.⁸² Indeed, as compared to Alabama and Florida, the Act provides more time off

77. Sam Gringlas, *Democratic Sen. Raphael Warnock Defeats Republican Herschel Walker in Georgia Runoff*, NPR, <https://www.npr.org/2022/12/06/1141162415/democratic-sen-raphael-warnock-defeats-republican-herschel-walker-in-georgia-run> [https://perma.cc/5MPM-7ZKS] (Dec. 7, 2022, 12:16 AM).

78. 2023 Ga. Laws 614, § 3, at 616 (codified at O.C.G.A. § 21-2-404 (2023)).

79. Williams Interview, *supra* note 18.

80. *See id.*; 2023 Ga. Laws 614, § 3, at 616; O.C.G.A. § 21-2-598 (2023).

81. § 21-2-598.

82. Tom Huddleston Jr., *A State-by-State Guide to Where You’re Guaranteed Paid Time Off for Voting—and Where You Aren’t*, CNBC, <https://www.cnbc.com/2022/11/01/us-states-where-employers-have-to-give-you-paid-time-off-to-vote.html> [https://perma.cc/UUW4-VP8V] (Nov. 8, 2022, 1:10 PM).

for voting than either state.⁸³ Further, the Act includes language specifying that employers must give time off to vote “on one of the days that are designated for advance in-person voting.”⁸⁴ While Alabama mandates employers give up to one hour of time off to vote, Alabama’s law only specifies that time off must be given “on the day on which the primary or election is held.”⁸⁵ Thus, the Act provides opportunities for Georgians to request time off to vote early while the Alabama and Florida statutes do not.

Even though Georgia provides more time off than its fellow Eleventh Circuit states, other states provide the same or more benefits. For example, Tennessee law requires up to three hours of time off to vote.⁸⁶ This Tennessee law also requires that employees receive paid time off, which Georgia law does not.⁸⁷ However, similar to Alabama, the Tennessee law does not specify that time off is required for early voting.⁸⁸

Although Georgia provides more opportunities than many states by permitting time off for early voting and Election Day voting, Georgia could look to other states with more expansive voting laws to further increase voting access.

Similar Legislation in the Future

Other states’ voting laws could provide a guide for Georgia to expand upon this Act. Georgia could take a page from Texas law, which provides that an offense is committed if an individual knowingly “refuses to permit the other person to be absent from work” or “subjects or threatens to subject the other person to a penalty for

83. Compare O.C.G.A. § 21-2-404 (2023) (allowing up to two hours off to vote), with ALA. CODE § 17-1-5 (LexisNexis 2023) (allowing up to one hour of time off to vote). See also *Voting Leave Laws for Employees: 50-State Survey*, JUSTIA, <https://www.justia.com/employment/employment-laws-50-state-surveys/voting-leave-laws-for-employees-50-state-survey/#florida> [https://perma.cc/98SX-346W] (Sept. 2022) (“There is no Florida voting leave law.”).

84. 2023 Ga. Laws 614, § 3, at 616 (codified at O.C.G.A. § 21-2-404 (2023)).

85. ALA. CODE § 17-1-5 (LexisNexis 2023).

86. TENN. CODE ANN. § 2-1-106 (2023).

87. Compare O.C.G.A. § 21-2-404 (2023), with TENN. CODE ANN. § 2-1-106(b) (2023). *Voting Leave Laws for Employees: 50-State Survey*, *supra* note 83.

88. See ALA. CODE § 17-1-5 (LexisNexis 2023); TENN. CODE ANN. § 2-1-106(a) (2023) (specifying only that a person “may be absent from any service or employment on the day of the election”).

attending the polls” to vote on Election Day or during early voting.⁸⁹ Texas’s law punishes employers with a misdemeanor for violating this Code section.⁹⁰

Senator Williams, the sponsor of SB 129, suggested that legal action could be the recourse sought by an employee against an employer violating this Code section.⁹¹ Adding an explicit provision like Texas could clarify the remedies available to Georgia employees if their employers violate this section. Additionally, as other states permit paid time off to vote, Georgia legislators could consider codifying this addition. Codifying paid time off for voting could ensure that all employees across Georgia receive this benefit.

Conclusion

The Georgia Legislature and Governor Brian Kemp (R) have embraced an “easy to vote, hard to cheat” conception for Georgia’s elections.⁹² The Act aims to expand Georgian’s access to the polls, ensure fair elections, and assist election officials in carrying out their duties. The Act achieves these goals but leaves room for future legislation.

Cody A. Choi & Devan K.T. Knapp

89. TEX. ELEC. CODE ANN. § 276.004 (West 2023) (classifying refusal of time off to vote or penalizing or threatening to penalize for absence to vote as a misdemeanor).

90. *Id.*

91. See Williams Interview, *supra* note 18.

92. See Rojas, *supra* note 17.

