**MODEL STATE LEGISLATION**

**THE STOP ELECTION SABOTAGE ACT**

**REVIEW DRAFT FOR LEGISLATIVE COUNSEL, VERSION 3.0**

**REVISION NOTE**

This is version 3.0. It adds substitute certification and preservation notice authority to Section 7, an aggravated grade for acts under color of law and organizational fines to Section 4, whistleblower protection as Section 14, and disqualification from election office on conviction as Section 15. The prior revision's changes are retained, and the prior draft's Sections 14 through 16 are renumbered 16 through 18.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [STATE]:**

**SECTION 1. SHORT TITLE**

This act may be cited as the Stop Election Sabotage Act.

**SECTION 2. LEGISLATIVE FINDINGS**

The legislature finds that:

(a) Ballots, voter data, voting technology, and election records in the custody of election officials are administered under the law of this state, and the Constitution of the United States assigns the administration of elections to the states in the first instance.

(b) Interference with elections occurs through multiple documented methods, including seizure of ballots, unauthorized access to voting systems and voter data, intimidation of election officials and workers, interference with canvass and certification, refusal by officials to perform ministerial certification duties, destruction of records, and coordinated armed deployments at election facilities.

(c) Remedies that become available only after certification do not protect the election in which the interference occurs.

(d) Federal law at 52 U.S.C. 20701 requires the preservation of federal election records for twenty-two months; federal law at 52 U.S.C. 20703 provides for inspection and reproduction of such records on written demand of the Attorney General and does not authorize their removal from custody; and no provision of federal law authorizes the removal of ballots, nonpublic voter data, or voting equipment from state or county custody before certification absent an order of a court of competent jurisdiction.

(e) This act is intended to operate in full harmony with federal law and does not prohibit any conduct that a valid federal statute or federal court order affirmatively authorizes.

**SECTION 3. DEFINITIONS**

As used in this act:

(a) "Ballot" means any official ballot, whether voted, unvoted, spoiled, provisional, or absentee, and any package, container, or drop box containing ballots.

(b) "Election materials" means ballots, tally sheets, canvass records, chain of custody logs, audit records, certified voting technology, including voting machines, tabulators, software, and storage media, the statewide voter registration database, and nonpublic voter data.

(c) "Nonpublic voter data" means voter information not subject to disclosure under [the state public records act] or the National Voter Registration Act, 52 U.S.C. 20507(i), including full dates of birth, identification numbers, and signatures.

(d) "Election official" means the secretary of state, a county or municipal clerk, registrar, or election administrator, and their authorized staff.

(e) "Election worker" means any person authorized by an election official to perform duties in the administration of an election, whether paid or volunteer.

(f) "Certification" means the final certification of election results by the officer or body authorized under the law of this state.

(g) "Ministerial duty" means a duty relating to canvass or certification that the law of this state requires an official to perform by a fixed deadline without discretion as to whether to perform it.

(h) "Order of a court of competent jurisdiction" means an order or warrant issued by a state or federal court, and includes legal process after a court has ordered compliance.

(i) "Armed" means carrying or displaying a firearm or other dangerous weapon.

(j) "Coordinated armed presence" means one or more armed persons stationed, patrolling, or assembled at a location under common direction, plan, or agreement, and does not include an individual voter or worker lawfully present and lawfully carrying who is not acting under such direction, plan, or agreement.

(k) "Intimidation" means conduct or communication, made knowingly or with reckless disregard of its threatening character, that would place a reasonable person in fear of bodily harm, unlawful arrest or detention, or other unlawful injury.

(l) "Material support" means funds, property, personnel, transportation, equipment, or services provided with the intent that they be used, or with knowledge that they are to be used, to commit an offense under this act.

**SECTION 4. OFFENSES**

(a) Unlawful seizure of ballots. A person commits this offense if the person knowingly takes, removes, seizes, or exercises unauthorized custody or control over any ballot or election materials in the custody of an election official before certification, without authorization under the election laws of this state or an order of a court of competent jurisdiction.

(b) Unlawful access to election technology and data. A person commits this offense if the person knowingly and without authorization under the election laws of this state or an order of a court of competent jurisdiction accesses, copies, alters, disables, or takes custody of certified voting technology, a tabulation system, the statewide voter registration database, or nonpublic voter data.

(c) Intimidation of election officials and workers. A person commits this offense if the person, by force, threat of force, or intimidation, and with intent to interfere with the performance of official election duties or to compel any official act or omission relating to an election, interferes with an election official or election worker.

(d) Interference with canvass or certification. A person commits this offense if the person knowingly, by force, threat, fraud, or unauthorized physical act, prevents or materially delays the counting, canvassing, transmission, or certification of election results.

(e) Willful failure to perform certification duties. An election official commits this offense if the official willfully fails or refuses to perform a ministerial duty by the deadline fixed by law, except as directed by an order of a court of competent jurisdiction.

(f) Destruction of election records. A person commits this offense if the person knowingly and with intent to impair their availability or integrity destroys, conceals, or alters election materials before certification or before the expiration of the retention period required by state or federal law, without lawful authorization.

(g) Unlawful armed deployment. A person commits this offense if, during the period beginning [forty-five] days before any election and continuing through certification, the person knowingly directs, organizes, or participates in a coordinated armed presence within [250] feet of a polling place, ballot drop box, elections office, or canvass facility without the written authorization of the responsible election official. This subsection does not apply to a peace officer performing lawful duties or responding to an urgent public safety emergency; to security personnel retained by the responsible election official; to security personnel employed by an owner or occupant of other premises within the zone, acting within the scope of that employment and not directed at an election facility, election official, election worker, or voter; or to persons within a private residence or on residential property they lawfully occupy.

(h) Grading. Each offense under this section is a felony punishable by imprisonment for up to [three] years, a fine of up to [$10,000], or both, [conform to state felony classification; grading

may be tiered among the subsections to state practice]. An organization convicted of an offense under this act is subject to a fine of up to [$1,000,000] per offense, in addition to forfeiture under Section 8.

(i) Aggravation for acts under color of law. An offense under this section committed by an election official, a public officer or employee of any government, or a person acting under color of law is punishable by an additional term of imprisonment of up to [two] years, [or one felony grade higher, conform to state classification].

**SECTION 5. ATTEMPT**

An attempt to commit any offense under Section 4 is punishable to the same extent as the completed offense. A peace officer may arrest a person on probable cause that the person is committing or attempting an offense under Section 4.

**SECTION 6. CONSPIRACY, SOLICITATION, AND FINANCING**

(a) A person who agrees with one or more persons to commit an offense under Section 4, where any party to the agreement performs an overt act in furtherance of it, or who solicits, orders, or directs such an offense, or who provides material support for such an offense, is guilty of that offense and subject to the same penalties.

(b) Liability under this section applies whether or not the person was physically present and whether or not the object offense was completed.

**SECTION 7. PROTECTION AND RAPID ENFORCEMENT**

(a) State and local law enforcement agencies shall protect election officials, election workers, election facilities, and election materials upon the request of an election official. [In states with local-mandate reimbursement requirements, include the appropriation or disclaimer state law requires.]

(b) The attorney general, the secretary of state, or any election official may petition for a temporary restraining order or injunction against actual or threatened violations of this act. The court shall hold a hearing as soon as practicable and no later than 24 hours after filing. No bond shall be required.

(c) Upon a showing of probable cause, a court may issue an order restraining the transfer, concealment, or disposal of assets traceable to an offense under this act pending trial. An order under this subsection shall not restrain assets the defendant demonstrates are untainted and needed to retain counsel or to meet ordinary living expenses.

(d) Preservation notice. Upon written notice from the attorney general or the secretary of state to any person, identifying election materials in that person's possession or control, a duty to

preserve those materials attaches. Knowing destruction, concealment, or alteration of identified materials after notice is punishable under Section 4(f).

(e) Substitute certification. If an election official fails or refuses to perform a ministerial duty by the deadline fixed by law, a court of competent jurisdiction may, on petition by the attorney general, the secretary of state, or an affected election official, order the duty performed and may direct [the appropriate officer, or a person appointed by the court,] to execute it. Execution under this subsection has the same legal effect as performance by the official and does not bar prosecution under Section 4(e).

**SECTION 8. FORFEITURE**

(a) Upon conviction for an offense under this act, including conviction under Section 6, the court shall order forfeiture of property or funds used to commit, facilitate, or finance the offense, and the proceeds of the offense.

(b) Property of a person who neither knew of nor consented to the unlawful use is not subject to forfeiture.

(c) The court shall ensure that any forfeiture is not grossly disproportional to the gravity of the offense.

(d) Forfeited assets shall be deposited in [the state election security fund].

**SECTION 9. RACKETEERING PREDICATE**

Offenses under Section 4 are added to the list of predicate offenses under [cite the state racketeering or criminal profiteering statute]. [Where the state has no such statute, omit this section; Sections 7, 8, and 13 supply the corresponding remedies.]

**SECTION 10. ORDERS AND CLAIMED AUTHORITY**

(a) It is not a defense to prosecution under this act that the defendant acted at the direction, request, or order of any other person, official, or agency.

(b) A defendant asserting that federal law authorized the conduct charged must show that the conduct was authorized by federal law and that the defendant reasonably believed the conduct was necessary and proper to the performance of federal duties. This subsection shall be construed consistently with the Constitution of the United States and does not enlarge or diminish any immunity it provides.

**SECTION 11. CONSTRUCTION AND SAVINGS**

(a) Nothing in this act criminalizes conduct affirmatively authorized by a valid federal statute or by an order of a court of competent jurisdiction.

(b) Nothing in this act prohibits constitutionally protected speech, assembly, or petitioning, or observation, challenges, recounts, contests, audits, or litigation authorized by law.

(c) Nothing in this act limits access to records available under [the state public records act] or disclosure required by the National Voter Registration Act, 52 U.S.C. 20507(i).

**SECTION 12. JURISDICTION AND VENUE**

(a) The attorney general and the prosecuting attorney of any affected county have concurrent authority to prosecute offenses under this act.

(b) An offense under this act may be prosecuted in any county where any element of the offense occurred or where the affected certification occurs. [Conform venue to state constitutional vicinage requirements.]

**SECTION 13. CIVIL ENFORCEMENT**

The attorney general, the secretary of state, or an affected election official may bring an action for injunctive relief and civil penalties of up to [$50,000] [per violation or per course of conduct, as state practice provides]. An election official or election worker injured by a violation may bring an action for damages, and a prevailing plaintiff shall recover reasonable attorney fees.

**SECTION 14. WHISTLEBLOWER PROTECTION**

(a) No person shall discharge, demote, suspend, threaten, harass, or otherwise retaliate against an election official, election worker, or any employee for reporting in good faith a suspected violation of this act to a law enforcement agency, the attorney general, the secretary of state, or a supervising election official, or for participating in an investigation or proceeding under this act.

(b) A person injured by retaliation under this section may bring a civil action for reinstatement, back pay, damages, and reasonable attorney fees.

(c) This section does not protect statements the person knows to be false.

**SECTION 15. DISQUALIFICATION**

To the extent permitted by the constitution of this state, a person convicted of an offense under Section 4(e), or of any offense under this act committed under color of law, is disqualified for [ten] years following conviction from serving in any office or employment with authority over the administration or certification of elections. [Conform to state constitutional provisions on qualifications for office.]

**SECTION 16. LIMITATION PERIOD**

Prosecution for an offense under this act may be commenced within [six] years of the offense.

**SECTION 17. SEVERABILITY**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act and its other applications are not affected.

**SECTION 18. EFFECTIVE DATE**

This act takes effect immediately upon enactment where the constitution of this state permits urgency or emergency legislation, and otherwise on the earliest date permitted by law.