

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4

# A Bill

SENATE BILL 431

5 By: Senator A. Clark  
6 By: Representative Furman  
7

## For An Act To Be Entitled

9 TO AMEND ARKANSAS LAW CONCERNING ABSENTEE BALLOTS;  
10 REPEALING DESIGNATED BEARERS AS PERSONS PERMITTED TO  
11 HANDLE ABSENTEE BALLOTS; CLARIFYING WHO MAY HANDLE  
12 ABSENTEE BALLOTS; ESTABLISHING CRIMINAL PENALTIES FOR  
13 THE HANDLING OF ABSENTEE BALLOTS IN VIOLATION OF  
14 ARKANSAS LAW; AND FOR OTHER PURPOSES.  
15  
16

## Subtitle

18 AMENDING ARKANSAS LAW CONCERNING THE  
19 HANDLING OF ABSENTEE BALLOTS.  
20  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. Arkansas Code § 7-1-101(9), concerning the definition of  
25 "designated bearer", is repealed.

26 ~~(9) "Designated bearer" means any person who is identified and~~  
27 ~~authorized by the applicant to obtain from the county clerk or to deliver to~~  
28 ~~the county clerk the applicant's ballot;~~  
29

30 SECTION 2. Arkansas Code § 7-5-403 is amended to read as follows:

31 7-5-403. ~~Designated bearers, authorized~~ Authorized agents, and  
32 administrators ~~- Penalties.~~

33 ~~(a)(1) A designated bearer may obtain absentee ballots for no more~~  
34 ~~than two (2) voters per election.~~

35 ~~(2)(A) A designated bearer shall not have more than two (2)~~  
36 ~~absentee ballots in his or her possession at any time.~~



1                   ~~(B) If the county clerk knows or reasonably suspects that~~  
2 ~~a designated bearer has more than two (2) absentee ballots in his or her~~  
3 ~~possession, the county clerk shall notify the prosecuting attorney.~~

4                   ~~(3)(A) A designated bearer receiving an absentee ballot from the~~  
5 ~~county clerk for a voter shall obtain the absentee ballot directly from the~~  
6 ~~county clerk and deliver the absentee ballot directly to the voter.~~

7                   ~~(B) A designated bearer receiving an absentee ballot from~~  
8 ~~a voter shall obtain the absentee ballot directly from the voter and deliver~~  
9 ~~the absentee ballot directly to the county clerk.~~

10                  ~~(4)(A) A designated bearer may deliver to the county clerk the~~  
11 ~~absentee ballots for not more than two (2) voters.~~

12                  ~~(B) The designated bearer shall be named on the voter~~  
13 ~~statement accompanying the absentee ballot.~~

14                  ~~(5) In order to obtain an absentee ballot from the county clerk:~~

15                   ~~(A) The designated bearer shall show a form of current~~  
16 ~~photographic identification to the county clerk;~~

17                   ~~(B) The county clerk shall print the designated bearer's~~  
18 ~~name and address beside the voter's name on a register;~~

19                   ~~(C) The designated bearer shall sign the register under~~  
20 ~~oath indicating receipt of the voter's absentee ballot; and~~

21                   ~~(D) The county clerk shall indicate beside the designated~~  
22 ~~bearer's name on the register that he or she obtained an absentee ballot for~~  
23 ~~a voter.~~

24                  ~~(6) When a designated bearer delivers an absentee ballot to the~~  
25 ~~county clerk:~~

26                   ~~(A) The designated bearer shall present current and valid~~  
27 ~~photographic identification to the county clerk;~~

28                   ~~(B) The county clerk shall print the designated bearer's~~  
29 ~~name and address beside the voter's name on a register;~~

30                   ~~(C) The designated bearer shall sign the register under~~  
31 ~~oath indicating delivery of the voter's absentee ballot;~~

32                   ~~(D) The county clerk shall not accept an absentee ballot~~  
33 ~~from a designated bearer who does not sign the register under oath; and~~

34                   ~~(E) The county clerk shall write or stamp the word~~  
35 ~~"BEARER" and write the designated bearer's name and address on the voter's~~  
36 ~~absentee ballot return envelope.~~

1           ~~(7) When providing an absentee ballot to a designated bearer or~~  
2 ~~receiving an absentee ballot from a designated bearer, the county clerk shall~~  
3 ~~provide to the designated bearer a written notice informing the designated~~  
4 ~~bearer that:~~

5                   ~~(A) A designated bearer may obtain ballots for no more~~  
6 ~~than two (2) voters per election;~~

7                   ~~(B) A designated bearer shall at no time have more than~~  
8 ~~two (2) ballots in his or her possession;~~

9                   ~~(C) A designated bearer shall not deliver ballots to the~~  
10 ~~county clerk for more than two (2) voters per election; and~~

11                   ~~(D) Possession of an absentee ballot with the intent to~~  
12 ~~defraud a voter or an election official is a felony under § 7-1-104.~~

13           ~~(8) The county clerk shall post a notice of the rules concerning~~  
14 ~~designated bearers and authorized agents in each county clerk's office where~~  
15 ~~absentee ballots are distributed or returned.~~

16           ~~(b)(1)(a)(1)~~ An authorized agent may deliver applications for absentee  
17 ballots to the county clerk and obtain absentee ballots from the county clerk  
18 for not more than two (2) voters per election who cannot cast a ballot at the  
19 appropriate polling place on election day because the voter is a patient in a  
20 hospital or long-term care or residential care facility licensed by the  
21 state.

22                   (2) At no time shall an authorized agent have more than two (2)  
23 absentee ballots in his or her possession.

24                   (3)(A) An authorized agent receiving an absentee ballot from the  
25 county clerk for a voter shall deliver the absentee ballot directly to the  
26 voter.

27                   (B) An authorized agent receiving an absentee ballot from  
28 a voter shall deliver the absentee ballot directly to the county clerk.

29                   (4)(A) In order for an authorized agent to obtain a ballot from  
30 the county clerk, the authorized agent shall submit to the county clerk an  
31 affidavit from the administrative head of a hospital or long-term care or  
32 residential care facility licensed by the state that the applicant is a  
33 patient of the hospital or long-term care or residential care facility  
34 licensed by the state and is thereby unable to vote on the election day at  
35 his or her regular polling site.

36                   (B) A copy of the affidavit shall be retained by the

1 county clerk as an attachment to the application for an absentee ballot.

2 (5) In order to obtain an absentee ballot from the county clerk,  
3 the:

4 (A) Authorized agent shall present current photographic  
5 identification to the clerk;

6 (B) Clerk shall print the authorized agent's name and  
7 address beside the voter's name on a register; and

8 (C) Authorized agent shall sign the register under oath  
9 indicating receipt of the voter's ballot.

10 (6) When an authorized agent delivers an absentee ballot to the  
11 county clerk, the:

12 (A) Authorized agent shall show some form of current  
13 photographic identification to the clerk;

14 (B) Clerk shall print the authorized agent's name and  
15 address beside the voter's name on a register;

16 (C) Authorized agent shall sign the register under oath  
17 indicating delivery of the voter's ballot; and

18 (D) The county clerk shall not accept an absentee ballot  
19 from an authorized agent who does not sign the register under oath.

20 (7) The county clerk shall write or stamp the words "AUTHORIZED  
21 AGENT" and the agent's name and address on the voter's absentee ballot return  
22 envelope.

23 (8) The county clerk shall post a notice of the rules concerning  
24 designated bearers and authorized agents in each county clerk's office where  
25 absentee ballots are distributed or returned.

26 ~~(e)(1)(b)(1)~~ The county clerk shall keep a register of ~~designated~~  
27 ~~bearers and~~ authorized agents.

28 (2) The ~~designated bearer and~~ authorized agent register shall  
29 contain the following oath on each page: "I ACKNOWLEDGE THAT ARKANSAS LAW  
30 PROHIBITS ~~DESIGNATED BEARERS AND~~ AUTHORIZED AGENTS FROM RECEIVING OR  
31 RETURNING MORE THAN TWO (2) ABSENTEE BALLOTS PER ELECTION. I HAVE COMPLIED  
32 WITH THE ARKANSAS LAW. I UNDERSTAND THAT IF I PROVIDE FALSE INFORMATION ON  
33 THIS FORM, I MAY BE GUILTY OF PERJURY AND SUBJECT TO A FINE OF UP TO TEN  
34 THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR UP TO TEN (10) YEARS, OR BOTH,  
35 UNDER FEDERAL AND STATE LAWS."

36 ~~(d)(1)(A)(c)(1)(A)~~ An administrator may deliver to the county clerk an

1 application for an absentee ballot for any voter who is a patient of a long-  
2 term care or residential care facility licensed by the state and who  
3 authorizes the administrator to obtain an absentee ballot on his or her  
4 behalf.

5 (B) The absentee ballot application shall identify the  
6 administrator by name as the administrator of the facility where the voter  
7 resides.

8 (2) Upon presentation of photographic identification to the  
9 county clerk, an administrator may receive absentee ballots for as many  
10 qualified residents of the facility as:

11 (A) Apply for absentee ballots; and

12 (B) Identify the administrator in the voter's absentee  
13 ballot application.

14 (3)(A) An administrator may deliver the absentee ballot to the  
15 county clerk for any voter who names the administrator on his or her  
16 application and voter statement.

17 (B) Absentee ballots may be delivered to the county clerk  
18 in person by the administrator or by mail.

19 (4) Before obtaining an absentee ballot, an administrator shall  
20 submit to the county clerk an affidavit, signed and dated by the  
21 administrator, stating:

22 (A) That he or she is the administrative head of a long-  
23 term care or residential care facility licensed by the state;

24 (B) The name and address of the facility;

25 (C) That he or she has been authorized by the voters who  
26 reside in his or her facility to obtain from the county clerk and return to  
27 the county clerk absentee ballots on their behalf;

28 (D) That each of the voters for whom the administrator  
29 seeks to obtain an absentee ballot has named the administrator on his or her  
30 application; and

31 (E) That the administrator understands that Arkansas law  
32 requires that the administrator assist the voter by marking or casting a  
33 ballot on behalf of the voter without any comment or interpretation.

34 (5) The county clerk shall attach a copy of the administrator's  
35 affidavit to each application for an absentee ballot delivered by the  
36 administrator to the county clerk.

1 (6) When the ballots are returned by the administrator in person  
2 or by mail, the county clerk shall write or stamp the word "ADMINISTRATOR"  
3 and write the administrator's name on the voter's absentee ballot return  
4 envelope.

5 ~~(e)~~(d) Any person who knowingly makes a false statement on an  
6 affidavit required by this section shall be guilty of perjury and subject to  
7 a fine of up to ten thousand dollars (\$10,000) or imprisonment of up to ten  
8 (10) years.

9 (e)(1) Any person other than an authorized agent or administrator who  
10 purposely obtains an absentee ballot for a voter:

11 (A) Shall be guilty of a Class D felony;

12 (B) Shall be considered to have committed an infamous  
13 crime as defined under § 7-1-101; and

14 (C) Shall not be permitted to:

15 (i) Serve as an election official at subsequent  
16 elections; or

17 (ii) Obtain an absentee ballot for a voter as an  
18 authorized agent or administrator under this section.

19 (2) If an absentee ballot is found in the possession of a person  
20 who is not an authorized agent or administrator:

21 (A) The possession of the absentee ballot shall be prima  
22 facie evidence of a violation of this subsection (e); and

23 (B) The absentee ballot, if completed, shall not be  
24 counted.

25 (f)(1) An authorized agent or administrator who purposely violates the  
26 provisions of this section:

27 (A) Shall be guilty of a Class D felony;

28 (B) Shall be considered to have committed an infamous  
29 crime as defined under § 7-1-101; and

30 (C) Shall not be permitted to:

31 (i) Serve as an election official at subsequent  
32 elections; or

33 (ii) Obtain an absentee ballot for a voter as an  
34 authorized agent or administrator under this section.

35 (2) If an authorized agent or administrator is found in the  
36 possession of an absentee ballot in violation of this section:



1 otherwise; or

2

3 SECTION 4. Arkansas Code § 7-5-405(a)(2)(F), concerning applications  
4 for absentee ballots, is amended to read as follows:

5 (F) Mailing information for the ballot or the name and  
6 signature of ~~a designated bearer~~, an administrator, or an authorized agent;

7

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

9 7-5-409. Materials furnished to qualified voters.

10 (a)(1)(A) The county clerk shall satisfy himself or herself that the  
11 applicant for an absentee ballot is a qualified registered elector in the  
12 ward, precinct, or township in which he or she claims to be a resident or  
13 that the applicant does not require prior registration under § 7-5-406.

14 (B) The county clerk shall verify that the application has  
15 been properly signed by the applicant and, if necessary, the ~~designated~~  
16 ~~bearer~~, administrator, or authorized agent. If the application is not  
17 properly signed, the application shall be rejected by the county clerk.

18 (C) The county clerk shall notify the applicant of the  
19 reason for the rejection.

20 (2) If the county clerk is unable to contact the applicant to  
21 cure the deficiency, the county clerk shall forward the application with the  
22 reason for the rejection to the county board of election commissioners. The  
23 county board of election commissioners shall determine whether the applicant  
24 is a qualified elector.

25 (b) If the applicant is registered or is otherwise eligible to vote  
26 absentee, the county clerk, prior to mailing or delivering the ballot, shall  
27 detach the ballot stub and deposit the ballot stub into a sealed box  
28 designated as "Absentee Stub Box" and deliver to the applicant or to the  
29 applicant's ~~designated bearer~~, authorized agent, or administrator for  
30 delivery to the applicant the following materials:

31 (1) An official absentee ballot for each election named in the  
32 application;

33 (2) Instructions for voting and returning the official absentee  
34 ballot to the county clerk;

35 (3) An official absentee ballot secrecy envelope on which there  
36 shall be written or printed the words "Ballot Only";



1 (4)(A)(i) A uniform voter statement created and approved by the  
2 State Board of Election Commissioners.

3 (ii) The voter statement shall include the following  
4 heading in bold capitalized letters: "THIS VOTER STATEMENT SHALL BE COMPLETED  
5 AND RETURNED IN THE MAILING ENVELOPE OR THE ABSENTEE BALLOT WILL NOT BE  
6 COUNTED."

7 (iii) The voter statement shall include the following  
8 statement in bold capitalized letters at the bottom of the page: "THE  
9 INFORMATION I HAVE PROVIDED IS TRUE TO THE BEST OF MY KNOWLEDGE UNDER PENALTY  
10 OF PERJURY. IF I HAVE PROVIDED FALSE INFORMATION, I MAY BE SUBJECT TO A FINE  
11 OF UP TO TEN THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR UP TO TEN (10)  
12 YEARS, OR BOTH, UNDER FEDERAL OR STATE LAWS."

13 (iv) The voter statement shall include a statement  
14 that the voter resides at the address on his or her application.

15 (v) The voter statement shall include a statement  
16 for a first-time voter who registers by mail: "If I am a newly registered  
17 voter of this county and this is the first time I am voting in this county, I  
18 am enclosing a copy of a current and valid photo identification card or a  
19 current utility bill, bank statement, government check, paycheck, or other  
20 government document that shows my name and address."

21 (B) Blanks shall be provided for the voter to provide his  
22 or her printed name, signature, mailing address, residential voting address,  
23 date of birth, printed name and address of the administrator, or authorized  
24 agent, ~~or designated bearer~~, signature of administrator, or authorized agent,  
25 ~~or designated bearer~~, and address of the administrator, or authorized agent,  
26 ~~or designated bearer~~.

27 (C)(i) The voter statement shall include a sworn statement  
28 portion that may be completed by the voter stating that the voter is  
29 registered to vote and that he or she is the person who is registered.

30 (ii) The sworn statement portion of the voter  
31 statement is not required to be notarized, but the voter shall execute the  
32 sworn statement under penalty of perjury;

33 (5) A sealable envelope upon which shall be printed or written  
34 the words: "Return Envelope", the address of the county clerk, the precinct  
35 of the voter, and the words: "ABSENTEE BALLOT, ....., .....,  
36 ELECTION"; and

1 (6) An authorized agent authorization form, as follows:

2 "AGENT AUTHORIZATION FORM

3 If applicable, fill out and sign this form and place it in the  
4 Return Envelope

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

10 .....  
11 Signature of voter

12 .....  
13 Printed name of voter

14 .....  
15 Address of voter

16 .....  
17 Date of birth of voter."

18  
19 (c)(1) Except for absentee ballots mailed to an address outside the  
20 county in which the applicant is registered, an absentee ballot shall be  
21 mailed to the address that appears on the applicant's registration record or  
22 absentee ballot application if the voter is temporarily at a different  
23 address.

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

26 (A) The address is outside the territorial limits of the  
27 United States;

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

30 (C) There are more than two (2) persons lawfully  
31 registered at the same address.

32 (d) The county clerk shall not deliver an absentee ballot to any  
33 person other than the absentee voter unless the person picking up the ballot  
34 provides current and valid photographic identification to the county clerk  
35 that he or she is:

36 (1) The voter's:

1 (A) Designated bearer; or

2 (B) Authorized agent; or

3 (2) The administrator of a long-term care or residential care  
4 facility licensed by the state in which the voter resides.

5 (e) The county clerk shall not provide more than two (2) absentee  
6 ballots per election to any ~~designated bearer~~ or authorized agent, nor shall  
7 the county clerk accept delivery of more than two (2) absentee ballots per  
8 election from any ~~designated bearer~~ or authorized agent.

9 ~~(f) A designated bearer shall be allowed to pick up only two (2)~~  
10 ~~absentee ballots from the county clerk only during the fifteen (15) days~~  
11 ~~prior to a school election, special election, preferential primary election,~~  
12 ~~or general election and seven (7) days prior to a runoff election, including~~  
13 ~~a general primary election.~~

14 ~~(g)~~(f) Upon delivery of an absentee ballot to an individual authorized  
15 to receive an absentee ballot, the county clerk shall mark the electronic  
16 voter registration list and the precinct voter registration list to indicate  
17 that an absentee ballot has been delivered to the voter.

18 ~~(h)~~(g) The county clerk or other designated election official  
19 providing materials to qualified voters shall not distribute:

20 (1) Unsolicited absentee ballot applications to electors; or

21 (2) Unsolicited absentee ballots to electors.

22 ~~(i)~~(h) The county clerk and other designated election officials  
23 providing materials to qualified voters may:

24 (1) Display a printable or downloadable absentee ballot  
25 application form on the internet;

26 (2) Post links to the absentee ballot application form on social  
27 media of any type; and

28 (3) Make paper copies of absentee ballot application forms  
29 available for distribution or to be available upon request by a qualified  
30 voter in:

31 (A) The county clerk’s office; or

32 (B) Other governmental offices.

33  
34 SECTION 6. Arkansas Code § 7-5-411(a)(3), concerning methods of voting  
35 absentee, is amended to read as follows:

36 (3) By delivery of the ballot to the physical office of the

1 county clerk of the county of residence of the voter not later than the time  
2 the county clerk's office regularly closes on the Friday before election day  
3 by the registered voter, ~~designated bearer,~~ or administrator of the absentee  
4 voter, upon proper verification of the signature of the voter by the county  
5 clerk and validation of the identity of the registered voter, ~~designated~~  
6 ~~bearer,~~ or administrator; or

7  
8 SECTION 7. Arkansas Code § 7-5-412(a)(1), concerning the marking and  
9 return of absentee ballots, is amended to read as follows:

10 (1) The completed and executed voter statement, including  
11 identification of the ~~designated bearer,~~ authorized agent, or administrator  
12 when appropriate; and

13  
14 SECTION 8. Arkansas Code § 7-5-416(b)(1)(G)(ii) and (iii), concerning  
15 the counting of absentee ballots, are amended to read as follows:

16 (ii) The election officials shall compare the name  
17 of the bearer written on the absentee ballot application with the information  
18 on the voter statement, and if the information does not compare, the ballot  
19 shall be a provisional ballot;

20 ~~(iii) An absentee ballot designated as a provisional~~  
21 ~~ballot for the lack of a designation of, or name of, a designated bearer~~  
22 ~~shall be counted only if the county board of election commissioners does not~~  
23 ~~determine that the provisional ballot is invalid and should not be counted~~  
24 ~~based on other grounds;~~

25  
26 SECTION 9. Arkansas Code § 7-5-416(c)(2), concerning the counting of  
27 absentee ballots, is amended to read as follows:

28 (2) Signed, dated, and delivered to the county clerk by a  
29 ~~designated bearer,~~ an authorized agent, or administrator before the date of  
30 death; or

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33  
34  
35  
36