

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 880 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/1/05

A Bill

HOUSE BILL 1842

5 By: Representative Edwards
6
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE CASTING OF BALLOTS AND
10 ABSENTEE BALLOTS; AND FOR OTHER PURPOSES.
11

Subtitle

13 AN ACT CONCERNING THE CASTING OF BALLOTS
14 AND ABSENTEE BALLOTS.
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 7-5-307 is amended to read as follows:
20 7-5-307. Election official's initials.

21 Before giving the voter a ballot, an election official shall:

- 22 (1) ~~initial~~ Initial the back of the ballot;
23 (2) Remove the ballot stub; and
24 (3) Place the stub into the stub box provided.
25

26 SECTION 2. Arkansas Code § 7-5-309(b)(2), concerning voting
27 procedures, is amended to read as follows:

28 (2) The voter shall then ~~separate his ballot on the perforated~~
29 ~~line and~~ personally deposit the larger portion ballot in the ballot box
30 provided ~~and the smaller portion or ballot stub in the stub box provided.~~
31

32 SECTION 3. Arkansas Code § 7-5-312(b), as amended by Act 67 of 2005,
33 concerning the challenge of a voter's ballot, is amended to read as follows:

34 (b)(1) When the ballot of any voter is thus challenged, it shall be
35 treated as a provisional ballot. It shall be the duty of the election



1 officials in the election precinct to make and retain a list of the names of
2 *all persons voting a provisional ballot. The following* procedure shall be
3 followed:

4 (A) The voter shall ~~separate his or her marked ballot and~~
5 ~~ballot stub~~ mark his or her ballot;

6 (B) The voter shall place the ballot in a single
7 provisional ballot envelope and seal the envelope; and

8 (C) The voter shall place ~~the ballot stub and~~ the sealed
9 provisional ballot envelope and challenge form in a provisional voter
10 envelope.

11 (2) All provisional ballots shall be preserved, secured, and
12 separated from the remaining ballots to the end that the right of any person
13 to vote may be determined later by the county board of election commissioners
14 or the court in which an election contest may thereafter be filed.

15
16 SECTION 4. Arkansas Code § 7-5-409 is amended to read as follows:

17 7-5-409. Materials furnished to qualified voters.

18 (a)(1) The county clerk must satisfy himself or herself that the
19 applicant for an absentee ballot is a qualified registered elector in the
20 ward, precinct, or township in which he or she claims to be a resident or
21 that the applicant is exempted from registration under § 7-5-406.

22 (A) The county clerk shall verify that the application has
23 been properly signed by the applicant and, if necessary, the designated
24 bearer, administrator, or authorized agent. If the application is not
25 properly signed, the application shall be rejected by the county clerk.

26 (B) The county clerk shall notify the applicant of the
27 reason for the rejection.

28 (2) If the county clerk is unable to contact the applicant to
29 cure the deficiency, the county clerk shall forward the application with the
30 reason for the rejection to the county board of election commissioners. The
31 board shall determine whether the applicant is a qualified elector.

32 (b) If the applicant is registered or is otherwise eligible to vote
33 absentee, the county clerk shall, prior to mailing or delivering the ballot,
34 detach the ballot stub and deposit the ballot stub into a sealed box
35 designated as "Absentee Stub Box," and deliver or mail to the applicant or
36 deliver pursuant to subsections (d)-(f) of this section to the person who

1 delivers the application to the office of the county clerk pursuant to § 7-5-
2 403 the following materials:

3 (1) An official ballot for each election named in the
4 application;

5 (2) Instructions for voting and returning the ballot to the
6 county clerk;

7 (3)~~(A)~~ A ballot secrecy envelope on which there shall be written
8 or printed the words: "Ballot Only" ~~and on which shall be printed a blank~~
9 ~~voter statement containing the following information;~~

10 (4)(A) A voter statement containing the following information:

11 "I reside at the address indicated on my application. I have enclosed
12 in the return envelope:

13 ~~(i) My ballot stub;~~

14 ~~(ii)~~(i) My completed voter statement;

15 ~~(iii)~~(ii) A copy of a current and valid photo
16 identification card or current utility bill, bank statement, government
17 check, paycheck, or other government document that shows my name and address,
18 if I registered to vote for the first time by mail; and

19 ~~(iv)~~(iii) The ballot only envelope containing my
20 marked ballot; and

21 "THE INFORMATION I HAVE PROVIDED IS TRUE TO THE BEST OF MY KNOWLEDGE
22 UNDER PENALTY OF PERJURY. IF I HAVE PROVIDED FALSE INFORMATION, I MAY BE
23 SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR
24 UP TO TEN (10) YEARS, OR BOTH, UNDER FEDERAL OR STATE LAWS."

25 (B) Blanks shall be provided for the voter to provide his
26 or her printed name, signature, address, date of birth, signature of
27 administrator, authorized agent, or designated bearer, and address of the
28 administrator, authorized agent, or designated bearer; ~~and~~

29 ~~(4)~~(5) A sealable envelope upon which shall be printed or
30 written the words: "Return Envelope", the address of the county clerk, the
31 precinct of the voter, and the words: "ABSENTEE BALLOT,,
32, ELECTION"; and

33 ~~(5)~~(6) An authorized agent authorization form, as follows:

34

35 "AGENT AUTHORIZATION FORM

36

1 If applicable, fill out and sign this form and place it in the Return
2 Envelope

3
4 I hereby authorize (insert his or her name) as my
5 authorized agent, to deliver this ballot as I am medically unable to vote on
6 election day. An affidavit verifying my medical status as unable to deliver
7 the application or to vote on the day of the election is attached or has been
8 provided with my application.

9
10

11
12 signature of voter

13
14

15
16 printed name of voter

17
18

19
20 address of voter

21
22

23
24 date of birth of voter"

25 (c)(1) Except for absentee ballots mailed to an address outside the
26 county in which the applicant is registered, an absentee ballot shall be
27 mailed to the address that appears on the applicant's registration record or
28 absentee ballot application if the voter is temporarily at a different
29 address.

30 (2) The county clerk shall not mail more than two (2) absentee
31 ballots to the same address unless:

32 (A) The address is outside the territorial limits of the
33 United States and the District of Columbia;

34 (B) The address is for a long-term care or residential
35 care facility licensed by the state; or

36 (C) There are more than two (2) persons lawfully

1 registered at the same address.

2 (d) The county clerk shall not deliver absentee ballots to any person
3 other than the absentee voter unless the person picking up the ballots
4 provides satisfactory photo identification to the county clerk that he or she
5 is the person authorized by the absentee voter to pick up the ballots.

6 (e) The county clerk shall require the person picking up absentee
7 ballots for another person to sign a register under oath to be maintained by
8 the county clerk. The designated bearer register shall contain the following
9 information: printed name of designated bearer, address of designated bearer,
10 printed name of voter, and signature of designated bearer. The register shall
11 contain the following oath on each page: IF YOU PROVIDE FALSE INFORMATION ON
12 THIS FORM, YOU MAY BE GUILTY OF PERJURY AND SUBJECT TO A FINE OF UP TO TEN
13 THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR UP TO TEN YEARS, OR BOTH,
14 UNDER FEDERAL AND STATE LAWS.

15 (f) The county clerk shall not provide more than two (2) absentee
16 ballots per election to any designated bearer, nor shall the county clerk
17 accept delivery of more than two (2) absentee ballots per election from any
18 designated bearer.

19 (g) The county clerk shall not deliver in person or by any other means
20 of transmittal more than two (2) absentee ballots per election to the
21 individual authorized to receive the absentee ballots unless there are more
22 than two (2) persons lawfully registered at the same address as the
23 individual obtaining the absentee ballots, in which case the individual may
24 receive only the same number of absentee ballots as persons lawfully
25 registered at the same address.

26 (h) A designated bearer shall be allowed to pick up only two (2)
27 absentee ballots from the county clerk per election and shall be allowed to
28 *do so only during the fifteen (15) days prior to a preferential or general*
29 *election and seven (7) days prior to a general primary election.*

30

31 SECTION 5. Arkansas Code § 7-5-412 is amended to read as follows:

32 7-5-412. Marking and return of ballots - Delivery of mailed ballots.

33 (a) Upon receiving the blank ballot, statement, and envelopes, whether
34 in the office of the county clerk or elsewhere, the voter shall mark the
35 ballot, ~~tear off the lower ballot stub end,~~ and place the ballot in the
36 provided envelope. He or she shall then seal the envelope containing the

1 ballot and place it in the other, provided outer envelope with the following:

2 (1) The executed voter statement; and

3 ~~(2) The ballot stub; and~~

4 ~~(3)~~(2) A copy of a current and valid photo identification or a
5 copy of a current utility bill, bank statement, government check, paycheck,
6 or other government document that shows the name and address of the first-
7 time voter, for first-time voters who registered by mail. However, this
8 requirement does not apply if:

9 (A) The voter registered to vote by mail and provided the
10 identification at that time; or

11 (B) The first-time voter registered to vote by mail and
12 submitted his or her driver's license number or at least the last four (4)
13 digits of his or her social security number at the time and this information
14 matches the information in an existing state identification record bearing
15 the same number, name, and date of birth as provided in the registration.

16 (b) The envelope containing the ballot, ~~ballot stub~~, identification,
17 if applicable, and voter's statement must be received in the office of the
18 county clerk not later than 7:30 p.m. on the day of the election.

19 (c) An individual who desires to cast an absentee ballot but who does
20 not meet the identification requirements of subdivision (a)(3) of this
21 section may cast a ballot by mail, and the ballot shall be considered as a
22 provisional ballot.

23 (d) Ballots by mail shall be counted if received no later than the
24 time the polls close on election day. Ballots received by mail on election
25 day before the polls close shall be delivered promptly by the county clerk to
26 the election officials designated to canvass and count absentee ballots.

27
28 *SECTION 6. Arkansas Code § 7-5-416, as amended by Act 138 of 2005, is*
29 *amended to read as follows:*

30 *7-5-416. Counting of absentee ballots.*

31 (a)(1) *The election officials for absentee ballots shall meet in the*
32 *courthouse in a place designated by the county board of election*
33 *commissioners on election day for the purpose of processing absentee ballots.*

34 (2) *The county board shall give public notice of the time and*
35 *location of the opening, processing, canvassing, and counting of absentee*
36 *ballots as provided in § 7-5-202.*

1 (3) *The county clerk shall forward the absentee ballot*
2 *applications sorted alphabetically or by precinct to the election officials*
3 *for absentee ballots.*

4 (4) *The counting of absentee ballots shall be open to the*
5 *public, and candidates and political parties may be present in person or by a*
6 *representative designated in writing pursuant to § 7-5-312 during the*
7 *opening, processing, canvassing, and counting of the absentee ballots as*
8 *provided in this subchapter.*

9 (5) *Absentee or early votes may be counted prior to the closing*
10 *of the polls on election day.*

11 (b)(1) *The opening, processing, counting, and canvassing of absentee*
12 *ballots shall be conducted as follows:*

13 (A) *One (1) of the election officials shall open outer*
14 *absentee ballot envelopes one (1) by one (1) and verify the contents;*

15 (B) *If the required materials are properly placed in the*
16 *outer absentee ballot envelope, the election official shall proceed to read*
17 *aloud from the voter statement the name of the voter and the voting precinct*
18 *in which the voter claims to be a legal voter;*

19 (C) *If the required materials are not properly placed in*
20 *the outer absentee ballot envelope, a second election official shall open the*
21 *inner absentee ballot envelope to verify the contents;*

22 (D) *If all required materials are present within one (1)*
23 *or the other envelopes, the election officials shall put the materials in the*
24 *proper envelopes while preserving the secrecy of the voter's ballot and shall*
25 *proceed to read aloud from the voter statement the name of the voter and the*
26 *voting precinct in which the voter claims to be a legal voter;*

27 (E) *As each outer envelope is opened and the name of the*
28 *voter is read, the election officials for the absentee box shall list in*
29 *duplicate the name and voting precinct of the voter;*

30 (F)(i) *After the election official reads aloud from the*
31 *statement, the election officials shall compare the name, address, date of*
32 *birth, and signature of the voter's absentee application with the voter's*
33 *statement and, for first-time voters who registered by mail, the first-time*
34 *voter's identification document unless the voter previously provided*
35 *identification at the time of mailing the voter registration application.*

36 (ii) *If the application and the voter's statement do*

1 not compare as to name, address, date of birth, and signature, ~~or if the~~
2 ~~first-time voter failed to provide the required identification with the~~
3 ~~ballot or at the time of mailing the voter registration application, the~~
4 ~~absentee application, absentee ballot envelope, and voter's statement shall~~
5 ~~be placed in an envelope marked "provisional" the absentee ballot shall not~~
6 ~~be counted;~~

7 (iii) If a first-time voter fails to provide the
8 required identification with the ballot or at the time of mailing the voter
9 registration application, then the absentee application, absentee ballot
10 envelope, and voter's statement shall be placed in an envelope marked
11 "provisional" and the ballot shall be considered a provisional ballot.

12 (G) If the absentee voter fails to return the required
13 materials, the contents of both envelopes shall be placed in an envelope
14 marked "provisional";

15 (H)(i) The election official shall record the reason for
16 the challenge on the envelope, and it shall be referred to the county board.

17 (ii) The county board shall determine whether the
18 voter is qualified and whether or not the vote shall be counted;

19 (I) Failure of the voter to submit the required absentee
20 materials in the proper envelopes shall not be grounds for challenging the
21 ballot;

22 (J) If no challenge is made, the election official shall,
23 without opening the inner envelope containing the ballot, remove the inner
24 envelope and place it in the ballot box without marking it in any way;

25 ~~(K) The ballot stub ends shall be placed in a separate~~
26 ~~ballot box designated for them and retained as are other ballot stub ends;~~

27 ~~(L)~~(K)(i) After all of the outer envelopes have been
28 opened and a list has been made in duplicate of the name and voting precinct
29 of the voters, as required in this section, the election officials of the
30 absentee box shall preserve all the statements of voters and the voters'
31 identification documents and deliver them to the county clerk, who shall file
32 and keep them for the same length of time after the election as is required
33 for retention of other ballots.

34 (ii) The voter statements shall be made available
35 for public inspection during regular business hours.

36 (iii) The voters' identification documents shall not

1 be subject to public inspection except as part of a judicial proceeding to
2 contest the election;

3 ~~(M)~~(L) When all of the inner envelopes containing the
4 ballots have been placed in the ballot box ~~and the ballot stub ends have been~~
5 ~~deposited in a separate box~~, the ballot box shall be shaken thoroughly to mix
6 the ballots; and

7 ~~(N)~~(M) The ballot box shall be opened and the ballots
8 canvassed and counted.

9 (2) No election results shall be printed or released prior to
10 the closing of the polls.

11 (c) If any person casting an absentee ballot dies before the polls
12 open on election day, his or her vote shall not be counted.

13 (d) It is the intent of this section to permit the election officials
14 for absentee ballots to meet and process, canvass, and count absentee ballots
15 according to this section prior to the closing of the polls on election day.

16 ~~(e)~~(1) Absentee votes may be cast on paper ballots or ballot cards, or
17 both methods may be used.

18 ~~(1)~~(2) The ballots shall first be counted for write-in votes by
19 the election officials. Then, the ballots may be either hand counted or
20 automatically counted on an electronic system, whichever is more convenient.

21 ~~(2)~~(3) Election officials may make a true copy of absentee paper
22 ballots on ballot cards which, after being verified in the presence of
23 witnesses, shall be counted in the same manner as other ballot cards.

24

25 SECTION 7. Arkansas Code § 7-5-417(b), as amended by Act 67 of 2005,
26 concerning the preservation of absentee ballots, is amended to read as
27 follows:

28 (b) If the statement is not in proper form, or if for any other legal
29 reason the vote should not be counted, the ballot shall be preserved together
30 with the ~~stub~~, statement, and envelope for the same period of time that the
31 statements are preserved.

32

33 SECTION 8. Arkansas Code § 7-5-418(f), concerning the casting of
34 ballots during early voting, is amended to read as follows:

35 (f) Upon casting his or her ballot, the voter shall then deposit the
36 ballot ~~and the stub~~ in the appropriate box in the same manner as for votes

1 cast on the day of the election.

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/s/ Edwards

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APPROVED: 3/16/2005

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