HB538

211430-1

By Representative Baker

RFD: Constitution, Campaigns and Elections

First Read: 11-MAR-21
SYNOPSIS: This bill would revise the timeframe to apply to vote by absentee ballot and would revise certain procedures relating to the processing of absentee ballots.

This bill would also update certain cross-references in the relevant statute to federal law.

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

"(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) 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.

"(c) 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, 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
Absentee Voting Act, 42 U.S.C. 1973ff et seq. 52 U.S.C. §§ 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.