

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.

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

A Bill

HOUSE BILL 1842

4
5 By: Representative Edwards
6
7

For An Act To Be Entitled

8
9 AN ACT CONCERNING THE CASTING OF BALLOTS AND
10 ABSENTEE BALLOTS; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 AN ACT CONCERNING THE CASTING OF BALLOTS
14 AND ABSENTEE BALLOTS.
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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), concerning the challenge of a
33 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
36 officials in the election precinct to make and retain a list of the names of



1 all persons ~~so challenged~~ voting a provisional ballot. The following
 2 procedure shall be followed:

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

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

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

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

14

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

16 7-5-409. Materials furnished to qualified voters.

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

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

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

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

31 (b) If the applicant is registered or is otherwise eligible to vote
 32 absentee, the county clerk shall, prior to mailing or delivering the ballot,
 33 detach the ballot stub and deposit the ballot stub into a sealed box
 34 designated as "Absentee Stub Box," and deliver or mail to the applicant or
 35 deliver pursuant to subsections (d)-(f) of this section to the person who
 36 delivers the application to the office of the county clerk pursuant to § 7-5-

1 403 the following materials:

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

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

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

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

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

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

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

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

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

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

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

28 ~~(4)~~(5) A sealable envelope upon which shall be printed or
29 written the words: "Return Envelope", the address of the county clerk, the
30 precinct of the voter, and the words: "ABSENTEE BALLOT,,
31, ELECTION"; and

32 ~~(5)~~(6) An authorized agent authorization form, as follows:

33

34 "AGENT AUTHORIZATION FORM

35

36 If applicable, fill out and sign this form and place it in the Return

1 Envelope

2

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

8

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11 signature of voter

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15 printed name of voter

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19 address of voter

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23 date of birth of voter"

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

29

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

31

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

33

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

35

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

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

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

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

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

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

29
 30 SECTION 5. Arkansas Code § 7-5-412 is amended to read as follows:

31 7-5-412. Marking and return of ballots - Delivery of mailed ballots.

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

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

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

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

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

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

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

26

27 SECTION 6. Arkansas Code § 7-5-416 is amended to read as follows:

28 7-5-416. Counting of absentee ballots.

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

32 (2) The At least three (3) days before each election, the county
 33 board shall post at the county clerk's office the time and location of the
 34 opening, processing, canvassing, and counting of absentee ballots.

35 (3) The county clerk shall forward the absentee ballot
 36 applications sorted alphabetically or by precinct to the election officials

1 for absentee ballots.

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

7 ~~(5) No absentee or early votes shall be counted prior to the~~
 8 ~~closing of the polls.~~

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

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

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

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

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

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

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

34 (ii) If the application and the voter's statement do
 35 not compare as to name, address, date of birth, and signature, ~~or if the~~
 36 ~~first-time voter failed to provide the required identification with the~~

1 ~~ballot or at the time of mailing the voter registration application, the~~
 2 ~~absentee application, absentee ballot envelope, and voter's statement shall~~
 3 ~~be placed in an envelope marked "provisional" the absentee ballot shall not~~
 4 ~~be counted.~~

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

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

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

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

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

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

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

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

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

34 (iii) The voters' identification documents shall not
 35 be subject to public inspection except as part of a judicial proceeding to
 36 contest the election;

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

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

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

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

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

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

16 ~~(1)~~(2) The ballots shall first be counted for write-in votes by
17 the election officials. Then, the ballots may be either hand counted or
18 automatically counted on an electronic system, whichever is most convenient.

19 ~~(2)~~(3) Election officials may make a true copy of absentee paper
20 ballots ~~on ballot cards~~ which, after being verified in the presence of
21 witnesses, shall be counted in the same manner as other ~~ballot cards~~ ballots.

22
23 SECTION 7. Arkansas Code § 7-5-417 is amended to read as follows:

24 7-5-417. Challenge of absentee votes.

25 (a) When the name and voting precinct of a voter is read by the
26 election official, any candidate or qualified poll watcher pursuant to § 7-5-
27 312 may challenge the vote in the manner provided by law for personal voting
28 challenges, and the election officials shall ~~receive the evidence or~~
29 ~~testimony to establish the challenge~~ consider the ballot as a provisional
30 ballot.

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

35 (c) If the county board of election commissioners determines that the
36 ~~challenged~~ provisional voter is qualified and that the vote should be

1 counted, it shall be handled in the same manner as ~~challenged~~ provisional
2 ballots in a regular voting precinct.

3
4 SECTION 8. Arkansas Code § 7-5-418(f), concerning the casting of
5 ballots during early voting, is amended to read as follows:

6 (f) Upon casting his or her ballot, the voter shall then deposit the
7 ballot ~~and the stub~~ in the appropriate box in the same manner as for votes
8 cast on the day of the election.

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