HB538

211430-3

By Representative Baker

RFD: Constitution, Campaigns and Elections

First Read: 11-MAR-21
A BILL

TO BE ENTITLED

AN ACT

Relating to absentee ballots; to amend Sections 17-11-3, 17-11-10, and 17-11-18, Code of Alabama 1975, to revise the timeframe for applying to vote by absentee ballot; to revise certain procedures for the processing of absentee ballots; and to update certain references to federal law.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 17-11-3, 17-11-10, and 17-11-18, Code of Alabama 1975, are amended to read as follows:

"§17-11-3.

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

"(1) The person expects to be out of the county or the state, or the municipality for municipal elections, on election day.
(2) The person has any physical illness or infirmity which prevents his or her attendance at the polls, whether he or she is within or without the county on the day of the election.

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

(4) The person is enrolled as a student at an 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 a caregiver for a family member to the second degree of kinship by affinity or consanguinity and the family member is confined to his or her home.

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

(b) Applications returned by mail must be received not less than 10 days prior to the election. Applications
returned by hand must be received not less than five days prior to the election.

"(c) 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. Applications returned by mail must be received not less than 10 days prior to the election. Applications returned by hand must be received not less than five days prior to the election. Session.

"(d) Any registered elector who requires emergency treatment of a licensed physician within five days of an election 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 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.

"(d)(1) Any registered elector whose name appears on the poll list of qualified voters may vote by an emergency absentee ballot if any of the following situations arise:

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

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

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

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

"(e) If the occurrence of a state of emergency as
declared in this or any other state, or by the federal
government, renders substantial compliance with this article
impossible or unreasonable for a group of qualified voters who
respond to the emergency, the Secretary of State, pursuant to
Section 41-22-5, may adopt an emergency rule to allow those
qualified voters to vote by absentee ballot. Notwithstanding
any other laws to the contrary, all expenses and costs
incurred by the state or any county in carrying out the
responsibilities and duties included in an emergency rule
adopted pursuant to this subsection shall be paid by the State
of Alabama from any funds made available for election expenses
under state and federal law.

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

"§17-11-10.

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

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

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

"(3) Upon closing of the polls, the absentee ballots shall be counted and otherwise handled in all respects as if the absentee voter were present and voting in person. Precinct ballot counters may be used to count absentee ballots. Absentee election officials are to be appointed and trained in the same manner as prescribed for regular election officials. The number of absentee election officials shall be determined by the number of precinct counters provided. The county commission may provide more than one precinct ballot counter
based upon the recommendation of the absentee election
manager. Beginning not earlier than noon 7:00 a.m. on election
day, the absentee election officials shall perform the duties
prescribed in Section 17-11-11.

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

"(c)(1) Absentee ballots cast in a second primary
election for federal, state, or county office by individuals
voting pursuant to the federal Uniformed and Overseas Citizens
20301-20311, and received after noon on the day of the second
primary election, shall be opened and counted at the same time
as the verified provisional ballots. At noon seven days after
the second primary election, the absentee election manager
shall deliver the sealed affidavit envelopes containing
absentee ballots to the officials provided for in subsection
(f) of Section 17-10-2. The officials shall call the name of
each voter casting an absentee ballot in the presence of
watchers designated by any interested candidates and shall examine each affidavit envelope to determine if the signature of the voter has been appropriately witnessed. If the witnessing of the signature and the information in the affidavit establish that the voter is entitled to vote by absentee ballot, then the election officials shall certify the findings, open each affidavit envelope, and deposit the plain envelope containing the absentee ballot into a sealed ballot box.

"(2) No election official shall open an affidavit envelope if the affidavit printed thereon is unsigned by the voter or unmarked, and no ballot envelope or ballot therein may be removed or counted. No election official shall open an affidavit envelope if the voter's affidavit signature or mark is not witnessed by the signatures of two witnesses or a notary public, or other officer, including a military commissioned officer, authorized to acknowledge oaths, and no ballot envelope or ballot therein may be removed or counted. The provision for witnessing of the voter's affidavit signature or mark in Section 17-11-7 goes to the integrity and sanctity of the ballot and election. No court or other election tribunal shall allow the counting of an absentee ballot with respect to which the voter's affidavit signature or mark is not witnessed by the signatures of two witnesses 18 years of age or older or a notary public, or other officer, including a military commissioned officer, authorized to
acknowledge oaths, prior to being delivered or mailed to the absentee election manager.

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

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

"§17-11-18.

"(a) 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 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, by noon on the day of the election.

"(b) 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, 52 U.S.C. §§ 20301-20311, when those individuals are voting in a primary, second primary, general, or special election for a federal, state, or county office or
proposed constitutional amendment or other referenda. In the case of UOCAVA voters voting absentee in a primary, second primary, general, or special election for a federal, state, or county office or proposed constitutional amendment or other referenda, 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 primary, second primary, general, or special election and received by mail no later than noon seven days after the primary, second primary, general, or special election."

Section 2. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.
House of Representatives

Read for the first time and referred to the House of Representatives committee on Constitution, Campaigns and Elections............ ....... 11-MAR-21

Read for the second time and placed on the calendar 1 amendment ...... ....... 18-MAR-21

Read for the third time and passed as amended......................... ....... 30-MAR-21

Yeas 79, Nays 16, Abstains 3

Jeff Woodard
Clerk