

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 579**

4 (By Senators Beach, Miller and D. Hall)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported March 27, 2013.]
8 _____

9
10 A BILL to repeal §3-3-2a and §3-3-7 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §3-3-1, §3-3-2, §3-3-3,
12 §3-3-3a, §3-3-4, §3-3-5, §3-3-5a, §3-3-5b, §3-3-5c, §3-3-8,
13 §3-3-10 and §3-3-11 of said code; and to amend said code by
14 adding thereto a new section, designated §3-3-3b, all relating
15 to absentee and early in-person voting; updating, clarifying
16 and reorganizing existing language in the code; removing
17 outdated language; allowing veterans' homes to be treated like
18 nursing homes in certain situations; adding requirements to
19 serve as an assistant with early in-person voting; clarifying
20 differences between paper-based voting systems and direct
21 recording voting systems; clarifying certain language with
22 regard to criminal violations; authorizing the Secretary of
23 State to create electronic ballots in certain situations;
24 clarifying when a federal write-in ballot may not be counted;
25 and detailing and adding to the process for counting of
26 absentee ballots separated by voting mechanism.

1 *Be it enacted by the Legislature of West Virginia:*

2 That §3-3-2a and §3-3-7 of the Code of West Virginia, 1931, as
3 amended, be repealed; that §3-3-1, §3-3-2, §3-3-3, §3-3-3a, §3-3-4,
4 §3-3-5, §3-3-5a, §3-3-5b, §3-3-5c, §3-3-8, §3-3-10 and §3-3-11 of
5 said code be amended and reenacted; and that said code be amended
6 by adding thereto a new section, designated §3-3-3b, all to read as
7 follows:

8 **ARTICLE 3. VOTING BY ABSENTEES.**

9 **§3-3-1. Persons eligible to vote absentee ballots by mail or**
10 **electronically.**

11 ~~(a) All registered and other qualified voters of the county~~
12 ~~may vote an absentee ballot during the period of early voting in~~
13 ~~person.~~

14 ~~(b) (a)~~ Registered voters ~~and other qualified voters~~ in the
15 county are authorized to vote an absentee ballot by mail in the
16 following circumstances:

17 (1) ~~Any~~ A voter who is confined to a specific location and
18 prevented from voting in person throughout the period of voting in
19 person because of:

20 (A) Illness, injury, physical disability, immobility or other
21 medical reason; or

22 ~~(B) Physical disability or immobility due to extreme advanced~~
23 ~~age; or~~

24 ~~(C) (B)~~ Incarceration or home detention: *Provided*, That the
25 underlying conviction is not for a crime which is a felony or a

1 violation of section twelve, thirteen or sixteen, article nine of
2 this chapter involving bribery in an election;

3 (2) ~~Any~~ A voter who is absent from the county throughout the
4 period and available hours for voting in person because of:

5 (A) Personal or business travel;

6 (B) Attendance at a college, university or other place of
7 education or training; or

8 (C) Employment which because of hours worked and ~~distance from~~
9 ~~the county seat~~ location of employment make voting in person
10 impossible;

11 (3) ~~Any~~ A voter absent from the county throughout the period
12 and available hours for voting in person and who is an absent
13 uniformed services voter or overseas voter, as defined by 42 U. S.
14 C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee
15 Voting Act of 1986, including members of the uniformed services on
16 active duty, members of the merchant marine, spouses and dependents
17 of those members on active duty and persons who reside outside the
18 United States and are qualified to vote in the last place in which
19 the person was domiciled before leaving the United States. The
20 Secretary of State may authorize the use of an online delivery
21 system for blank ballots provided electronically to absent
22 uniformed services voter or overseas voter, as defined by 42 U. S.
23 C. §1973, et seq., pursuant to subdivision (2), subsection (e),
24 section five of this article;

25 (4) Any voter who is required to dwell temporarily outside the
26 county and is absent from the county throughout the time for voting

1 in person because of:

2 (A) Serving as an elected or appointed federal or state
3 officer; or

4 (B) Serving in any other documented employment assignment of
5 specific duration of four years or less;

6 (5) ~~Any~~ A voter for whom the designated area ~~for absentee~~
7 ~~voting within the county courthouse or annex of the courthouse~~ or
8 areas for early in-person voting and the voter's assigned polling
9 place are inaccessible because of his or her physical disability;
10 and

11 (6) Any voter who is participating in the Address
12 Confidentiality Program as established by section one hundred
13 three, article twenty-eight-a, chapter forty-eight of this code.

14 ~~(c)~~ (b) Registered voters and other qualified voters in the
15 county may, in the following circumstances, vote an emergency
16 absentee ballot subject to the availability of the services as
17 provided in this article:

18 (1) ~~Any~~ A voter who is confined or expects to be confined in
19 a hospital or other duly licensed health care facility within the
20 county of residence or other authorized area, as provided in this
21 article, on the day of the election;

22 (2) ~~Any~~ A voter who resides in a nursing home or veterans'
23 home within the county of residence and ~~would be otherwise~~ is
24 unable to vote in person ~~providing~~ if the county commission has
25 authorized the services; ~~if the voter has resided in the nursing~~
26 ~~home for a period of less than thirty days;~~ and

1 (3) ~~Any~~ A voter who is working as a replacement poll worker
2 and is assigned to a precinct out of his or her voting district if
3 the assignment was made after the period for voting an absentee
4 ballot in person has expired.

5 **§3-3-2. Authority to conduct absentee voting; absentee voting**
6 **application; form.**

7 (a) Absentee voting is to be supervised and conducted by the
8 proper official for the political division in which the election is
9 held in conjunction with the ballot commissioners appointed from
10 each political party as follows:

11 (1) The clerk of the county commission for ~~any~~ an election
12 held throughout the county, within a political subdivision or
13 territory other than a municipality or within a municipality when
14 the municipal election is conducted in conjunction with a county
15 election; ~~the clerk of the county commission~~ or

16 (2) The municipal recorder or other officer authorized by
17 charter or ordinance ~~provisions~~ to conduct absentee voting, for ~~any~~
18 an election held entirely within the municipality or, in the case
19 of annexation elections, within the area affected. The terms
20 "clerk" or "clerk of the county commission" or "official designated
21 to supervise and conduct absentee voting" used elsewhere in this
22 article means municipal recorder or other officer in the case of
23 municipal elections.

24 (b) A person authorized and desiring to vote a mail-in
25 absentee ballot in ~~any~~ a primary, general or special election is to
26 make application in writing in the proper form to the proper

1 official as follows:

2 (1) The completed application is to be on a form prescribed by
3 the Secretary of State and is to contain the name, date of birth
4 and political affiliation of the voter, residence address within
5 the county, the address to which the ballot is to be mailed, the
6 authorized reason ~~if any,~~ for which the absentee ballot is
7 requested, ~~and if the reason is illness or hospitalization, the~~
8 ~~name and telephone number of the attending physician,~~ the signature
9 of the voter to a declaration made under ~~the~~ penalties for false
10 swearing as provided in section three, article nine of this chapter
11 that the statements and declarations contained in the application
12 are true and any affidavit required and any additional information
13 which the voter is required to supply; ~~any affidavit which may be~~
14 ~~required and an indication as to whether it is an application for~~
15 ~~voting in person or by mail; or~~

16 (2) For ~~any~~ a person authorized to vote an absentee ballot
17 under the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed
18 and Overseas Citizens Absentee Voting Act of 1986, the completed
19 application may be on the federal postcard application for absentee
20 ballot form issued under authority of that act and submitted by
21 mail or electronically; or

22 ~~(3) For any person unable to obtain the official form for~~
23 ~~absentee balloting at a reasonable time before the deadline for an~~
24 ~~application for an absentee ballot by mail is to be received by the~~
25 ~~proper official, the completed application may be in a form set out~~
26 ~~by the voter, provided all information required to meet the~~

1 ~~provisions of this article is set forth and the application is~~
2 ~~signed by the voter requesting the ballot; or~~

3 ~~(4)~~ (3) A person authorized to vote an absentee ballot who is
4 participating in the Address Confidentiality Program as established
5 by section one hundred three, article twenty-eight-a, chapter
6 forty-eight of this code, may apply to the program manager within
7 the Office of the Secretary of State to vote a mail-in absentee
8 ballot. The program manager will notify the designated county
9 contact to coordinate the application and the provision of an
10 absentee ballot to the program participant.

11 **§3-3-3. Early voting in person.**

12 (a) All registered voters of the county may vote during the
13 period of early in-person voting.

14 ~~(a)~~ (b) The voting period for early in-person voting is to be
15 conducted during regular business hours beginning on the thirteenth
16 day before the election and continuing through the third day before
17 the election. Additionally, early in-person voting is to be
18 available from 9:00 a.m. to 5:00 p.m. on Saturdays during the early
19 voting period.

20 ~~(b)~~ (c) ~~Any~~ A person desiring to vote during the period of
21 early in-person voting shall, upon entering the election room,
22 clearly state his or her name and residence to the official or
23 representative designated to supervise and conduct ~~absentee~~ early
24 in-person voting. If that person is found to be duly registered as
25 a voter in the precinct of his or her residence, he or she is
26 required to sign his or her name in the space marked "signature of

1 voter" on the pollbook. If the voter is unable to sign his or her
2 name due to illiteracy or physical disability, the person assisting
3 the voter and witnessing the mark of the voter shall sign his or
4 her name in the space provided. No ballot may be given to the
5 person until he or she signs his or her name on the pollbook.

6 ~~(c)~~ (d) When the voter's signature or mark is properly on the
7 pollbook, two qualified representatives of the official designated
8 to supervise and conduct ~~absentee~~ early in-person voting shall sign
9 their names in the places indicated on the back of the official
10 ballot for paper-based voting systems, or direct the voter to a
11 voting booth for direct recording voting systems.

12 ~~(d)~~ (e) If the official designated to supervise and conduct
13 ~~absentee~~ early in-person voting determines that the voter is not
14 properly registered in the precinct where he or she resides, the
15 clerk or his or her representative shall challenge the voter's
16 ~~absentee~~ ballot as provided in this article.

17 ~~(e)~~ (f) The official designated to supervise and conduct
18 ~~absentee~~ early in-person voting shall provide each person voting ~~an~~
19 ~~absentee ballot in person the following items to be printed a~~
20 ballot with the following items as prescribed by the Secretary of
21 State:

22 (1) In counties using ~~paper ballots,~~ paper-based voting
23 systems, one of each type of official ~~absentee~~ ballot the voter is
24 eligible to vote prepared according to law and other supplies
25 needed; or

26 ~~(2) In counties using punch card systems, one of each type of~~

1 ~~official absentee ballot the voter is eligible to vote, prepared~~
2 ~~according to law, and a gray secrecy envelope;~~

3 ~~(3) In counties using optical scan systems, one of each type~~
4 ~~of official absentee ballot the voter is eligible to vote, prepared~~
5 ~~according to law, and a secrecy sleeve; or~~

6 ~~(4) (2) For direct recording election voting systems, access~~
7 ~~to the voting equipment in the voting booth.~~

8 ~~(f) (g) The voter shall enter the voting booth alone and there~~
9 ~~mark the ballot: *Provided*, That the voter may have assistance in~~
10 ~~voting according to the provisions of section four of this article.~~
11 ~~After the voter has voted the ballot or ballots, the ~~absentee voter~~~~
12 ~~shall: ~~Place the ballot or ballots in the gray secrecy envelope and~~~~
13 ~~return the ballot or ballots to the official designated to~~
14 ~~supervise and conduct the absentee voting: *Provided, however*, That~~
15 ~~voter shall (1) in paper-based voting systems, return the ballot or~~
16 ~~ballots by the appropriate means to the official designated to~~
17 ~~supervise and conduct early in-person voting; or (2) in direct~~
18 ~~recording election voting systems, once the voter has cast his or~~
19 ~~her ballot, the voter shall exit the polling place and the~~
20 ~~designated official shall ensure that the voting system is ready~~
21 ~~for the next voter.~~

22 ~~(g) (h) In counties using paper-based voting systems, upon~~
23 ~~receipt of the voted ballot, representatives of the official~~
24 ~~designated to supervise and conduct the ~~absentee~~ early in-person~~
25 ~~voting shall:~~

26 (1) Remove the ballot stub;

1 (2) Place ~~punch card ballots~~ and paper ballots into one
2 envelope ~~which shall not have any~~ with no marks except the precinct
3 number and seal the envelope: Provided, That counties with
4 precinct-based scanners shall use the precinct-based scanners in
5 lieu of placing the ballots into the envelope; and

6 (3) Place ~~ballots for all voting systems~~ ballots into a ballot
7 box that is secured by two locks with a key to one lock kept by the
8 president of the county commission and a key to the other lock kept
9 by the county clerk.

10 **§3-3-3a. Early in-person voting areas; prohibition against display**
11 **of campaign material.**

12 (a) The county commission shall designate the courthouse or
13 annex to the courthouse as the primary location for early in-person
14 voting and in addition, the commission may designate other
15 locations as provided in section three-b of this article.

16 (b) Throughout the period of early in-person voting, the
17 official designated to supervise and conduct early in-person voting
18 shall make the following provisions for voting:

19 (1) Provide a sufficient number of voting booths or devices
20 appropriate to the voting system where voters may prepare their
21 ballots. The booths or devices are to be in an area separate from
22 but within clear view of the public entrance area of the official's
23 office or other area designated by the county commission for early
24 in-person voting and are to be arranged to ensure the voter
25 complete privacy in casting the ballot.

26 (2) Secure the voting area free from interference with the

1 voter and ensure that voted and unvoted ballots are at all times
2 secure from tampering. No person, other than a person lawfully
3 assisting the voter according to the provisions of this chapter,
4 may be permitted to come within five feet of the voting booth while
5 the voter is voting. No person may enter the area or room set aside
6 for voting except for the officials or employees of the official
7 designated to supervise and conduct early in-person voting, members
8 of the Board of Ballot Commissioners assigned to conduct early
9 in-person voting or representatives from the Secretary of State's
10 Office.

11 (3) Request that the county commission designate an area
12 within the county courthouse, an annex of the courthouse or any
13 other area designated as early in-person voting locations within
14 the county, as a portion of the official's office for the purpose
15 of early in-person voting, subject to the same requirements as the
16 regular early in-person voting area, in the following
17 circumstances:

18 (A) If the voting area is not accessible to voters with
19 physical disabilities;

20 (B) If the voting area is not within clear view of the public
21 entrance of the office of the official designated to supervise and
22 conduct early in-person voting; or

23 (C) If there is no suitable area for early in-person voting
24 within the office.

25 (4) The official designated to supervise and conduct early
26 in-person voting shall have at least two representatives to assist

1 with early in-person voting. The two representatives may not be
2 registered with the same political party affiliation or registered
3 with no political party affiliation. The representatives may be
4 full-time employees, temporary employees hired for the period of
5 early in-person voting or volunteers. To be eligible to serve as an
6 assistant with early in-person voting, a person:

7 (A) Must be a registered voter;

8 (B) Must be able to read and write the English language;

9 (C) May not be a candidate on the ballot or an official
10 write-in candidate in the election;

11 (D) May not be the parent, child, sibling or spouse of either
12 a candidate on the ballot or an official write-in candidate in the
13 precinct where the official serves;

14 (E) May not be a person prohibited from serving as an election
15 official pursuant to a federal or state statute; and

16 (F) May not have been previously convicted of a violation of
17 an election law.

18 (c) No person may electioneer or display or distribute, in any
19 manner, or authorize the display or distribution of literature,
20 posters or material of any kind which tends to influence the voting
21 for or against a candidate or a public question on the property of
22 the county courthouse, annex facilities or other designated early
23 voting locations within the county during the period of early
24 in-person voting. The official designated to supervise and conduct
25 early in-person voting is authorized to remove the material and to
26 direct the sheriff of the county to enforce the prohibition.

1 **§3-3-3b. Community early in-person voting areas.**

2 (a) The county commission, with the approval of the county
3 clerk or other official charged with the administration of
4 elections, may designate community voting locations for early in-
5 person voting other than the county courthouse or courthouse annex,
6 according to the following:

7 (1) The designation must be made by a majority of the members
8 of the county commission at a public meeting called for that
9 purpose;

10 (2) The county commission shall publish a notice of its intent
11 to designate community voting location at least thirty days prior
12 to the designation. Notice shall be by publication as a Class II-0
13 legal advertisement in compliance with provisions of article three,
14 chapter fifty-nine of this code. The publication area is the county
15 in which the community voting locations are designated;

16 (3) Community voting locations shall comply with the
17 requirements of this article for early in-person voting as
18 prescribed by the Secretary of State and all community voting
19 locations for early in-person voting shall:

20 (A) Be available for use during the early voting period;

21 (B) Have the physical facilities necessary to accommodate
22 early voting requirements;

23 (C) Have adequate space for voting equipment, poll workers and
24 voters; and

25 (D) Have adequate security, public accessibility and parking;

26 and

1 (4) The county executive committees of the two major political
2 parties may nominate sites to be used as community voting locations
3 during the early voting period.

4 (b) The county commission, with the approval of the county
5 clerk, may authorize community voting locations pursuant to
6 subsection (a) of this section on a rotating basis where a
7 community voting location may be utilized for less than the full
8 period of early in-person voting. If more than one community
9 voting location is designated, each location shall be utilized for
10 an equal number of voting days and permit voting for the same
11 number of hours per day.

12 (c) Upon the designation of a community voting location or
13 locations:

14 (1) The county clerk shall, not less than thirty days prior to
15 an election, give notice of the dates, times and place of community
16 voting locations by publication as a Class II-0 legal advertisement
17 in compliance with provisions of article three, chapter fifty-nine
18 of this code; and

19 (2) Voting shall be conducted at each designated community
20 voting site for a period of not less than five consecutive days
21 during early in-person voting authorized by section three of this
22 article but need not be conducted at each location for the entire
23 period of early in-person voting;

24 (d) The Secretary of State shall propose legislative and
25 emergency rules in accordance with the provisions of article three,
26 chapter twenty-nine-a of this code as necessary to implement the

1 provisions of this section. The rules shall include establishment
2 of criteria to assure neutrality and security in the selection of
3 community voting locations.

4 **§3-3-4. Assistance to voter in early in-person voting; penalties.**

5 (a) ~~Any~~ A registered voter who requires assistance to vote by
6 reason of blindness, disability, advanced age or inability to read
7 and write may be given assistance by a person of the voter's
8 choice: *Provided*, That the assistance may not be given by the
9 voter's present or former employer or agent of that employer, by
10 the officer or agent of a labor union of which the voter is a past
11 or present member or by a candidate on the ballot.

12 (b) ~~Any~~ A voter who requests assistance in voting ~~an absent~~
13 ~~voter's~~ a ballot but who is determined by the official designated
14 to supervise and conduct ~~absentee~~ early in-person voting not to be
15 qualified for assistance under the provisions of this section and
16 section thirty-four, article one of this chapter, may vote a
17 ~~challenged absent voter's~~ provisional ballot with the assistance of
18 ~~any~~ a person authorized to render assistance pursuant to this
19 section. The official designated to supervise and conduct ~~absentee~~
20 ~~voting shall in this case challenge the absent~~ early in-person
21 voting shall challenge the voter's ballot on the basis of his or
22 her determination that the voter is not qualified for assistance.

23 ~~(c) Any one or more of the election commissioners or poll~~
24 ~~clerks in the precinct to which an absent voter's ballot has been~~
25 ~~sent may challenge the ballot on the ground that the voter received~~
26 ~~assistance in voting it when in his or their opinion: (1) The~~

1 ~~person who received the assistance in voting the absent voter's~~
2 ~~ballot did not require assistance; or (2) the person who provided~~
3 ~~the assistance in voting did not make an affidavit as required by~~
4 ~~this section. The election commissioner or poll clerk or~~
5 ~~commissioners or poll clerks making a challenge shall enter the~~
6 ~~challenge and reason for the challenge on the form and in the~~
7 ~~manner prescribed or authorized by this article.~~

8 ~~(d)~~ (c) Before entering the voting booth or compartment, the
9 person who intends to provide a voter assistance in voting shall
10 make an affidavit, ~~the form of which is to be~~ on a form as
11 prescribed by the Secretary of State, asserting the following:

12 (1) That he or she will not in any manner request or seek to
13 persuade or induce the voter to vote ~~any~~ a particular ticket or for
14 ~~any~~ a particular candidate or for or against ~~any~~ a public question;
15 and

16 (2) That he or she will not keep or make any memorandum or
17 entry of anything occurring within the voting booth or compartment;
18 and

19 (3) That he or she will not, directly or indirectly, reveal to
20 any person the name of ~~any~~ a candidate voted for by the voter, ~~or~~
21 which ticket he or she had voted, ~~or~~ how he or she had voted on ~~any~~
22 a public question or anything occurring within the voting booth or
23 compartment ~~or voting machine booth,~~ except when required pursuant
24 ~~to~~ by law to give testimony as to the matter in a judicial
25 proceeding.

26 ~~(e)~~ (d) In accordance with instructions issued by the

1 Secretary of State, the official designated to supervise and
2 conduct ~~absentee~~ early in-person voting shall provide a form
3 entitled "List of Assisted Voters", prescribed by the Secretary of
4 State, which list is to be divided into two parts. Part A is to be
5 entitled "Unchallenged Assisted Voters" and Part B is to be
6 entitled "Challenged Assisted Voters".

7 (1) Under Part A, the official designated to supervise and
8 conduct ~~absentee~~ early in-person voting shall enter the name of
9 each voter receiving unchallenged assistance in voting ~~an absent~~
10 ~~voter's~~ the ballot, the address of the voter assisted, the nature
11 of the disability which qualified the voter for assistance, ~~in~~
12 ~~voting an absent voter's ballot,~~ the name of the person providing
13 the voter with assistance, ~~in voting an absent voter's ballot,~~ the
14 fact that the person rendering the assistance in voting made and
15 subscribed to the oath required by this section and the signature
16 of the official designated to supervise and conduct ~~absentee~~ early
17 in-person voting certifying to the fact that he or she had
18 determined that the voter who received assistance in voting ~~an~~
19 ~~absent voter's ballot~~ was qualified to receive the assistance under
20 the provisions of this section.

21 (2) Under Part B, the official designated to supervise and
22 conduct ~~absentee~~ early in-person voting shall enter the name of
23 each voter receiving challenged assistance in voting, the address
24 of the voter receiving challenged assistance, the reason for the
25 challenge and the name of the person providing the challenged voter
26 with assistance in voting. At the close of the period provided for

1 ~~voting an absent voter's ballot by personal appearance,~~ early
2 in-person voting, the official designated to supervise and conduct
3 ~~absentee~~ early in-person voting shall make and subscribe to an oath
4 on the list that the list is correct in all particulars. If no
5 voter has been assisted in voting ~~an absent voter's ballot~~ as
6 provided in this section, the official designated to supervise and
7 conduct ~~absentee~~ early in-person voting shall make and subscribe to
8 an oath of that fact on the list. The List of Assisted Voters is
9 to be available for public inspection in the office of the ~~official~~
10 ~~designated to supervise and conduct absentee voting~~ county clerk
11 during regular business hours throughout the period provided for
12 early in-person voting. ~~an absent voter's ballot by personal~~
13 ~~appearance and, unless otherwise directed by the Secretary of~~
14 ~~State, the official shall transmit the list, together with the~~
15 ~~affidavits, applications and absent voters' ballots, to the~~
16 ~~precincts on election day.~~

17 ~~(f)~~ (e) Following the election, the affidavits required by
18 this section from persons providing assistance in voting, together
19 with the List of Assisted Voters, are to be ~~returned by the~~
20 ~~election commissioners to the clerk of the county commission, along~~
21 ~~with the election supplies, records and returns,~~ retained by the
22 clerk of the county commission who shall make the oaths and list
23 available for public inspection and ~~who shall~~ preserve the oaths
24 and list for twenty-two months or, if under order of the court,
25 until their destruction or other disposition is authorized or
26 directed by the court.

1 ~~(g)~~ (f) ~~Any~~ A person making an affidavit required under the
2 provisions of this section who knowingly swears falsely in the
3 affidavit or ~~any~~ a person who counsels or advises, aids or abets
4 another in the commission of false swearing under this section is
5 guilty of a misdemeanor and, upon conviction thereof, shall be
6 fined not more than \$1,000 or confined in ~~the county or regional~~
7 jail ~~for a period of~~ not more than one year, or both fin~~ed~~ and
8 confined.

9 ~~(h)~~ (g) ~~Any~~ A person who knowingly provides a voter assistance
10 in voting ~~an absent voter's ballot~~ in the office of the official
11 designated to supervise and conduct ~~absentee~~ early in-person voting
12 who is not qualified or permitted by this section to provide
13 assistance is guilty of a misdemeanor and, upon conviction thereof,
14 shall be fined not more than \$1,000 or ~~imprisoned in the county or~~
15 ~~regional~~ confined in jail ~~for a period of~~ not more than one year,
16 or both fin~~ed~~ and confined.

17 ~~(i)~~ (h) ~~Any~~ An official designated to supervise and conduct
18 ~~absentee~~ early in-person voting, an election commissioner or a poll
19 clerk who knowingly authorizes or allows a voter to receive ~~or to~~
20 ~~have received~~ unchallenged assistance in voting ~~an absent voter's~~
21 ~~ballot~~ when the voter is known to ~~the~~ that official, ~~designated to~~
22 ~~supervise and conduct absentee voting or~~ election commissioner or
23 poll clerk ~~not to be or have been~~ that the voter is not authorized
24 by the provisions of this section to receive ~~or to have received~~
25 assistance in voting, is guilty of a misdemeanor and, upon
26 conviction thereof, shall be fined not more than \$1,000 or

1 ~~imprisoned in the county or regional~~ confined in jail for a period
2 of not more than one year, or both fined and confined.

3 ~~(j) The term "physical disability" as used in this section~~
4 ~~means: blindness or a degree of blindness as will prevent the voter~~
5 ~~from seeing the names on the ballot; or amputation of both hands;~~
6 ~~or a disability of both hands that neither can be used to make~~
7 ~~cross marks on the absent voter's ballot.~~

8 **§3-3-5. Voting an absentee ballot by mail or electronically;**
9 **penalties.**

10 (a) Upon oral or written request, the official designated to
11 supervise and conduct absentee voting shall provide ~~to any~~ a voter
12 of the county, in person, by mail or electronically, the
13 appropriate application for voting absentee by mail as provided in
14 this article. The voter shall complete and sign the application.
15 ~~in his or her own handwriting or,~~ If the voter is unable to
16 complete the application because of illiteracy or physical
17 disability, the person assisting the voter and witnessing the mark
18 of the voter shall sign his or her name in the space provided.

19 (b) Completed applications for voting an absentee ballot by
20 mail are to be accepted when received by the official designated to
21 supervise and conduct absentee voting in person, by mail or
22 electronically within the following times:

23 (1) For persons eligible to vote an absentee ballot under the
24 provisions of subdivision (3), subsection ~~(b)~~, (a), section one of
25 this article, relating to absent uniformed services and overseas
26 voters, not earlier than January 1 of an election year or

1 eighty-four days preceding the election, whichever is earlier, and
2 not later than the sixth day preceding the election, which
3 application, ~~is to,~~ upon the voter's request, is to be accepted as
4 an application for the ballots for all elections in the calendar
5 year; and

6 (2) For all other persons eligible to vote an absentee ballot
7 by mail, not earlier than eighty-four days preceding the election
8 and not later than the sixth day preceding the election.

9 (c) Upon acceptance of a completed application, the official
10 designated to supervise and conduct absentee voting shall determine
11 whether the following requirements have been met:

12 (1) The application has been completed as required by law;

13 (2) The applicant is duly registered to vote in the precinct
14 of his or her residence and, in a primary election, is qualified to
15 vote the ballot of the political party requested;

16 (3) The applicant is authorized for the reasons given in the
17 application to vote an absentee ballot by mail; and

18 ~~(4) The address to which the ballot is to be mailed is an~~
19 ~~address outside the county if the voter is applying to vote by mail~~
20 ~~under the provisions of paragraph (A) or (B), subdivision (2),~~
21 ~~subsection (b), section one of this article; or subdivision (3) or~~
22 ~~(4) of said subsection;~~

23 ~~(5) The applicant is not making his or her first vote after~~
24 ~~having registered by postcard registration or, if the applicant is~~
25 ~~making his or her first vote after having registered by postcard~~
26 ~~registration, the applicant is exempt from these requirements; and~~

1 ~~(6)~~ (4) No regular and repeated pattern of applications for an
2 absentee ballot by mail for the reason of being out of the county
3 during the entire period of voting in person exists to suggest that
4 the applicant is no longer a resident of the county.

5 (d) If the official designated to supervise and conduct
6 absentee voting determines that the required conditions have been
7 met, two representatives ~~that are~~ registered to vote with different
8 political party affiliations shall sign their names in the places
9 indicated on the back of the official ballot. If the official
10 designated to supervise and conduct absentee voting determines the
11 required conditions have not been met or has evidence that any of
12 the information contained in the application is not true, the
13 official shall give notice to the voter that the voter's absentee
14 ballot will be ~~challenged~~ provisional as provided in this article
15 and shall enter ~~that challenge~~ the provisional reason.

16 (e) (1) Within one day after the official designated to
17 supervise and conduct absentee voting has both the completed
18 application and the ballot, the official shall mail to the voter at
19 the address given on the application the following items as
20 required and as prescribed by the Secretary of State:

21 (A) One of each type of official absentee ballot the voter is
22 eligible to vote, prepared according to law;

23 (B) One envelope, unsealed, ~~which may have~~ with no marks
24 except the designation "Absent Voter's Ballot Envelope No. 1" and
25 printed instructions to the voter;

26 (C) One postage paid envelope, unsealed, designated "Absent

1 Voter's Ballot Envelope No. 2";

2 (D) Instructions for voting absentee by mail;

3 (E) For electronic systems, a device for marking by
4 electronically sensible pen or ink, as may be appropriate;

5 ~~(F) Notice that a list of write-in candidates is available~~
6 ~~upon request;~~ The list of write-in candidates; and

7 (G) Any other supplies required for voting in the particular
8 voting system.

9 (2) If the voter is an absent uniformed services voter or
10 overseas voter, as defined by 42 U. S. C. §1973, *et seq.*, the
11 official designated to supervise and conduct absentee voting shall
12 transmit the ballot to the voter via mail or electronically, as
13 requested by the voter, not later than forty-six days before the
14 election when the application is received by the clerk by this day,
15 otherwise, within one day after receiving and processing the
16 application. If the voter does not designate a preference for
17 transmittal, the clerk may select either method of transmittal for
18 the ballot. If the ballot is transmitted electronically, ~~pursuant~~
19 ~~to this subdivision,~~ the official designated to supervise and
20 conduct absentee voting shall also transmit electronically:

21 (A) A waiver of privacy form, to be promulgated by the
22 Secretary of State;

23 ~~(B) Instructions for voting absentee utilizing a federally~~
24 ~~approved system for voting by mail or electronically;~~

25 ~~(C) Notice that a~~ (B) The list of write-in candidates; ~~is~~
26 ~~available upon request;~~ and

1 ~~(D) Statement~~ (C) Oath of the voter affirming the voter's
2 current name and address and whether ~~or not~~ he or she received
3 assistance in voting.

4 (f) The voter shall mark the ballot alone ~~Provided, That the~~
5 ~~voter~~ but may have assistance ~~in voting~~ according to the provisions
6 of section six of this article.

7 (1) After the voter has voted the ballot or ballots to be
8 returned by mail, the voter shall:

9 (A) Place the ballot or ballots in envelope no. 1 and seal
10 that envelope;

11 (B) Place the sealed envelope no. 1 in envelope no. 2 and seal
12 that envelope;

13 (C) Complete and sign the forms on envelope no. 2; and

14 (D) Return that envelope to the official designated to
15 supervise and conduct absentee voting.

16 ~~(2) If the ballot was transmitted electronically as provided~~
17 ~~in subdivision (2), subsection (e) of this section, the voter shall~~
18 ~~return the ballot in the same manner the ballot was received, or~~
19 ~~the voter may return the ballot by United States mail, along with~~
20 ~~a signed privacy waiver form.~~

21 (2) After the voter has voted the ballots or ballots to be
22 returned electronically, the voter shall return the ballot, the
23 privacy waiver form and the oath of voter according to instructions
24 provided for returning the ballot by electronic means or by mail.

25 (g) Except as provided in subsection (h) of this section,
26 absentee ballots returned by United States mail or other express

1 shipping service are to be accepted if:

2 (1) The ballot is received by the official designated to
3 supervise and conduct absentee voting no later than the day after
4 the election; or

5 (2) The ballot bears a postmark of the United States Postal
6 Service dated no later than election day and the ballot is received
7 by the official designated to supervise and conduct absentee voting
8 no later than the hour at which the board of canvassers convenes to
9 begin the canvass.

10 (h) Absentee ballots received through the United States mail
11 from persons eligible to vote an absentee ballot under the
12 provisions of subdivision (3), subsection ~~(b)~~, (a), section one of
13 this article, relating to uniform services and overseas voters, are
14 to be accepted if the ballot is received by the official designated
15 to supervise and conduct absentee voting no later than the hour at
16 which the board of canvassers convenes to begin the canvass.

17 (i) Voted ballots submitted electronically pursuant to
18 subdivision (2), subsection (f) of this section are to be accepted
19 if the ballot is received by the official designated to supervise
20 and conduct absentee voting no later than the close of polls on
21 election day. ~~Provided, That the Secretary of State's office shall~~
22 ~~enter into an agreement with the Federal Voting Assistance Program~~
23 ~~of the United States Department of Defense to transmit the ballots~~
24 ~~to the county clerks at a time when two individuals of opposite~~
25 ~~political parties are available to process the received ballots.~~

26 (j) Ballots received after the proper time which cannot be

1 accepted are to be placed unopened in an envelope marked for the
2 purpose and kept secure for twenty-two months following the
3 election, after which time they are to be destroyed without being
4 opened. Ballots which cannot be accepted are to be entered into
5 the voter's record within the statewide voter registration system
6 with the reason for not being accepted.

7 (k) Absentee ballots which are hand delivered are to be
8 accepted if they are received by the official designated to
9 supervise and conduct absentee voting no later than the day
10 preceding the election. ~~Provided, That~~ No person may hand deliver
11 more than two absentee ballots in ~~any~~ an election and ~~any~~ a person
12 hand delivering an absentee ballot is required to certify that he
13 or she has not examined or altered the ballot. ~~Any~~ A person who
14 makes a false certification violates the provisions of article nine
15 of this chapter and is subject to those provisions.

16 (l) Upon receipt of the sealed envelope, the official
17 designated to supervise and conduct absentee voting shall:

18 (1) Enter onto the envelope any other required information;

19 (2) Enter the challenge, if any, to the ballot;

20 (3) Enter the required information into the ~~permanent record~~
21 statewide voter registration system of persons applying for and
22 voting an absentee ballot in person; and

23 (4) Place the sealed envelope into a ballot box that is secured
24 by two locks with a key to one lock kept by the president of the
25 county commission and a key to the other lock kept by the county
26 clerk.

1 (m) Upon receipt of a ballot submitted electronically pursuant
2 to subdivision (2), subsection (f) of this section, the official
3 designated to supervise and conduct absentee voting shall place the
4 ballot in an envelope marked "Absentee by Electronic Means" with the
5 completed waiver and oath: *Provided*, That no ballots are to be
6 processed without the presence of two individuals of opposite
7 political parties.

8 (n) All ballots received electronically prior to the close of
9 the polls on election day are to be tabulated in the manner
10 prescribed for tabulating absentee ballots submitted by mail to the
11 extent that those procedures are appropriate for the applicable
12 voting system. The clerk of the county commission shall keep a
13 record of absentee ballots sent and received electronically within
14 the statewide voter registration system.

15 **§3-3-5a. Processing federal postcard applications.**

16 When a federal postcard registration and absentee ballot
17 request (FPCA), as defined in subdivision (2), subsection (b),
18 section two of this article, is received by the official designated
19 to supervise and conduct absentee voting, the official shall examine
20 the application and take the following steps:

21 (1) The official shall first enter the name of the applicant
22 in the ~~permanent absentee~~ statewide voter registration system
23 voter's record for each election for which a ballot is requested,
24 make a photocopy of the application for each election for which a
25 ballot is requested and place the separate copies in secure files
26 to be maintained for use in the various elections.

1 (2) The official designated to supervise and conduct absentee
2 voting shall determine if the applicant is registered to vote at the
3 residence address listed in the voting residence section of the
4 application. If the applicant is not registered or not registered
5 at the address given, the official shall deliver the original FPCA
6 to the clerk of the county commission for processing and the clerk
7 of the county commission shall process the application as an
8 application for registration. ~~and,~~ If the application is received
9 after the close of voter registration for the next succeeding
10 election, the official shall challenge the absentee ballot for that
11 election and send a provisional ballot to the voter.

12 (3) Except as provided in subdivision (2) of this section, the
13 federal application for an absentee ballot received from a person
14 qualified to use the application as provided in section two of this
15 article is to be processed as all other applications. ~~and~~ The ballot
16 or ballots for each election for which ballots are requested by the
17 applicant is to be ~~mailed to the voter on the first day on which~~
18 ~~both the application and the ballot are available.~~ transmitted to
19 the voter by the voter's preferred option on the forty-sixth day
20 before the election if both the application and the ballot are
21 available. If after the forty-sixth day, the ballot or ballots are
22 to be transmitted on the first day after receipt of the application.

23 **§3-3-5b. Procedures for voting a federal write-in absentee ballot**
24 **by qualified persons.**

25 (a) Notwithstanding any other provisions of this chapter, a
26 person qualified to vote an absentee ballot in accordance with

1 subdivision (3), subsection ~~(d)~~ (a), section one of this article may
2 apply not earlier than January 1 of an election year for a ~~special~~
3 federal write-in absentee ballot for a primary or general election
4 in conjunction with the application for a regular absentee ballot
5 or ballots. If the application is received after the forty-ninth
6 day preceding the election, the official designated to supervise and
7 conduct absentee voting shall honor only the application for local,
8 state and federal offices in general, special and primary elections.

9 (b) The application for a ~~special~~ federal write-in absentee
10 ballot may be made on the federal postcard application form.

11 (c) In order to qualify for a ~~special~~ federal write-in absentee
12 ballot, the voter must state that he or she is unable to vote by
13 regular absentee ballot or in person due to requirements of military
14 service or due to living in isolated areas or extremely remote areas
15 of the world. This statement may be made on the federal postcard
16 application or on a form prepared by the Secretary of State and
17 supplied and returned with the ~~special~~ federal write-in absentee
18 ballot.

19 (d) Upon receipt of the application within the time required,
20 the official designated to supervise and conduct absentee voting
21 shall issue the ~~special~~ federal write-in absentee ballot which is
22 to be the same ballot issued under the provisions of 42 U. S. C.
23 §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting
24 Act of 1986. The ballot is to permit the elector to vote in a
25 primary election by indicating his or her political party
26 affiliation and the names of the specific candidates for each office

1 and, in a general election, by writing in a party preference for
2 each office, the names of specific candidates for each office or the
3 name of the person whom the voter prefers for each office.

4 (e) ~~When a special federal write-in ballot is~~ A federal
5 write-in ballot may not be counted when received by the official
6 designated to supervise and conduct absentee voting from a voter:

7 (1) Who mailed the write-in ballot from ~~any~~ a location within
8 the United States;

9 (2) Who did not apply for a regular absentee ballot;

10 (3) ~~who did not apply for a~~ Whose regular absentee ballot by
11 ~~mail;~~ was received by the clerk of the county commission; or

12 (4) Whose application for a regular absentee ballot by mail was
13 received less than thirty days before the election. ~~the write-in~~
14 ~~ballot may not be counted.~~

15 (f) Any write-in absentee ballot must be received by the
16 official designated to supervise and conduct absentee voting prior
17 to the close of the polls on election day or it may not be counted.

18 **§3-3-5c. Procedures for voting an emergency absentee ballot by**
19 **qualified voters.**

20 (a) Notwithstanding any other provision of this chapter, a
21 person qualified to vote an emergency absentee ballot, as provided
22 in subsection ~~(c)~~ (b), section one of this article, may vote an
23 emergency absentee ballot under the procedures established in this
24 section. The county commission may adopt a policy extending the
25 emergency absentee voting procedures to: (1) Hospitals or other
26 duly licensed health care facilities within an adjacent county or

1 within thirty-five miles of the county seat; or (2) nursing homes
2 and veterans' homes within the county. ~~Provided, That~~ The policy
3 is to be adopted by the county commission at least ninety days prior
4 to the election that will be affected and a copy of the policy is
5 to be filed with the Secretary of State.

6 (b) On or before the fifty-sixth day preceding the date on
7 which ~~any~~ an election is to be held, the official designated to
8 supervise and conduct absentee voting shall notify the county
9 commission of the number of sets of emergency absentee ballot
10 commissioners which he or she determines necessary to perform the
11 duties and functions pursuant to this section.

12 (c) A set of emergency absentee ballot commissioners at large
13 ~~shall consist~~ consists of two persons with different political party
14 affiliations appointed by the county commission in accordance with
15 the procedure prescribed for the appointment of election
16 commissioners under the provisions of article one of this chapter.
17 Emergency absentee ballot commissioners have the same qualifications
18 and rights and take the same oath required under the provisions of
19 this chapter for commissioners of elections. Emergency absentee
20 ballot commissioners are to be compensated for services and expenses
21 in the same manner as commissioners of election or poll clerks
22 obtaining and delivering election supplies under the provisions of
23 section forty-four, article one of this chapter.

24 (d) Upon request of the voter or a member of the voter's
25 immediate family or, when the county commission has adopted a policy
26 to provide emergency absentee voting services to nursing home and

1 veterans' home residents within the county, upon request of a staff
2 member of the nursing or veterans' home, the official designated to
3 supervise and conduct absentee voting, upon receiving a proper
4 request for voting an emergency absentee ballot no earlier than the
5 seventh day ~~next~~ preceding the election and no later than noon of
6 election day, shall supply to the emergency absentee ballot
7 commissioners the application for voting an emergency absentee
8 ballot and the balloting materials. The emergency absentee ballot
9 application is to be prescribed by the Secretary of State and is to
10 include the name, residence address, ~~and~~ political party affiliation
11 of the voter, the date ~~location and reason for confinement in the~~
12 ~~case of an emergency, and the name of the attending physician.~~ and
13 location of the voter.

14 (e) The application for an emergency absentee ballot is to be
15 signed by the person applying. If the person applying for an
16 emergency absentee ballot is unable to sign ~~his or her application~~
17 because of illiteracy or physical disability, he or she is to make
18 his or her mark on the signature line provided for an illiterate or
19 disabled applicant. The mark is to be witnessed. The person
20 assisting the voter and witnessing the mark ~~of the voter~~ shall sign
21 his or her name in the space provided.

22 (f) A declaration is to be completed and signed by each of the
23 emergency absentee ballot commissioners stating their names and the
24 date on which they appeared at the place of confinement of the
25 person applying for an emergency absentee ballot. ~~and the~~
26 ~~particulars of the confinement.~~

1 (g) At least one of the emergency absentee ballot commissioners
2 receiving the balloting materials shall sign a receipt which is to
3 be attached to the application form. Each of the emergency absentee
4 ballot commissioners shall deliver the materials to the absent
5 voter, await his or her completion of the application and ballot and
6 return the ~~application and the ballot~~ ballot, in a sealed envelope,
7 and the application to the official designated to supervise and
8 conduct absentee voting. Upon delivering the application and the
9 voted ballot to the official, the emergency absentee ballot
10 commissioners shall sign an oath that no person other than the
11 absent voter voted the ballot. The application and the voted ballot
12 are to be returned to the official designated to supervise and
13 conduct absentee voting prior to the close of the polls on election
14 day. ~~Any~~ Ballots received by the official after the time that
15 delivery may reasonably be made but before the closing of the polls
16 are to be delivered to the canvassing board along with the absentee
17 ballots challenged in accordance with the provisions of section ten
18 of this article.

19 (h) Upon receiving the application and emergency absentee
20 ballot, the official designated to supervise and conduct absentee
21 voting shall ascertain whether the application is complete, whether
22 the voter appears to be eligible to vote an emergency absentee
23 ballot, and whether the voter is properly registered to vote with
24 the office of the clerk of the county commission. If the voter is
25 found to be properly registered in the precinct shown on the
26 application, the ballot is to be delivered to the precinct election

1 commissioner pursuant to section seven of this article. If the
2 voter is found not to be registered or is otherwise ineligible to
3 vote an emergency ballot, the ballot is to be challenged for the
4 appropriate reason provided for in section ten of this article.

5 (i) If either or both of the emergency absentee ballot
6 commissioners refuse to sign ~~any~~ an application for voting an
7 emergency absentee ballot, the voter may vote as an emergency
8 absentee and the ballot will be challenged in accordance with the
9 provisions of section ten of this article in addition to those
10 absentee ballots subject to challenge as provided in that section.

11 (j) ~~Any~~ A voter who receives assistance in voting an emergency
12 absentee ballot shall comply with the provisions of section six of
13 this article. ~~Any~~ Other provisions of this chapter relating to
14 absentee ballots not altered by the provisions of this section ~~are~~
15 ~~to~~ govern the treatment of emergency absentee ballots.

16 **§3-3-8. Disposition and counting of absent voters' ballots.**

17 (a) In counties using paper ballots, all absentee ballots shall
18 be processed as follows:

19 (1) For paper ballots that are not using electronic voting
20 systems:

21 (A) The ballot boxes containing the absentee ballots shall be
22 opened in the presence of the clerk of the county commission and two
23 representatives of opposite political parties;

24 ~~(2)~~ (B) The ballots shall be separated by precincts as stated
25 on the sealed envelopes containing the ballots; ~~and~~

26 ~~(3)~~ (C) Absentee ballots shall be delivered to the polls to be

1 opened and counted in accordance with section thirty-three, article
2 one of this chapter, section fifteen, article five of this chapter;
3 and section six, article six of this chapter. Disclosure of any
4 results before the voting has been closed and the precinct returns
5 posted on the door of the polling place ~~shall be~~ is a per se
6 violation of the oath taken by the counting board. In all other
7 counties, counting is to begin immediately after closing of the
8 polls;

9 (D) The absentee ballots of each precinct and forms, lists and
10 records as designated by the Secretary of State are to be delivered
11 in a sealed carrier envelope to the election commissioner of the
12 precinct at the time he or she picks up the official ballots and
13 other election supplies as provided in section twenty-four, article
14 one of this chapter; and

15 (E) Absentee ballots received after the election commissioner
16 has retrieved the official ballots and other election supplies for
17 the precinct are to be delivered before the closing of the polls to
18 the election commissioner of the precinct who has been designated,
19 pursuant to section twenty-four, article one of this chapter, as the
20 official to supervise and conduct absentee. Ballots received by the
21 official after the time that delivery may reasonably be made but
22 within the time required as provided in subsection (g), section five
23 of this article are to be delivered to the board of canvassers along
24 with the provisional ballots.

25 ~~(b) In counties using optical scan systems, the absentee~~
26 ~~ballots shall be processed as follows:~~

1 (2) For paper-based electronic voting systems:

2 ~~(1)~~ (A) On election day, the ballot boxes containing the
3 absentee ballots shall be delivered to the central counting center
4 and opened in the presence of the clerk of the county commission and
5 two representatives of opposite political parties; and

6 ~~(2)~~ (B) The absentee ballots shall be counted in accordance
7 with section twenty-seven, article four-a of this chapter.

8 ~~(c)~~ (b) In counties using direct recording ~~elections~~ voting
9 systems, the absentee ballots shall be counted as follows:

10 (1) On election day, the ballot boxes containing the paper
11 absentee ballots shall be delivered to the central counting center
12 and opened in the presence of the clerk of the county commission and
13 two representatives of opposite political parties; ~~and~~

14 (2) Each absentee ballot shall be recorded on a direct
15 recording voting terminal designated by the clerk of the county
16 commission as the terminal for absentee tabulations after being read
17 aloud by a separate team of two representatives of opposite
18 political parties; ~~and~~

19 (3) The ballot shall be verified by both teams as being
20 accurately printed on the paper receipt before the ballot is
21 tabulated; and

22 (4) The appropriate election officials shall follow the
23 procedures set out in subsections (a), (b), (d) and (e), section
24 twenty-seven, article four-a of this chapter and subdivisions (3),
25 (4), (5) and (6), subsection (c) of ~~said~~ section twenty-seven,
26 article four-a of this chapter.

1 ~~(d)~~ (c) The provisional ballots shall be deposited in a
2 provisional ballot envelope and delivered to the board of
3 canvassers.

4 ~~(e)~~ (d) ~~Any~~ An election official who determines a person has
5 voted an absent voter's ballot and has also voted at the polls on
6 election day must report the fact to the prosecuting attorney of the
7 county in which the votes were cast.

8 **§3-3-10. Challenging of absent voters' ballots.**

9 (a) The official designated to supervise and conduct absentee
10 voting may challenge an absent voter's ballot on any of the
11 following grounds:

12 (1) That the application for an absent voter's ballot has not
13 been completed as required by law;

14 (2) That ~~any~~ a statement or declaration contained in the
15 application for an absent voter's ballot is not true;

16 (3) That the applicant for an absent voter's ballot is not
17 registered to vote in the precinct of his or her residence as
18 provided by law;

19 (4) That the person voting an ~~absent~~ early in-person voter's
20 ballot ~~by personal appearance~~ in his or her office had assistance
21 in voting the ballot when the person was not qualified for voting
22 assistance because:

23 (A) The affidavit of the person who received assistance does
24 not indicate a legally sufficient reason for assistance; ~~or~~

25 (B) The person who received assistance did not make an
26 affidavit as required by this article; or

1 (C) The person who received assistance is not so illiterate as
2 to have been unable to read the names on the ballot or that he or
3 she is not so physically disabled as to have been unable to see or
4 mark the absent voter's ballot;

5 (5) That the person who voted an absent voter's ballot by mail
6 and received assistance in voting the ballot was not qualified under
7 the provisions of this article for assistance; and

8 (6) That the person has voted absentee by mail as a result of
9 being out of the county more than four consecutive times: *Provided,*
10 That the determination as to whether the person has voted more than
11 four consecutive times does not apply if the person is a citizen
12 residing out of the United States; a member, spouse or dependent of
13 a member serving in the uniformed services; or a college student
14 living outside of his or her home county.

15 (b) ~~Any~~ One or more of the election commissioners or poll
16 clerks in a precinct may challenge an absent voter's ballot ~~on~~ only
17 if the absent voter was not registered and qualified to vote
18 pursuant to the provisions of subsection (a), section one of this
19 article, and if any of the following grounds are present:

20 (1) That the application for an absent voter's ballot was not
21 completed as required by law;

22 (2) That ~~any~~ a statement or declaration contained in the
23 application for an absent voter's ballot is not true;

24 (3) That the person voting an absent voter's ballot is not
25 registered to vote in the precinct of his or her residence as
26 provided by law;

1 (4) That the signatures of the person voting an absent voter's
2 ballot as they appear on his or her registration record, his or her
3 application for an absent voter's ballot and the absent voter's
4 ballot envelope are not in the same handwriting;

5 (5) That the person voting an absent voter's ballot by personal
6 appearance had assistance in voting the ballot when the person was
7 not qualified for assistance because:

8 (A) The affidavit of the person who received assistance does
9 not indicate a legally sufficient reason for assistance; ~~or~~

10 (B) The person who received assistance did not make an
11 affidavit as required by this article; or

12 (C) The person who received assistance is not so illiterate as
13 to have been unable to read the names on the ballot or that he or
14 she was not so physically disabled as to have been unable to see or
15 mark the absent voter's ballot;

16 (6) That the person voted an absent voter's ballot by mail and
17 received assistance in voting the ballot when not qualified under
18 the provisions of this article for assistance;

19 (7) That the person who voted the absent voter's ballot voted
20 in person at the polls on election day;

21 (8) That the person voted an absent voter's ballot under
22 authority of subdivision (3), subsection ~~(b)~~, (a), section one of
23 this article and is or was present in the county in which he or she
24 is registered to vote between the opening and closing of the polls
25 on election day; and

26 (9) On any other ground or for any reason ~~on which or for which~~

1 the ballot of a voter voting in person at the polls on election day
2 may be challenged.

3 ~~No challenge may be made to any absent voter ballot if the~~
4 ~~voter was registered and qualified to vote pursuant to the~~
5 ~~provisions of subsection (a), section one of this article.~~

6 (c) Forms for, and the manner of, challenging an absent voter's
7 ballot under the provisions of this article are to be prescribed by
8 the Secretary of State.

9 (d) Absent voters' ballots challenged by the official
10 designated to supervise and conduct absentee voting under the
11 provisions of this article are to be transmitted by the official
12 directly to the county commission sitting as a board of canvassers.
13 The absent voters' ballots challenged by the election commissioners
14 and poll clerks under the provisions of this article may not be
15 counted by the election officials but are to be transmitted by them
16 to the county commission sitting as a board of canvassers. Action
17 by the board of canvassers on challenged absent voters' ballots is
18 to be governed by the provisions of section forty-one, article one
19 of this chapter.

20 **§3-3-11. Preparation, number and handling of absent voters'**
21 **ballots.**

22 (a) Absent voters' ballots are to be in all respects like other
23 ballots. Not less than ~~seventy~~ eighty-four days before the date on
24 which ~~any~~ a primary, general or special election is to be held,
25 unless a lesser number of days is provided in ~~any~~ a specific
26 election law in which case the lesser number of days applies, the

1 clerks of the county commissions of the several counties shall
2 estimate and determine the number of absent voters' ballots of all
3 kinds which will be required in their respective counties for that
4 election. The ballots for the election of all officers, or the
5 ratification, acceptance or rejection of ~~any~~ a measure, proposition
6 or other public question to be voted on by the voters, are to be
7 prepared and printed under the direction of the board of ballot
8 commissioners ~~constituted~~ as provided in article one of this
9 chapter. The several county boards of ballot commissioners shall
10 prepare and have printed, in the number they may determine, absent
11 voters' ballots that are to be printed under their directions as
12 provided in this chapter. ~~and those~~ These ballots are to be
13 delivered to the clerk of the county commission of the county not
14 less than forty-six days before the day of the election at which
15 they are to be used.

16 (b) The official designated to supervise and conduct absentee
17 voting ~~shall be~~ is responsible for the mailing, transmitting,
18 receiving, delivering and otherwise handling of all absent voters'
19 ballots. He or she shall keep a record within the statewide voter
20 registration system, as may be prescribed by the Secretary of State,
21 of all ballots delivered for ~~the purpose of~~ absentee voting, as well
22 as all ballots, if any, marked before him or her. ~~and~~ The official
23 shall deliver to the commissioner of election a certificate stating
24 the number of ballots delivered, transmitted or mailed to absent
25 voters and those marked before him or her, if any, and the names of
26 the voters to whom those ballots have been delivered, transmitted

1 or mailed or by whom they have been marked, if marked before him or
2 her.

(NOTE: The purpose of this bill is to clean up and update existing code language concerning absentee and early in-person voting.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§3-3-3a has been completely rewritten and §3-3-3b is new; therefore, strike-throughs and underscoring have been omitted.)