

1 HB538
2 211430-1
3 By Representative Baker
4 RFD: Constitution, Campaigns and Elections
5 First Read: 11-MAR-21

SYNOPSIS: This bill would revise the timeframe to apply to vote by absentee ballot and would revise certain procedures relating to the processing of absentee ballots.

This bill would also update certain cross-references in the relevant statute to federal law.

A BILL
TO BE ENTITLED
AN ACT

Relating to absentee ballots; to amend Sections 17-11-3, 17-11-10, and 17-11-18, Code of Alabama 1975, to revise the timeframe for applying to vote by absentee ballot; to revise certain procedures for the processing of absentee ballots; and to update certain references to federal law.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 17-11-3, 17-11-10, and 17-11-18, Code of Alabama 1975, are amended to read as follows:

1 "§17-11-3.

2 "(a) Any qualified elector of this state may apply
3 for and vote an absentee ballot by mail, by hand delivery, or
4 by commercial carrier, as determined by rule by the Secretary
5 of State, as provided in Sections 17-11-5 and 17-11-9, in any
6 primary, general, special, or municipal election, if he or she
7 makes application in writing ~~therefor not less than five days~~
8 ~~prior to the election in which he or she desires to vote~~ and
9 meets one or more of the following requirements:

10 "(1) The person expects to be out of the county or
11 the state, or the municipality for municipal elections, on
12 election day.

13 "(2) The person has any physical illness or
14 infirmity which prevents his or her attendance at the polls,
15 whether he or she is within or without the county on the day
16 of the election.

17 "(3) The person expects to work a shift which has at
18 least 10 hours which coincide with the hours the polls are
19 open at his or her regular polling place.

20 "(4) The person is enrolled as a student at an
21 educational institution located outside the county of his or
22 her personal residence, attendance at which prevents his or
23 her attendance at the polls.

24 "(5) The person is a member of, or spouse or
25 dependent of a member of, the Armed Forces of the United
26 States or is similarly qualified to vote absentee pursuant to

1 the federal Uniformed and Overseas Citizens Absentee Voting
2 Act, 42 U.S.C. 1973ff.

3 "(6) The person has been appointed as an election
4 officer or named as a poll watcher at a polling place other
5 than his or her regular polling place.

6 "(7) The person is a caregiver for a family member
7 to the second degree of kinship by affinity or consanguinity
8 and the family member is confined to his or her home.

9 "(8) The person is incarcerated in prison or jail
10 and has not been convicted of a felony involving moral
11 turpitude, as provided in Section 17-3-30.1.

12 "(b) An applicant for an absentee ballot who is a
13 member of the Armed Forces of the United States, including the
14 Alabama National Guard, the United States Naval Reserves, the
15 United States Air Force Reserves, and the United States Army
16 Reserve on active duty or active duty for training or an
17 applicant who is the spouse of any member of the armed forces
18 or any other applicant qualified to vote absentee pursuant to
19 the federal Uniformed and Overseas Citizens Absentee Voting
20 Act, 42 U.S.C. §1973ff, may make application for an absentee
21 ballot by filling out the federal postcard application form,
22 authorized and provided for under the provisions of The
23 Federal Voting Assistance Act of 1955, Public Law 296, Chapter
24 656, H.R. 4048, approved August 9, 1955, 84th Congress 1st
25 Session. Applications returned by mail must be received not
26 less than 10 days prior to the election. Applications returned

1 by hand must be received not less than five days prior to the
2 election.

3 "(c) Any registered elector who requires emergency
4 treatment of a licensed physician within five days of an
5 election may apply for an emergency absentee ballot for the
6 election and may vote by returning the absentee ballot no
7 later than noon on the day the election is held. The attendant
8 physician shall describe and certify the circumstances as
9 constituting an emergency on a special form designed by the
10 Secretary of State and provided by his or her office to local
11 absentee election managers. The special form shall be attached
12 to the application.

13 "(d) (1) Any registered elector whose name appears on
14 the poll list of qualified voters may vote by an emergency
15 absentee ballot if any of the following situations arise:

16 "a. The elector is required by his or her employer
17 under unforeseen circumstances within five days before an
18 election to be unavailable to vote at the polls on election
19 day.

20 "b. The elector is a caregiver of a person who
21 requires emergency treatment by a licensed physician within
22 five days before an election.

23 "c. A family member to the second degree of kinship
24 by affinity or consanguinity of an elector dies within five
25 days before an election.

26 "(2) Under such circumstances, the elector shall
27 apply for an emergency absentee ballot at the office of the

1 absentee election manager no later than the close of the
2 business day one day prior to the election. The applicant
3 shall complete and file an application form designed by the
4 Secretary of State for emergency absentee voters. The form
5 shall contain an affidavit which the applicant shall sign or
6 swear acknowledging that he or she was not aware of the
7 situation constituting the emergency prior to five days before
8 the election. An applicant who meets the requirements of this
9 subsection may vote by an emergency absentee ballot. After
10 voting the ballot, the voter shall hand the ballot to the
11 absentee election manager.

12 "(e) If the occurrence of a state of emergency as
13 declared in this or any other state, or by the federal
14 government, renders substantial compliance with this article
15 impossible or unreasonable for a group of qualified voters who
16 respond to the emergency, the Secretary of State, pursuant to
17 Section 41-22-5, may adopt an emergency rule to allow those
18 qualified voters to vote by absentee ballot. Notwithstanding
19 any other laws to the contrary, all expenses and costs
20 incurred by the state or any county in carrying out the
21 responsibilities and duties included in an emergency rule
22 adopted pursuant to this subsection shall be paid by the State
23 of Alabama from any funds made available for election expenses
24 under state and federal law.

25 "(f) Notwithstanding any other provision of
26 otherwise applicable law, in the event more than one absentee
27 ballot is cast in the name of the single voter, whether any

1 such multiple ballot is cast by mail or otherwise, none of the
2 affidavit envelopes containing the multiple ballots shall be
3 opened, and none of the multiple ballots shall be counted,
4 except in the event of an election contest, upon the order of
5 the election contest tribunal. Upon the conclusion of an
6 election contest or, in the event no such contest is filed,
7 upon the expiration of time for filing such a contest, the
8 multiple ballots shall be provided to the district attorney,
9 with photocopies provided to the state Attorney General, for
10 the investigation, prosecution, or other action as may be
11 appropriate under applicable law.

12 "§17-11-10.

13 "(a) Upon receipt of the absentee ballot, the
14 absentee election manager shall record its receipt ~~thereof~~ on
15 the absentee list as provided in Section 17-11-5 and shall
16 safely keep the ballot without breaking the seal of the
17 affidavit envelope.

18 "(b) ~~(1) For absentee ballots received by noon on the~~
19 ~~day of the election, the~~ The absentee election manager ~~shall,~~
20 beginning at ~~noon~~ 7:00 a.m. on the day of the election, shall
21 deliver the sealed affidavit envelopes containing absentee
22 ballots to the election officials provided for in Section
23 17-11-11. The election officials shall then call the name of
24 each voter casting an absentee ballot with poll watchers
25 present as may be provided under the laws of Alabama and shall
26 examine each affidavit envelope to determine if the signature
27 of the voter has been appropriately witnessed. If the

1 witnessing of the signature and the information in the
2 affidavit establish that the voter is entitled to vote by
3 absentee ballot, then the election officials shall certify the
4 findings, open each affidavit envelope, and deposit the plain
5 envelope containing the absentee ballot into a sealed ballot
6 box.

7 "(2) No poll worker or other election official shall
8 open an affidavit envelope if the envelope indicates the
9 ballot is an unverified provisional ballot or the affidavit
10 ~~printed thereon~~ is unsigned by the voter or unmarked, and no
11 ballot envelope or ballot ~~therein~~ may be removed or counted.
12 No poll worker or other election official shall open an
13 affidavit envelope if the voter's affidavit signature or mark
14 is not witnessed by the signatures of two witnesses or a
15 notary public, or other officer, including a military
16 commissioned officer, authorized to acknowledge oaths, and no
17 ballot envelope or ballot ~~therein~~ may be removed or counted.
18 The provision for witnessing of the voter's affidavit
19 signature or mark in Section 17-11-7 goes to the integrity and
20 sanctity of the ballot and election. No court or other
21 election tribunal shall allow the counting of an absentee
22 ballot with respect to which the voter's affidavit signature
23 or mark is not witnessed by the signatures of two witnesses 18
24 years of age or older or a notary public, or other officer,
25 including a military commissioned officer, authorized to
26 acknowledge oaths, prior to being delivered or mailed to the
27 absentee election manager.

1 "(3) Upon closing of the polls, the absentee ballots
2 shall be counted and otherwise handled in all respects as if
3 the absentee voter were present and voting in person. Precinct
4 ballot counters may be used to count absentee ballots.
5 Absentee election officials are to be appointed and trained in
6 the same manner as prescribed for regular election officials.
7 The number of absentee election officials shall be determined
8 by the number of precinct counters provided. The county
9 commission may provide more than one precinct ballot counter
10 based upon the recommendation of the absentee election
11 manager. Beginning not earlier than ~~noon~~ 7:00 a.m. on election
12 day, the absentee election officials shall perform the duties
13 prescribed in Section 17-11-11.

14 "(4) As regards municipalities with populations of
15 less than 10,000, in the case of municipal elections held at a
16 time different from a primary or general election, the return
17 mail envelopes containing the ballots shall be delivered to
18 the election official of the precinct of the respective
19 voters, unless the city or town having a population of less
20 than 10,000 inhabitants has established, by permanent
21 ordinance adopted six months prior to the municipal election,
22 ~~established~~ a procedure for the appointment of absentee
23 election officials pursuant to subsection (c) of Section
24 11-46-27.

25 "(c) (1) Absentee ballots cast in a second primary
26 election for federal, state, or county office by individuals
27 voting pursuant to the federal Uniformed and Overseas Citizens

1 Absentee Voting Act, ~~42 U.S.C. 1973ff et seq.~~ 52 U.S.C. §§
2 20301-20311, and received after noon on the day of the second
3 primary election, shall be opened and counted at the same time
4 as the verified provisional ballots. At noon seven days after
5 the second primary election, the absentee election manager
6 shall deliver the sealed affidavit envelopes containing
7 absentee ballots to the officials provided for in subsection
8 (f) of Section 17-10-2. The officials shall call the name of
9 each voter casting an absentee ballot in the presence of
10 watchers designated by any interested candidates and shall
11 examine each affidavit envelope to determine if the signature
12 of the voter has been appropriately witnessed. If the
13 witnessing of the signature and the information in the
14 affidavit establish that the voter is entitled to vote by
15 absentee ballot, then the election officials shall certify the
16 findings, open each affidavit envelope, and deposit the plain
17 envelope containing the absentee ballot into a sealed ballot
18 box.

19 "(2) No election official shall open an affidavit
20 envelope if the affidavit printed thereon is unsigned by the
21 voter or unmarked, and no ballot envelope or ballot therein
22 may be removed or counted. No election official shall open an
23 affidavit envelope if the voter's affidavit signature or mark
24 is not witnessed by the signatures of two witnesses or a
25 notary public, or other officer, including a military
26 commissioned officer, authorized to acknowledge oaths, and no
27 ballot envelope or ballot therein may be removed or counted.

1 The provision for witnessing of the voter's affidavit
2 signature or mark in Section 17-11-7 goes to the integrity and
3 sanctity of the ballot and election. No court or other
4 election tribunal shall allow the counting of an absentee
5 ballot with respect to which the voter's affidavit signature
6 or mark is not witnessed by the signatures of two witnesses 18
7 years of age or older or a notary public, or other officer,
8 including a military commissioned officer, authorized to
9 acknowledge oaths, prior to being delivered or mailed to the
10 absentee election manager.

11 "(3) The absentee ballots described in this
12 subsection shall be opened, counted, and tabulated. The
13 results of the absentee ballots counted and tabulated on
14 election day shall be amended to include the results of the
15 absentee ballots described in this subsection.

16 "(4) In all other respects, unless otherwise
17 specifically provided by law, the absentee ballots described
18 in this subsection shall be treated as other absentee ballots.

19 "§17-11-18.

20 "(a) No absentee ballot shall be opened or counted
21 if received by the absentee election manager by mail, unless
22 ~~postmarked as of the date prior to the day of the election and~~
23 received by mail no later than noon on the day of election,
24 or, if received by the absentee election manager by hand
25 delivery, unless so delivered by the voter or medical
26 emergency designee to the absentee election manager not later
27 than the close of the last business day next preceding the

1 election or, if delivered by the medical emergency designee,
2 by noon on the day of the election.

3 "(b) The above provision does not apply in the case
4 of individuals voting absentee pursuant to the federal
5 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA),
6 ~~42 U.S.C. 1973ff~~ 52 U.S.C. §§ 20301-20311, when those
7 individuals are voting in a primary, second primary, general,
8 or special election for a federal, state, or county office or
9 proposed constitutional amendment or other referenda. In the
10 case of UOCAVA voters voting absentee in a primary, second
11 primary, general, or special election for a federal, state, or
12 county office or proposed constitutional amendment or other
13 referenda, no absentee ballot shall be opened or counted, if
14 received by the absentee election manager by mail, unless
15 postmarked as of the day of the primary, second primary,
16 general, or special election and received by mail no later
17 than noon seven days after the primary, second primary,
18 general, or special election."

19 Section 2. This act shall become effective
20 immediately following its passage and approval by the
21 Governor, or its otherwise becoming law.