

1 HB369
2 136912-1
3 By Representative Beckman
4 RFD: Constitution, Campaigns and Elections
5 First Read: 21-FEB-12

8 SYNOPSIS: Under existing law, certain qualified
9 electors are permitted to apply for and vote by
10 absentee ballot or emergency absentee ballot.

11 This bill would include any registered voter
12 who is a caretaker of a person who is physically
13 incapacitated as a person permitted to apply for
14 and vote by absentee ballot.

15 This bill would include any registered voter
16 who is incarcerated but has not been convicted of a
17 disqualifying crime as a person permitted to apply
18 for and vote by absentee ballot.

19 This bill would permit a caretaker of a
20 person who requires emergency medical treatment
21 within five days before an election as a person
22 permitted to apply for and vote by emergency
23 absentee ballot.

24 This bill would permit a person with
25 personal business emergencies to cast an emergency
26 absentee ballot.

This bill would also grant rulemaking authority to the Secretary of State to identify types of personal business emergencies.

A BILL

TO BE ENTITLED

AN ACT

To amend Sections 17-11-3, 17-11-4, 17-11-5, 17-11-7, and 17-11-18, Code of Alabama 1975, relating to absentee voting and emergency absentee ballots, to permit a qualified elector who serves as primary caretaker of a person who is physically incapacitated to apply for and vote by absentee ballot; to permit a qualified elector who is incarcerated in a county jail or state correctional facility but has not been convicted of a disqualifying crime to apply for and vote by absentee ballot; to permit a registered voter who serves as a caretaker to vote by emergency absentee ballot; to allow absentee voting for a person attending to emergency personal business; and to grant the Secretary of State rulemaking authority to identify additional types of personal business emergencies.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 17-11-3, 17-11-4, 17-11-5, 17-11-7, and 17-11-18 of the Code of Alabama 1975, are amended to read as follows:

"§17-11-3.

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

8 "(1) The person will be out of the county or the
9 state, or the municipality for municipal elections, on
10 election day.

11 "(2) The person ~~has any physical illness or~~
12 ~~infirmitiy which prevents his or her attendance at the polls is~~
13 physically incapacitated and is unable to vote in person on
14 election day or the person's service as a caretaker for
15 another person who is physically incapacitated prevents his or
16 her attendance at the polls, whether he or she is within or
17 without the county on the day of the election. The voter who
18 is physically incapacitated shall identify the person serving
19 as caretaker on the caretaker's absentee ballot application in
20 a manner to be determined by the Secretary of State pursuant
21 to the Administrative Procedure Act.

22 "(3) The person works on a shift which has at least
23 10 hours which coincide with the hours the polls are open at
24 his or her regular polling place.

25 "(4) The person is enrolled as a student at an
26 educational institution located outside the county of his or

her personal residence attendance at which prevents his or her attendance at the polls.

"(5) The person is a member of, or spouse or dependent of a member of, the Armed Forces of the United States or is similarly qualified to vote absentee pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff.

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

"(7) The person is incarcerated in a county jail or state correctional facility but has not been convicted of a crime disqualifying the person from being a registered voter or the person has had his or her voting rights restored notwithstanding incarceration in a county jail or state correctional facility.

"(b) An applicant for an absentee ballot who is a member of the Armed Forces of the United States, including the Alabama National Guard, the United States Naval Reserves, the United States Air Force Reserves, and the United States Army Reserve on active duty or active duty for training or an applicant who is the spouse of any member of the armed forces or any other applicant qualified to vote absentee pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff, may make application for an absentee ballot by filling out the federal postcard application form, authorized and provided for under the provisions of "The

~~Federal Voting Assistance Act of 1955," Public Law 296,~~
~~Chapter 656, H.R. 4048, approved August 9, 1955, 84th Congress~~
~~1st Session the Uniformed and Overseas Citizens Absentee~~
Voting Act, 42 U.S.C. §1973ff(b) (2).

"(c) Any registered elector who requires emergency treatment of a licensed physician within five days of an election or a registered voter who serves as a caretaker for a person requiring such emergency treatment may apply for an emergency absentee ballot for the election and may vote by returning the absentee ballot no later than noon on the day the election is held. The For the voter requiring emergency treatment by a licensed physician, the attendant physician shall describe and certify the circumstances as constituting an emergency on a special form designed by the Secretary of State and provided by his or her office to local absentee election managers. The special form shall be attached to the application. When applicable, the voter requiring the emergency treatment shall identify the person serving as his or her caretaker on a special form provided by the Secretary of State to local absentee election managers. The special form shall be attached to the application. The caretaker provided for in this subsection may be but is not required to be the medical emergency designee specified in Section 17-11-5(a).

"(d) Any registered elector whose name appears on the poll list of qualified voters may vote by an emergency absentee ballot if (1) he or she is required by his or her employer under unforeseen circumstances to be out of the

1 county on ~~an a work-related~~ emergency business trip on
2 election day ~~or (2) he or she is required to be out of the~~
3 ~~county on election day on an emergency trip to attend to~~
4 ~~personal business, including, but not limited to, attending~~
5 ~~the funeral of a family member. The Secretary of State is~~
6 ~~granted rulemaking authority under the Alabama Administrative~~
7 ~~Procedure Act to identify other types of personal business~~
8 ~~which qualify a registered elector to vote by an emergency~~
9 ~~ballot under this subsection.~~ Under such circumstances, the
10 applicant shall apply for an emergency absentee ballot at the
11 office of the absentee election manager no later than the
12 close of the business day one day prior to the election. The
13 applicant shall complete and file an application form designed
14 by the Secretary of State for emergency absentee voters. The
15 form shall contain an affidavit which the applicant shall sign
16 or swear acknowledging that he or she was not aware of the
17 out-of-county work-related or personal business requirement
18 prior to five days before the election. An applicant who meets
19 the requirements of this subsection may vote by an emergency
20 absentee ballot. After voting the ballot, the voter shall hand
21 the ballot to the absentee election manager.

22 "(e) Notwithstanding any other provision of
23 otherwise applicable law, in the event more than one absentee
24 ballot is cast in the name of the single voter, whether any
25 such multiple ballot is cast by mail or otherwise, none of the
26 affidavit envelopes containing the multiple ballots shall be
27 opened, and none of the multiple ballots shall be counted,

1 except in the event of an election contest, upon the order of
2 the election contest tribunal. Upon the conclusion of an
3 election contest or, in the event no such contest is filed,
4 upon the expiration of time for filing such a contest, the
5 multiple ballots shall be provided to the district attorney,
6 with photocopies provided to the state Attorney General, for
7 such investigation, prosecution, or other action as may be
8 appropriate under applicable law.

9 "§17-11-4.

10 "The application required in Section 17-11-3 shall
11 be filed with the person designated to serve as the absentee
12 election manager. The application shall be in a form
13 prescribed and designed by the Secretary of State and shall be
14 used throughout the state. Notwithstanding the foregoing,
15 handwritten applications can also be accepted at any time
16 prior to the five-day deadline to receive absentee ballot
17 applications as provided in Section 17-11-3. The application
18 shall contain sufficient information to identify the applicant
19 and shall include the applicant's name, residence address, or
20 such other information necessary to verify that the applicant
21 is a registered voter. Any applicant may receive assistance in
22 filling out the application as he or she desires, but each
23 application shall be manually signed by the applicant and, if
24 he or she signs by mark, the name of the witness to his or her
25 signature shall be signed thereon. The application may be
26 handed by the applicant to the absentee election manager or
27 forwarded to him or her by United States mail. An application

1 for ~~an~~ a medical emergency absentee ballot or caretaker
2 emergency absentee ballot pursuant to Section 17-11-3 may be
3 forwarded to the absentee election manager by the applicant or
4 his or her designee. Application forms which are printed and
5 made available to any applicant by the absentee election
6 manager shall have printed thereon all penalties provided for
7 any violation of this chapter. The Secretary of State shall
8 provide applications for absentee voting to military and
9 overseas voters in accordance with Section 17-4-35.

10 "§17-11-5.

11 "(a) Upon receipt of an application for an absentee
12 ballot as provided in Section 17-11-3, if the applicant's name
13 appears on the list of qualified voters produced from the
14 state voter registration list in the election to be held, or
15 if the voter makes an affidavit for a challenged vote or
16 provisional ballot, the absentee election manager shall
17 furnish the absentee ballot to the applicant by: (1)
18 Forwarding it by United States mail to the applicant's or
19 voter's residence address, or upon written request of the
20 voter, to the address where the voter regularly receives mail
21 or (2) by handing the absentee ballot to the voter in person
22 or, in the case of medical emergency voting or caretaker
23 emergency voting, his or her designee in person. If the
24 absentee election manager has reasonable cause to believe that
25 the applicant has given a fraudulent address on the
26 application for the absentee ballot, the absentee election
27 manager shall turn over the ballot application to the district

1 attorney for any action which may be necessary under this
2 chapter. The absentee election manager may require additional
3 proof of a voter's eligibility to vote absentee when there is
4 evidence of continuous absentee voting. The absentee election
5 manager shall mail any absentee ballot requested to be mailed
6 as provided in Section 17-11-3 no later than the next business
7 day after an application has been received unless the absentee
8 ballots have not been delivered to the absentee election
9 manager. If the absentee ballots have not been so delivered,
10 the absentee election manager shall hold all requests until
11 the ballots are delivered and shall then respond by placing
12 ballots in the mail no later than the next business day.

13 "(b) The official list of qualified voters shall be
14 furnished to the absentee election manager by the judge of
15 probate using a printout from the state voter registration
16 list of registered voters for that county containing ~~vote~~
17 voter registration information useful in the identification of
18 absentee voters. The information provided in this report shall
19 be established by rules adopted by the Secretary of State with
20 the advice of the Alabama Circuit Court Clerks Association or
21 its members and shall indicate whether the individual is
22 obligated to produce identification in accordance with
23 Sections 17-9-30 and 17-10-1. The Secretary of State may
24 further provide by administrative rule for electronic access
25 to this list for optional use by the absentee election
26 manager. This list shall be made available beginning at least
27 45 days before the election. In municipal elections, the

1 official list of qualified voters shall be furnished to the
2 absentee election manager at least 35 days before the
3 election. Any supplemental list of qualified electors shall
4 also be provided to the absentee election manager as soon as
5 the list becomes available. The absentee election manager
6 shall underscore on the list the name of each voter who has
7 applied for an absentee ballot and shall write immediately
8 beside his or her name the word "absentee." The Secretary of
9 State by rule may provide for electronic access to the
10 absentee election manager's county list of registered voters
11 and for the method of identifying applicants for absentee
12 ballots in conjunction with the state voter registration list.

13 "(c) The absentee election manager shall enroll the
14 name, residence, and voting place of the applicant, and the
15 date the application was received on a list of absentee
16 voters. Each day the absentee election manager shall enter on
17 the list the names, addresses, and voting places of each voter
18 who has that day applied for an absentee ballot and shall, for
19 all elections other than municipal elections, post a copy of
20 the list of applications received each day on the regular
21 bulletin board or other public place in the county courthouse.
22 In municipal elections, the absentee election manager shall
23 post a copy of the list of applications received each day on
24 the regular bulletin board or other public place in the city
25 hall. The absentee election manager in all elections shall
26 deliver to the board of registrars the day following the
27 election, a copy of the list of all absentee voters. The list

1 shall be maintained in the office of the circuit clerk for 60
2 days after the election, at which time it shall be delivered
3 to the judge of probate. Before the polls open at any election
4 on election day, the absentee election manager shall
5 effectuate the delivery to the election officers of each
6 voting place a list showing the name and address of every
7 person whose name appears on the official list of qualified
8 electors for the voting place who applied for an absentee
9 ballot in the election. The name of the person who applied for
10 an absentee ballot shall be identified as an absentee voter on
11 the list of qualified electors kept at the voting place, and
12 the person shall not vote again, except that in county, state,
13 and federal elections the person may vote a provisional
14 ballot. Applications for absentee ballots are required for
15 elections which are more than 30 days apart, except as to
16 individuals voting pursuant to the federal Uniformed and
17 Overseas Absentee Voting Act, 42 U.S.C. 1973ff.

18 "(d) For individuals voting pursuant to the federal
19 Uniformed and Overseas Absentee Voting Act, 42 U.S.C. 1973ff,
20 the Secretary of State shall by rule prescribe use of
21 standardized military and overseas voter registration
22 applications and applications for absentee ballots adopted by
23 the United States government for such use. The Secretary of
24 State shall also prescribe by rule provisions within the
25 standard state application form for absentee voting which
26 permit the voter to identify himself or herself as a military
27 or overseas voter. Unless otherwise indicated by the military

1 or overseas voter, an application for an absentee ballot by
2 such a voter shall remain valid through the next two regularly
3 scheduled general election cycles for federal office. The
4 circuit clerk shall confirm by January 1 of each election year
5 the address of the military and overseas voters prior to
6 mailing the ballots during each election cycle, and the
7 absentee election manager shall provide an absentee ballot to
8 the military and overseas voters for each such subsequent
9 election. The absentee election manager, within seven days
10 after each regularly scheduled general election for federal
11 office, shall report the number of military and overseas
12 ballots mailed out and the number of ballots received to the
13 Secretary of State who shall report this information to the
14 Federal Election Assistance Commission within 90 days of each
15 regularly scheduled general election for federal office.

16 "§17-11-7.

17 "(a) Each absentee ballot shall be accompanied by an
18 envelope upon which shall be printed an affidavit.

19 "(b) With respect to an absentee ballot cast
20 pursuant to Section 17-11-3, the affidavit shall read as
21 follows:

22 """State of Alabama

23 "County of _____

24 "I, the undersigned, do swear (or affirm) that:

25 "(1) I am a resident of _____ County in the
26 State of Alabama.

"(2) My place of residence in Alabama is: _____

(street)

_____, Alabama _____

Alabama

(city or town) (zip code)

(zip code)

"(3) My voting precinct (or place where I vote)

is:

"

"(4) My date of birth is:

10 month day year

11

"(5) I am entitled to vote an absentee ballot

13 because:

14 "Check only one:

15 "__ I will be out of the county or the state on
16 election day.

17 "__ I am physically incapacitated and will not be
18 able to vote in person on election day or I am caretaker for a
19 person who is physically incapacitated and due to that service
20 I am not able to vote in person on election day.

1 " I work a required workplace shift which has at
2 least 10 hours which coincide with the polling hours at my
3 regular polling place.

4 " I am a student at an educational institution
5 located outside the county of my permanent residence and am
6 therefore unable to vote at my usual polling place on election
7 day.

8 " I am a member of or a spouse or dependent of a
9 member of the Armed Forces of the United States or am
10 otherwise entitled to vote pursuant to the federal Uniformed
11 and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff.

12 " I am incarcerated in a county jail or state
13 correctional facility but I have not been convicted of a crime
14 that disqualifies me from being a registered voter or I have
15 had my voting rights restored notwithstanding being
16 incarcerated in a county jail or state correctional facility.

17 " I have been appointed as an election officer at
18 a polling place which is not my regular polling place.

19 "I further swear (or affirm) that I have not voted
20 nor will I vote in person in the election to which this ballot
21 pertains.

22 "I have marked the enclosed absentee ballot
23 voluntarily and I have read or had read to me and understand
24 the instructions accompanying this ballot and I have carefully
25 complied with such instructions.

26 "Moreover, I further swear (or affirm) that all of
27 the information given above is true and correct to the best of

1 my knowledge and that I understand that by knowingly giving
2 false information so as to vote illegally by absentee ballot
3 that I shall be guilty of a misdemeanor which is punishable by
4 a fine not to exceed one thousand dollars (\$1,000) or confine-
5 ment in the county jail for not more than six months, or both.

6 _____

7 (Signature or mark of voter.)

8 _____

9 (Printed name of voter.)

10 "IF YOUR AFFIDAVIT IS NOT SIGNED (OR MARKED), AND IF
11 YOUR AFFIDAVIT IS NOT WITNESSED BY TWO WITNESSES 18 YEARS OF
12 AGE OR OLDER OR A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO
13 ACKNOWLEDGE OATHS, PRIOR TO BEING DELIVERED OR MAILED TO THE
14 ABSENTEE ELECTION MANAGER, YOUR BALLOT WILL NOT BE COUNTED.

15 "Sworn to and subscribed before me this ____ day of
16 ____, 2___.

17 "I certify that the affiant is known (or made known)
18 to me to be the identical party he or she claims to be.

19 " _____ (Signature of official)

20 (Title of official)

21 _____

22 (Address of official)

1

OR

2 "1st Witness _____

Signature

4 _____

5 Print name _____

6 _____

7 Address _____

8 _____

9 City Zip Code _____

10 "2nd Witness _____

Signature

12 _____

13 Print name _____

14 _____

15 Address _____

16 _____

17 City Zip Code _____ "

18 "§17-11-18.

"No absentee ballot shall be opened or counted if received by the absentee election manager by mail, unless postmarked as of the date prior to the day of the election and received by mail no later than noon on the day of election, or, if received by the absentee election manager by hand delivery, unless so delivered by the voter or medical emergency designee or the caretaker emergency designee to the absentee election manager not later than the close of the last business day next preceding the election or, if delivered by the medical emergency designee or the caretaker emergency designee, by noon on the day of the election.

"The above provision does not apply in the case of individuals voting absentee pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. 1973ff, when those individuals are voting in a second primary election for a federal, state, or county office. In the case of UOCAVA voters voting absentee in a second primary election for a federal, state, or county office, no absentee ballot shall be opened or counted, if received by the absentee election manager by mail, unless postmarked as of the day of the second primary election and received by mail no later than noon seven days after the second primary election."

Section 2. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

