

1 HB396
2 209133-2
3 By Representative Hall
4 RFD: Constitution, Campaigns and Elections
5 First Read: 10-FEB-21

8 SYNOPSIS: Under existing law, an application for an
9 absentee ballot must be received not less than five
10 days before an election.

11 Under existing law, a registered voter may
12 only vote by absentee ballot if he or she meets one
13 of the criteria prescribed by law for voting
14 absentee.

15 Under existing law, the absentee manager
16 must begin delivering sealed affidavit envelopes
17 containing absentee ballots to elections officials
18 by noon on election day.

19 Also, under existing law, an absentee ballot
20 may not be counted unless it is postmarked as of
21 the date prior to the day of the election.

22 This bill would allow the absentee election
23 manager to appoint additional assistants.

24 This bill would require mailed absentee
25 ballot applications to be received 10 days before
26 an election and hand delivered applications to be
27 received five days before an election.

1 This bill would also allow a registered
2 voter to vote by absentee ballot without an excuse.

3 This bill would require the absentee
4 election manager to begin delivering sealed
5 affidavit envelopes containing absentee ballots to
6 elections officials at an earlier time on election
7 day.

8 This bill would eliminate the requirement
9 that an absentee ballot be postmarked as of the
10 date prior to the day of the election.

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT

15
16 Relating to voting; to amend Section 17-11-2, Code
17 of Alabama 1975, Sections 17-11-3 and 17-11-7, Code of Alabama
18 1975, as last amended by Act 2019-507 of the 2019 Regular
19 Session, Section 17-11-10, Code of Alabama 1975, Section
20 17-11-14, as last amended by Act 2019-415 of the 2019 Regular
21 Session, and Section 17-11-18, Code of Alabama 1975, as last
22 amended by Act 2019-507 of the 2019 Regular Session; to allow
23 the absentee election manager to appoint additional
24 assistants; to further provide for absentee ballot
25 applications; to authorize absentee voting without an excuse;
26 to provide further for the process of counting absentee
27 ballots; and to eliminate the requirement that an absentee

1 ballot be postmarked as of the date prior to the day of the
2 election.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 17-11-2, Code of Alabama 1975,
5 Sections 17-11-3 and 17-11-7, Code of Alabama 1975, as last
6 amended by Act 2019-507 of the 2019 Regular Session, Section
7 17-11-10, Code of Alabama 1975, Section 17-11-14, as last
8 amended by Act 2019-415 of the 2019 Regular Session, and
9 Section 17-11-18, Code of Alabama 1975, as last amended by Act
10 2019-507 of the 2019 Regular Session, are amended to read as
11 follows:

12 "§17-11-2.

13 "(a) In each county there shall be an "absentee
14 election manager," who shall fulfill the duties assigned by
15 this chapter. The circuit clerk of the county ~~shall~~, at his or
16 her option, shall be the absentee election manager. If the
17 circuit clerk of the county declines the duties of absentee
18 election manager, the appointing board shall ~~thereupon~~ appoint
19 an absentee election manager, who shall be ~~a person~~ an
20 individual qualified by training and experience, who is a
21 qualified elector of the county, and who is not a candidate in
22 the election to perform the duties assigned by this chapter.
23 Upon approval of the county commission, each absentee election
24 manager may appoint up to two assistants to aid in performing
25 the duties assigned by this chapter. The county commission
26 shall determine the days and hours to be worked by any
27 assistant appointed under this section. The county commission

1 shall designate the place or office where ~~such~~ the duties
2 shall be performed. ~~Such~~ The place or office shall be open on
3 the days and during the hours as that of the circuit clerk
4 prior to each election. Any ~~person~~ absentee election manager
5 so appointed shall have all the powers, duties, and
6 responsibilities of the circuit clerk for the purposes of this
7 chapter, including the power to administer oaths. ~~Such~~ The
8 powers, duties, and responsibilities shall terminate when the
9 election results are certified. The absentee election manager
10 or circuit clerk shall be entitled to the same compensation
11 for the performance of his or her duties as is provided in
12 Section 17-11-14.

13 "(b) All expenses and costs incurred by a county
14 commission in carrying out its obligations under this section
15 shall be reimbursed as provided in Chapter 16 of this title.

16 "§17-11-3.

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

25 ~~"(1) The person expects to be out of the county or~~
26 ~~the state, or the municipality for municipal elections, on~~
27 ~~election day.~~

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

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

8 ~~"(4) The person is enrolled as a student at an~~
9 ~~educational institution located outside the county of his or~~
10 ~~her personal residence, attendance at which prevents his or~~
11 ~~her attendance at the polls.~~

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

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

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

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

26 ~~"(b) An applicant for an absentee ballot who is a~~
27 ~~member of the Armed Forces of the United States, including the~~

1 ~~Alabama National Guard, the United States Naval Reserves, the~~
2 ~~United States Air Force Reserves, and the United States Army~~
3 ~~Reserve on active duty or active duty for training or an~~
4 ~~applicant who is the spouse of any member of the armed forces~~
5 ~~or any other applicant qualified to vote absentee pursuant to~~
6 ~~the federal Uniformed and Overseas Citizens Absentee Voting~~
7 ~~Act, 42 U.S.C. §1973ff, may make application for an absentee~~
8 ~~ballot by filling out the federal postcard application form,~~
9 ~~authorized and provided for under the provisions of The~~
10 ~~Federal Voting Assistance Act of 1955, Public Law 296, Chapter~~
11 ~~656, H.R. 4048, approved August 9, 1955, 84th Congress 1st~~
12 ~~Session. Applications returned by mail must be received not~~
13 ~~less than 10 days prior to the election. Applications returned~~
14 ~~by hand must be received not less than five days prior to the~~
15 ~~election.~~

16 "~~(c)~~ (b) Any registered elector who requires
17 emergency treatment of a licensed physician within five days
18 of an election may apply for an emergency absentee ballot for
19 the election and may vote by returning the absentee ballot no
20 later than noon on the day the election is held. The attendant
21 physician shall describe and certify the circumstances as
22 constituting an emergency on a special form designed by the
23 Secretary of State and provided by his or her office to local
24 absentee election managers. The special form shall be attached
25 to the application.

26 "~~(d)~~ (c) (1) Any registered elector whose name
27 appears on the poll list of qualified voters may vote by an

1 emergency absentee ballot if any of the following situations
2 arise:

3 "a. The elector is required by his or her employer
4 under unforeseen circumstances within five days before an
5 election to be unavailable to vote at the polls on election
6 day.

7 "b. The elector is a caregiver of a person who
8 requires emergency treatment by a licensed physician within
9 five days before an election.

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

13 "(2) Under such circumstances, the elector shall
14 apply for an emergency absentee ballot at the office of the
15 absentee election manager no later than the close of the
16 business day one day prior to the election. The applicant
17 shall complete and file an application form designed by the
18 Secretary of State for emergency absentee voters. The form
19 shall contain an affidavit which the applicant shall sign or
20 swear acknowledging that he or she was not aware of the
21 situation constituting the emergency prior to five days before
22 the election. An applicant who meets the requirements of this
23 subsection may vote by an emergency absentee ballot. After
24 voting the ballot, the voter shall hand the ballot to the
25 absentee election manager.

26 "~~(e)~~ (d) If the occurrence of a state of emergency
27 as declared in this or any other state, or by the federal

1 government, renders substantial compliance with this article
2 impossible or unreasonable for a group of qualified voters who
3 respond to the emergency, the Secretary of State, pursuant to
4 Section 41-22-5, may adopt an emergency rule to allow those
5 qualified voters to vote by emergency absentee ballot.

6 Notwithstanding any other laws to the contrary, all expenses
7 and costs incurred by the state or any county in carrying out
8 the responsibilities and duties included in an emergency rule
9 adopted pursuant to this subsection shall be paid by the State
10 of Alabama from any funds made available for election expenses
11 under state and federal law.

12 ~~"(f)~~ (e) Notwithstanding any other provision of
13 otherwise applicable law, in the event more than one absentee
14 ballot is cast in the name of the single voter, whether any
15 such multiple ballot is cast by mail or otherwise, none of the
16 affidavit envelopes containing the multiple ballots shall be
17 opened, and none of the multiple ballots shall be counted,
18 except in the event of an election contest, upon the order of
19 the election contest tribunal. Upon the conclusion of an
20 election contest or, in the event no such contest is filed,
21 upon the expiration of time for filing such a contest, the
22 multiple ballots shall be provided to the district attorney,
23 with photocopies provided to the state Attorney General, for
24 the investigation, prosecution, or other action as may be
25 appropriate under applicable law.

26 "§17-11-7.

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

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

6 "State of Alabama
7 County of _____

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

9 My place of residence in Alabama is: _____

10 (street)

11 _____, Alabama _____

12 (city or town) (zip code)

13 My date of birth is: _____

14 month day year

15
16 ~~I am entitled to vote an absentee ballot because:~~

17 ~~Check at least one:~~

18 ~~___ I expect to be out of the county or the state on~~

19 ~~election day.~~

20 ~~___ I am physically incapacitated and will not be~~

21 ~~able to vote in person on election day.~~

1 ~~_____ I expect to work a required workplace shift~~
2 ~~which has at least 10 hours which coincide with the polling~~
3 ~~hours at my 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 have been appointed as an election officer at~~
13 ~~a polling place which is not my regular polling place.~~

14 ~~_____ I will be out of the county on election day~~
15 ~~responding to a state of emergency as declared by this state~~
16 ~~or any other state, or by the federal government.~~

17 ~~_____ I am a caregiver for a family member to the~~
18 ~~second degree of kinship by affinity or consanguinity and the~~
19 ~~family member is confined to his or her home.~~

20 ~~_____ I am currently incarcerated in prison or jail~~
21 ~~and I have not been convicted of a felony involving moral~~
22 ~~turpitude.~~

23 I further swear (or affirm) that I have not voted
24 nor will I vote in person in the election to which this ballot
25 pertains.

26 I have marked the enclosed absentee ballot
27 voluntarily and I have read or had read to me and understand

1 the instructions accompanying this ballot and I have carefully
2 complied with such instructions.

3 Moreover, I further swear (or affirm) that all of
4 the information given above is true and correct to the best of
5 my knowledge and that I understand that by knowingly giving
6 false information so as to vote illegally by absentee ballot
7 that I shall be guilty of a misdemeanor which is punishable by
8 a fine not to exceed one thousand dollars (\$1,000) or confine-
9 ment in the county jail for not more than six months, or both.

10 _____
11 (Signature or mark of voter.)

12 _____
13 (Printed name of voter.)

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

19 Sworn to and subscribed before me this _____ day of
20 _____, 2__.

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

1 _____ (Signature of official)

2 (Title of official)

3 _____

4 (Address of official)

5 OR

6 1st Witness _____

7 Signature

8 _____

9 Print name

10 _____

11 Address

12 _____

13 City Zip Code

14 2nd Witness _____

15 Signature

16 _____

17 Print name

18 _____

19 Address

20 _____

1
2 "(c) Unless running unopposed, a candidate may not
3 witness or notarize any absentee ballot.

4 "§17-11-10.

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

10 "(b) (1) ~~For absentee ballots received by noon on~~
11 ~~the day of the election, the~~ The absentee election manager
12 ~~shall~~, beginning at ~~noon~~ 7:00 a.m. on the day of the election,
13 shall deliver the sealed affidavit envelopes containing
14 absentee ballots to the election officials provided for in
15 Section 17-11-11. The election officials shall then call the
16 name of each voter casting an absentee ballot with poll
17 watchers present as may be provided under the laws of Alabama
18 and shall examine each affidavit envelope to determine if the
19 signature of the voter has been appropriately witnessed. If
20 the witnessing of the signature and the information in the
21 affidavit establish that the voter is entitled to vote by
22 absentee ballot, then the election officials shall certify the
23 findings, open each affidavit envelope, and deposit the plain
24 envelope containing the absentee ballot into a sealed ballot
25 box.

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

22 "(3) Upon closing of the polls, the absentee ballots
23 shall be counted and otherwise handled in all respects as if
24 the absentee voter were present and voting in person. Precinct
25 ballot counters may be used to count absentee ballots.
26 Absentee election officials are to be appointed and trained in
27 the same manner as prescribed for regular election officials.

1 The number of absentee election officials shall be determined
2 by the number of precinct counters provided. The county
3 commission may provide more than one precinct ballot counter
4 based upon the recommendation of the absentee election
5 manager. Beginning not earlier than noon on election day, the
6 absentee election officials shall perform the duties
7 prescribed in Section 17-11-11.

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

19 "(c) (1) Absentee ballots cast in a second primary
20 election for federal, state, or county office by individuals
21 voting pursuant to the federal Uniformed and Overseas Citizens
22 Absentee Voting Act, ~~42 U.S.C. 1973ff et seq.~~ 52 U.S.C. §§
23 20301-20311, and received after noon on the day of the second
24 primary election, shall be opened and counted at the same time
25 as the verified provisional ballots. At noon seven days after
26 the second primary election, the absentee election manager
27 shall deliver the sealed affidavit envelopes containing

1 absentee ballots to the officials provided for in subsection
2 (f) of Section 17-10-2. The officials shall call the name of
3 each voter casting an absentee ballot in the presence of
4 watchers designated by any interested candidates and shall
5 examine each affidavit envelope to determine if the signature
6 of the voter has been appropriately witnessed. If the
7 witnessing of the signature and the information in the
8 affidavit establish that the voter is entitled to vote by
9 absentee ballot, then the election officials shall certify the
10 findings, open each affidavit envelope, and deposit the plain
11 envelope containing the absentee ballot into a sealed ballot
12 box.

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

1 years of age or older or a notary public, or other officer,
2 including a military commissioned officer, authorized to
3 acknowledge oaths, prior to being delivered or mailed to the
4 absentee election manager.

5 "(3) The absentee ballots described in this
6 subsection shall be opened, counted, and tabulated. The
7 results of the absentee ballots counted and tabulated on
8 election day shall be amended to include the results of the
9 absentee ballots described in this subsection.

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

13 "§17-11-14.

14 "The county commission shall determine the amount of
15 compensation to be paid to the absentee election manager ~~or~~
16 ~~other absentee election manager~~ and any assistant appointed
17 pursuant to Section 17-11-2 for the performance of his or her
18 duties with respect to absentee ballots for which his or her
19 services are required during the 55-day period prior to the
20 election, the day of the election, and the seven-day period
21 following the election during which ballots under the
22 Uniformed and Overseas Citizens Absentee Voting Act may be
23 returned, but ~~such~~ the compensation shall be at least fifty
24 dollars (\$50) per day or the same pay as an inspector as
25 authorized under Section 17-8-12, and the total number of days
26 worked may not exceed 46 days. Compensation paid to any
27 assistant appointed pursuant to Section 17-11-2 shall be

1 reimbursed by the state and shall in no case exceed the
2 compensation paid to a clerk as provided by 17-8-12. In all
3 counties in which the compensation of absentee election
4 managers is prescribed by local law or general law of local
5 application at an amount in excess of the amount prescribed,
6 the compensation of the absentee election manager shall not be
7 increased or decreased. The amount shall be the total
8 compensation allowed the absentee election manager for duties
9 relating to absentee ballots in all elections held on the same
10 day and shall be paid from the county treasury. Any
11 reimbursement shall be as provided in Chapter 16.

12 "§17-11-18.

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

23 "(b) The above provision does not apply in the case
24 of individuals voting absentee pursuant to the federal
25 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA),
26 ~~42 U.S.C. 1973ff~~ 52 U.S.C. §§ 20301-20311, when those
27 individuals are voting in a primary, second primary, general,

1 or special election for a federal, state, or county office or
2 proposed constitutional amendment or other referenda. In the
3 case of UOCAVA voters voting absentee in a primary, second
4 primary, general, or special election for a federal, state, or
5 county office or proposed constitutional amendment or other
6 referenda, no absentee ballot shall be opened or counted, if
7 received by the absentee election manager by mail, unless
8 postmarked as of the day of the primary, second primary,
9 general, or special election and received by mail no later
10 than noon seven days after the primary, second primary,
11 general, or special election."

12 Section 2. This act shall become effective
13 immediately following its passage and approval by the
14 Governor, or its otherwise becoming law.