

Senate Bill No. 579

(By Senators Beach, Miller and D. Hall)

[Introduced March 20, 2013; referred to the Committee on the
Judiciary.]

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10 A BILL to repeal §3-3-2a, §3-3-3a and §3-3-7 of the Code of West
11 Virginia, 1931, as amended; to amend and reenact §3-3-1,
12 §3-3-2, §3-3-3, §3-3-4, §3-3-5, §3-3-5a, §3-3-5b, §3-3-5c,
13 §3-3-8, §3-3-10 and §3-3-11 of said code; and to amend said
14 code by adding thereto two new sections, designated §3-3-3b
15 and §3-3-3c, all relating to absentee and early in-person
16 voting; and cleaning up and updating existing language in the
17 code.

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

19 That §3-3-2a, §3-3-3a and §3-3-7 of the Code of West Virginia,
20 1931, as amended, be repealed; that §3-3-1, §3-3-2, §3-3-3, §3-3-4,
21 §3-3-5, §3-3-5a, §3-3-5b, §3-3-5c, §3-3-8, §3-3-10 and §3-3-11 of
22 said code be amended and reenacted; and that said code be amended
23 by adding thereto two new sections, designated §3-3-3b and §3-3-3c,
24 all to read as follows:

1 **ARTICLE 3. VOTING BY ABSENTEES.**

2 **§3-3-1. Persons eligible to vote absentee ballots by mail or**
3 **electronically.**

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

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

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

13 (A) Illness, injury, physical disability or immobility or
14 other medical reason; or

15 ~~(B) Physical disability or immobility due to extreme advanced~~
16 ~~age; or~~

17 ~~(C) (B)~~ Incarceration or home detention: *Provided*, That the
18 underlying conviction is not for a crime which is a felony or a
19 violation of section twelve, thirteen or sixteen, article nine of
20 this chapter involving bribery in an election;

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

23 (A) Personal or business travel;

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

3 (C) Employment which because of hours worked and distance from
4 the county seat make voting in person impossible;

5 (3) ~~Any~~ A voter absent from the county throughout the period
6 and available hours for voting in person and who is an absent
7 uniformed services voter or overseas voter, as defined by 42 U.S.C.
8 §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting
9 Act of 1986, including members of the uniformed services on active
10 duty, members of the merchant marine, spouses and dependents of
11 those members on active duty and persons who reside outside the
12 United States and are qualified to vote in the last place in which
13 the person was domiciled before leaving the United States;

14 (4) Any voter who is required to dwell temporarily outside the
15 county and is absent from the county throughout the time for voting
16 in person because of:

17 (A) Serving as an elected or appointed federal or state
18 officer; or

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

21 (5) ~~Any~~ A voter for whom the designated area for absentee
22 voting within the county courthouse or annex of the courthouse and
23 the voter's assigned polling place are inaccessible because of his
24 or her physical disability; and

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

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

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

12 (2) ~~Any~~ A voter who resides in a nursing home or veteran's
13 home within the county of residence and ~~would be otherwise~~ is
14 unable to vote in person ~~providing~~ if the county commission has
15 authorized the services; ~~if the voter has resided in the nursing~~
16 ~~home for a period of less than thirty days;~~ and

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

21 **§3-3-2. Authority to conduct absentee voting; absentee voting**
22 **application; form.**

23 (a) Absentee voting is to be supervised and conducted by the
24 proper official for the political division in which the election is

1 held in conjunction with the ballot commissioners appointed from
2 each political party as follows:

3 (1) The clerk of the county commission for ~~any~~ an election
4 held throughout the county, within a political subdivision or
5 territory other than a municipality or within a municipality when
6 the municipal election is conducted in conjunction with a county
7 election, ~~the clerk of the county commission;~~ or

8 (2) The municipal recorder or other officer authorized by
9 charter or ordinance ~~provisions~~ to conduct absentee voting, for ~~any~~
10 an election held entirely within the municipality or, in the case
11 of annexation elections, within the area affected. The terms
12 "clerk" or "clerk of the county commission" or "official designated
13 to supervise and conduct absentee voting" used elsewhere in this
14 article means municipal recorder or other officer in the case of
15 municipal elections.

16 (b) A person authorized and desiring to vote a mail-in
17 absentee ballot in ~~any~~ a primary, general or special election is to
18 make application in writing in the proper form to the proper
19 official as follows:

20 (1) The completed application is to be on a form prescribed by
21 the Secretary of State and is to contain the name, date of birth
22 and political affiliation of the voter, residence address within
23 the county, the address to which the ballot is to be mailed, the
24 authorized reason ~~if any,~~ for which the absentee ballot is

1 requested and ~~if the reason is illness or hospitalization, the name~~
2 ~~and telephone number of the attending physician,~~ the signature of
3 the voter to a declaration made under ~~the~~ penalties for false
4 swearing as provided in section three, article nine of this chapter
5 that the statements and declarations contained in the application
6 are true, ~~any~~ additional information which the voter is required to
7 supply, ~~any~~ an affidavit which may be required and an indication as
8 to whether it is an application for voting in person or by mail; or

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

15 ~~(3) For any person unable to obtain the official form for~~
16 ~~absentee balloting at a reasonable time before the deadline for an~~
17 ~~application for an absentee ballot by mail is to be received by the~~
18 ~~proper official, the completed application may be in a form set out~~
19 ~~by the voter, provided all information required to meet the~~
20 ~~provisions of this article is set forth and the application is~~
21 ~~signed by the voter requesting the ballot; or~~

22 ~~(4)~~ (3) A person authorized to vote an absentee ballot who is
23 participating in the Address Confidentiality Program as established
24 by section one hundred three, article twenty-eight-a, chapter

1 forty-eight of this code, may apply to the program manager within
2 the Office of the Secretary of State to vote a mail-in absentee
3 ballot. The program manager will notify the designated county
4 contact to coordinate the application and the provision of an
5 absentee ballot to the program participant.

6 **§3-3-3. Early voting in person.**

7 (a) All registered voters of the county may vote an absentee
8 ballot during the period of early voting in person.

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

15 ~~(b)~~ (c) Any A person desiring to vote during the period of
16 early in-person voting shall, upon entering the election room,
17 clearly state his or her name and residence to the official or
18 representative designated to supervise and conduct ~~absentee~~ early
19 in-person voting. If that person is found to be duly registered as
20 a voter in the precinct of his or her residence, he or she is
21 required to sign his or her name in the space marked "signature of
22 voter" on the pollbook. If the voter is unable to sign his or her
23 name due to illiteracy or physical disability, the person assisting
24 the voter and witnessing the mark of the voter shall sign his or

1 her name in the space provided. No ballot may be given to the
2 person until he or she signs his or her name on the pollbook.

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

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

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

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

22 ~~(2) In counties using punch card systems, one of each type of~~
23 ~~official absentee ballot the voter is eligible to vote, prepared~~
24 ~~according to law, and a gray secrecy envelope;~~

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

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

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

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

23 (1) Remove the ballot stub;

24 (2) Place ~~punch card ballots~~ and paper ballots into one

1 envelope ~~which shall not have any~~ with no marks except the precinct
2 number and seal the envelope; and

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

7 **§3-3-3b. Early voting areas; prohibition against display of**
8 **campaign material.**

9 (a) The county commission shall designate the courthouse or
10 annex to the courthouse as the primary location for early voting
11 and in addition, the commission may designate other locations as
12 provided in section three-c of this article.

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

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

23 (2) Secure the voting area free from interference with the
24 voter and ensure that voted and unvoted ballots are at all times

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

10 (3) The official designated to supervise and conduct early
11 in-person voting shall request the county commission to designate
12 an area within the county courthouse, an annex of the courthouse or
13 any other area designated as early in-person voting locations
14 within the county, as a portion of the official's office for the
15 purpose of early in-person voting, subject to the same requirements
16 as the 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.

1 (4) The official designated to supervise and conduct early
2 in-person voting shall have at least two representatives to assist
3 with early voting. The two representatives may not be registered
4 with the same political party affiliation or registered with no
5 political party affiliation. The representatives may be full-time
6 employees, temporary employees hired for the period of early
7 in-person voting or volunteers. To be eligible to serve as an
8 assistant with early in-person voting, a person:

9 (A) Must be a registered voter;

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

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

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

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

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

20 (5) No person may electioneer or display or distribute, in any
21 manner, or authorize the display or distribution of literature,
22 posters or material of any kind which tends to influence the voting
23 for or against a candidate or a public question on the property of
24 the county courthouse, annex facilities or other designated early

1 voting locations within the county during the period of early
2 in-person voting. The official designated to supervise and conduct
3 early in-person voting is authorized to remove the material and to
4 direct the sheriff of the county to enforce the prohibition.

5 **§3-3-3c. Community early voting areas.**

6 (a) The county commission, with the approval of the county
7 clerk or other official charged with the administration of
8 elections, may designate community voting locations for early
9 voting other than the county courthouse or courthouse annex.

10 (1) This designation must be made by a majority of the members
11 of the county commission at a public meeting called for that
12 purpose;

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

19 (3) Community voting locations shall comply with requirements
20 of this article for early in-person voting as prescribed by the
21 Secretary of State and the following criteria:

22 (A) Available for use during the early voting period;

23 (B) Has the physical facilities necessary to accommodate early
24 voting requirements;

1 (C) Has adequate space for voting equipment, poll workers and
2 voters; and

3 (D) Has adequate security, public accessibility, and parking;

4 (4) The county executive committees of the two major political
5 parties may nominate sites to be used as community voting locations
6 during the early voting period;

7 (5) Upon the designation of a community voting location, the
8 county clerk shall, not less than thirty days prior to an election,
9 give notice of the dates, times and place of community voting
10 locations by publication as a Class II-0 legal advertisement in
11 compliance with provisions of article three, chapter fifty-nine of
12 this code;

13 (6) Voting shall be conducted at each designated community
14 voting site for a period of not less than five consecutive days
15 during early in-person voting authorized by section three of this
16 article but need not be conducted at each location for the entire
17 period of early in-person voting;

18 (7) The county commission, with the approval of the county
19 clerk, may authorize community voting locations on a rotating basis
20 where a community voting location may be utilized for less than the
21 full period of early in-person voting; and

22 (8) If more than one community voting location is designated,
23 each location shall be utilized for an equal number of voting days
24 and permit voting for the same number of hours per day.

1 (c) The Secretary of State shall propose legislative and
2 emergency rules in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code as necessary to implement the
4 provisions of this section. The rules shall include establishment
5 of criteria to assure neutrality and security in the selection of
6 community voting locations.

7 **§3-3-4. Assistance to voter in early in-person voting; penalties.**

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

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

1 her determination that the voter is not qualified for assistance.

2 ~~(c) Any one or more of the election commissioners or poll~~
 3 ~~clerks in the precinct to which an absent voter's ballot has been~~
 4 ~~sent may challenge the ballot on the ground that the voter received~~
 5 ~~assistance in voting it when in his or their opinion: (1) The~~
 6 ~~person who received the assistance in voting the absent voter's~~
 7 ~~ballot did not require assistance; or (2) the person who provided~~
 8 ~~the assistance in voting did not make an affidavit as required by~~
 9 ~~this section. The election commissioner or poll clerk or~~
 10 ~~commissioners or poll clerks making a challenge shall enter the~~
 11 ~~challenge and reason for the challenge on the form and in the~~
 12 ~~manner prescribed or authorized by this article.~~

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

17 (1) That he or she will not in any manner request or seek to
 18 persuade or induce the voter to vote ~~any~~ a particular ticket or for
 19 ~~any~~ a particular candidate or for or against ~~any~~ a public question;
 20 and

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

24 (3) That he or she will not, directly or indirectly, reveal to

1 any person the name of ~~any~~ a candidate voted for by the voter, ~~or~~
2 which ticket he or she had voted, ~~or~~ how he or she had voted on ~~any~~
3 a public question or anything occurring within the voting booth or
4 compartment ~~or voting machine booth,~~ except when required ~~pursuant~~
5 ~~to~~ by law to give testimony as to the matter in a judicial
6 proceeding.

7 ~~(e)~~ (d) In accordance with instructions issued by the
8 Secretary of State, the official designated to supervise and
9 conduct ~~absentee~~ early in-person voting shall provide a form
10 entitled "List of Assisted Voters", prescribed by the Secretary of
11 State, which list is to be divided into two parts. Part A is to be
12 entitled "Unchallenged Assisted Voters" and Part B is to be
13 entitled "Challenged Assisted Voters".

14 (1) Under Part A, the official designated to supervise and
15 conduct ~~absentee~~ early in-person voting shall enter the name of
16 each voter receiving unchallenged assistance in voting ~~an absent~~
17 ~~voter's~~ the ballot, the address of the voter assisted, the nature
18 of the disability which qualified the voter for assistance, ~~in~~
19 ~~voting an absent voter's ballot,~~ the name of the person providing
20 the voter with assistance, ~~in voting an absent voter's ballot,~~ the
21 fact that the person rendering the assistance in voting made and
22 subscribed to the oath required by this section and the signature
23 of the official designated to supervise and conduct ~~absentee~~ early
24 in-person voting certifying to the fact that he or she had

1 determined that the voter who received assistance in voting ~~an~~
2 ~~absent voter's ballot~~ was qualified to receive the assistance under
3 the provisions of this section.

4 (2) Under Part B, the official designated to supervise and
5 conduct ~~absentee~~ early in-person voting shall enter the name of
6 each voter receiving challenged assistance in voting, the address
7 of the voter receiving challenged assistance, the reason for the
8 challenge and the name of the person providing the challenged voter
9 with assistance in voting. At the close of the period provided for
10 ~~voting an absent voter's ballot by personal appearance, early~~
11 in-person voting, the official designated to supervise and conduct
12 ~~absentee~~ early in-person voting shall make and subscribe to an oath
13 on the list that the list is correct in all particulars. If no
14 voter has been assisted in voting ~~an absent voter's ballot~~ as
15 provided in this section, the official designated to supervise and
16 conduct ~~absentee~~ early in-person voting shall make and subscribe to
17 an oath of that fact on the list. The "List of Assisted Voters" is
18 to be available for public inspection in the office of the ~~official~~
19 ~~designated to supervise and conduct absentee voting~~ county clerk
20 during regular business hours throughout the period provided for
21 early in-person voting. ~~an absent voter's ballot by personal~~
22 ~~appearance and, unless otherwise directed by the Secretary of~~
23 ~~State, the official shall transmit the list, together with the~~
24 ~~affidavits, applications and absent voters' ballots, to the~~

1 ~~precincts on election day.~~

2 ~~(f)~~ (e) Following the election, the affidavits required by
3 this section from persons providing assistance in voting, together
4 with the "List of Assisted Voters", are to be ~~returned by the~~
5 ~~election commissioners to the clerk of the county commission, along~~
6 ~~with the election supplies, records and returns,~~ retained by the
7 clerk of the county commission who shall make the oaths and list
8 available for public inspection and ~~who shall~~ preserve the oaths
9 and list for twenty-two months or, if under order of the court,
10 until their destruction or other disposition is authorized or
11 directed by the court.

12 ~~(g)~~ (f) Any A person making an affidavit required under the
13 provisions of this section who knowingly swears falsely in the
14 affidavit or ~~any a~~ person who counsels or advises, aids or abets
15 another in the commission of false swearing under this section is
16 guilty of a misdemeanor and, upon conviction thereof, shall be
17 fined not more than \$1,000 or confined in ~~the county or regional~~
18 jail for a period of not more than one year, or both fined and
19 confined.

20 ~~(h)~~ (g) Any A person who provides a voter assistance in voting
21 ~~an absent voter's ballot~~ in the office of the official designated
22 to supervise and conduct ~~absentee~~ early in-person voting who is not
23 qualified or permitted by this section to provide assistance is
24 guilty of a misdemeanor and, upon conviction thereof, shall be

1 fined not more than \$1,000 or ~~imprisoned in the county or regional~~
 2 confined in jail for a period of not more than one year, or both
 3 fined and confined.

4 ~~(i)~~ (h) ~~Any~~ An official designated to supervise and conduct
 5 ~~absentee~~ early in-person voting, election commissioner or poll
 6 clerk who authorizes or allows a voter to receive or to have
 7 received unchallenged assistance in voting ~~an absent voter's~~ a
 8 ballot when the voter is known to the official designated to
 9 supervise and conduct ~~absentee~~ early in-person voting or election
 10 commissioner or poll clerk not to be or have been authorized by the
 11 provisions of this section to receive or to have received
 12 assistance in voting, is guilty of a misdemeanor and, upon
 13 conviction thereof, shall be fined not more than \$1,000 or
 14 ~~imprisoned in the county or regional~~ or confined in jail for a
 15 period of not more than one year, or both fined and confined.

16 ~~(j)~~ (i) The term "physical disability" as used in this section
 17 means:

18 (1) Blindness or a degree of blindness ~~as will prevent that~~
 19 prevents the voter from seeing the names on the ballot; ~~or~~

20 (2) Amputation of both hands; or

21 (3) A disability of both hands that neither can be used to
 22 make cross marks on the absent voter's ballot.

23 **§3-3-5. Voting an absentee ballot by mail or electronically;**
 24 **penalties.**

1 (a) Upon oral or written request, the official designated to
2 supervise and conduct absentee voting shall provide ~~to any~~ a voter
3 of the county, in person, by mail or electronically, the
4 appropriate application for voting absentee by mail as provided in
5 this article. The voter shall complete and sign the application.
6 ~~in his or her own handwriting or,~~ If the voter is unable to
7 complete the application because of illiteracy or physical
8 disability, the person assisting the voter and witnessing the mark
9 of the voter shall sign his or her name in the space provided.

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

14 (1) For persons eligible to vote an absentee ballot under the
15 provisions of subdivision (3), subsection ~~(b)~~, (a), section one of
16 this article, relating to absent uniformed services and overseas
17 voters, not earlier than January 1 of an election year ~~or~~
18 ~~eighty-four days preceding the election, whichever is earlier,~~ and
19 not later than the sixth day preceding the election, which
20 application, ~~is to,~~ upon the voter's request, is to be accepted as
21 an application for the ballots for all elections in the calendar
22 year; and

23 (2) For all other persons eligible to vote an absentee ballot
24 by mail, not earlier than eighty-four days preceding the election

1 and not later than the sixth day preceding the election.

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

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

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

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

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

16 ~~(5) The applicant is not making his or her first vote after~~
17 ~~having registered by postcard registration or, if the applicant is~~
18 ~~making his or her first vote after having registered by postcard~~
19 ~~registration, the applicant is exempt from these requirements; and~~

20 ~~(6) (4) No regular and repeated pattern of applications for an~~
21 ~~absentee ballot by mail for the reason of being out of the county~~
22 ~~during the entire period of voting in person exists to suggest that~~
23 ~~the applicant is no longer a resident of the county.~~

24 (d) If the official designated to supervise and conduct

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

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

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

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

21 (C) One postage paid envelope, unsealed, designated "Absent
22 Voter's Ballot Envelope No. 2";

23 (D) Instructions for voting absentee by mail;

24 (E) For electronic systems, a device for marking by

1 electronically sensible pen or ink, as may be appropriate;

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

4 (G) Any other supplies required for voting in the particular
5 voting system.

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

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

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

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

24 ~~(D) Statement~~ (C) Oath of the voter affirming the voter's

1 current name and address and whether ~~or not~~ he or she received
2 assistance in voting.

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

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

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

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

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

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

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

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

24 (g) Except as provided in subsection (h) of this section,

1 absentee ballots returned by United States mail or other express
2 shipping service are to be accepted if:

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

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

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

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

1 ~~to the county clerks at a time when two individuals of opposite~~
2 ~~political parties are available to process the received ballots.~~

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

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

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

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

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

23 (3) Enter the required information into the ~~permanent record~~
24 statewide voter registration system of persons applying for and

1 voting an absentee ballot in person; and

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

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

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

20 **§3-3-5a. Processing federal postcard applications.**

21 When a federal postcard registration and absentee ballot
22 request (FPCA), as defined in subdivision (2), subsection (b),
23 section two of this article, is received by the official designated
24 to supervise and conduct absentee voting, the official shall examine

1 the application and take the following steps:

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

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

19 (3) Except as provided in subdivision (2) of this section, the
20 federal application for an absentee ballot received from a person
21 qualified to use the application as provided in section two of this
22 article is to be processed as all other applications. ~~and~~ The ballot
23 or ballots for each election for which ballots are requested by the
24 applicant is to be ~~mailed to the voter on the first day on which~~

1 ~~both the application and the ballot are available. transmitted to~~
2 ~~the voter by the voter's preferred option on the forty-sixth day~~
3 ~~before the election if both the application and the ballot are~~
4 ~~available. If after the forty-sixth day, the ballot or ballots are~~
5 ~~to be transmitted on the first day after receipt of the application.~~

6 **§3-3-5b. Procedures for voting a federal write-in absentee ballot**
7 **by qualified persons.**

8 (a) Notwithstanding any other provisions of this chapter, a
9 person qualified to vote an absentee ballot in accordance with
10 subdivision (3), subsection ~~(d)~~ (a), section one of this article may
11 apply not earlier than January 1 of an election year for a ~~special~~
12 federal write-in absentee ballot for a primary or general election
13 in conjunction with the application for a regular absentee ballot
14 or ballots. If the application is received after the forty-ninth
15 day preceding the election, the official designated to supervise and
16 conduct absentee voting shall honor only the application for local,
17 state and federal offices in general, special and primary elections.

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

20 (c) In order to qualify for a ~~special~~ federal write-in absentee
21 ballot, the voter must state that he or she is unable to vote by
22 regular absentee ballot or in person due to requirements of military
23 service or due to living in isolated areas or extremely remote areas
24 of the world. This statement may be made on the federal postcard

1 application or on a form prepared by the Secretary of State and
 2 supplied and returned with the ~~special~~ federal write-in absentee
 3 ballot.

4 (d) Upon receipt of the application within the time required,
 5 the official designated to supervise and conduct absentee voting
 6 shall issue the ~~special~~ federal write-in absentee ballot which is
 7 to be the same ballot issued under the provisions of 42 U.S.C.
 8 §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting
 9 Act of 1986. The ballot is to permit the elector to vote in a
 10 primary election by indicating his or her political party
 11 affiliation and the names of the specific candidates for each office
 12 and, in a general election, by writing in a party preference for
 13 each office, the names of specific candidates for each office or the
 14 name of the person whom the voter prefers for each office.

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

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

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

21 ~~(3) who did not apply for a regular absentee ballot by mail;~~
 22 ~~or~~

23 ~~(4)~~ (3) Whose application for a regular absentee ballot by mail
 24 was received less than thirty days before the election. ~~the write-in~~

1 ~~ballot may not be counted.~~

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

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

7 (a) Notwithstanding any other provision of this chapter, a
8 person qualified to vote an emergency absentee ballot, as provided
9 in subsection ~~(c)~~ (b), section one of this article, may vote an
10 emergency absentee ballot under the procedures established in this
11 section. The county commission may adopt a policy extending the
12 emergency absentee voting procedures to: (1) Hospitals or other
13 duly licensed health care facilities within an adjacent county or
14 within thirty-five miles of the county seat; or (2) nursing homes
15 and veterans' homes within the county. ~~Provided, That~~ The policy
16 is to be adopted by the county commission at least ninety days prior
17 to the election that will be affected and a copy of the policy is
18 to be filed with the Secretary of State.

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

1 (c) A set of emergency absentee ballot commissioners at-large
2 ~~shall consist~~ consists of two persons with different political party
3 affiliations appointed by the county commission in accordance with
4 the procedure prescribed for the appointment of election
5 commissioners under the provisions of article one of this chapter.
6 Emergency absentee ballot commissioners have the same qualifications
7 and rights and take the same oath required under the provisions of
8 this chapter for commissioners of elections. Emergency absentee
9 ballot commissioners are to be compensated for services and expenses
10 in the same manner as commissioners of election or poll clerks
11 obtaining and delivering election supplies under the provisions of
12 section forty-four, article one of this chapter.

13 (d) Upon request of the voter or a member of the voter's
14 immediate family or, when the county commission has adopted a policy
15 to provide emergency absentee voting services to nursing home and
16 veterans' home residents within the county, upon request of a staff
17 member of the nursing or veterans' home, the official designated to
18 supervise and conduct absentee voting, upon receiving a proper
19 request for voting an emergency absentee ballot no earlier than the
20 seventh day ~~next~~ preceding the election and no later than noon of
21 election day, shall supply to the emergency absentee ballot
22 commissioners the application for voting an emergency absentee
23 ballot and the balloting materials. The emergency absentee ballot
24 application is to be prescribed by the Secretary of State and is to

1 include the name, residence address, ~~and~~ political party affiliation
2 of the voter, the date ~~location and reason for confinement in the~~
3 ~~case of an emergency, and the name of the attending physician.~~ and
4 location of the voter.

5 (e) The application for an emergency absentee ballot is to be
6 signed by the person applying. If the person applying for an
7 emergency absentee ballot is unable to sign ~~his or her application~~
8 because of illiteracy or physical disability, he or she is to make
9 his or her mark on the signature line provided for an illiterate or
10 disabled applicant. The mark is to be witnessed. The person
11 assisting the voter and witnessing the mark ~~of the voter~~ shall sign
12 his or her name in the space provided.

13 (f) A declaration is to be completed and signed by each of the
14 emergency absentee ballot commissioners stating their names and the
15 date on which they appeared at the place of confinement of the
16 person applying for an emergency absentee. ~~ballot and the~~
17 ~~particulars of the confinement.~~

18 (g) At least one of the emergency absentee ballot commissioners
19 receiving the balloting materials shall sign a receipt which is to
20 be attached to the application form. Each of the emergency absentee
21 ballot commissioners shall deliver the materials to the absent
22 voter, await his or her completion of the application and ballot and
23 return the ~~application and the ballot~~ ballot in a sealed envelope
24 and the application to the official designated to supervise and

1 conduct absentee voting. Upon delivering the application and the
2 voted ballot to the official, the emergency absentee ballot
3 commissioners shall sign an oath that no person other than the
4 absent voter voted the ballot. The application and the voted ballot
5 are to be returned to the official designated to supervise and
6 conduct absentee voting prior to the close of the polls on election
7 day. ~~Any~~ Ballots received by the official after the time that
8 delivery may reasonably be made but before the closing of the polls
9 are to be delivered to the canvassing board along with the absentee
10 ballots challenged in accordance with the provisions of section ten
11 of this article.

12 (h) Upon receiving the application and emergency absentee
13 ballot, the official designated to supervise and conduct absentee
14 voting shall ascertain whether the application is complete, whether
15 the voter appears to be eligible to vote an emergency absentee
16 ballot, and whether the voter is properly registered to vote with
17 the office of the clerk of the county commission. If the voter is
18 found to be properly registered in the precinct shown on the
19 application, the ballot is to be delivered to the precinct election
20 commissioner pursuant to section seven of this article. If the
21 voter is found not to be registered or is otherwise ineligible to
22 vote an emergency ballot, the ballot is to be challenged for the
23 appropriate reason provided for in section ten of this article.

24 (i) If either or both of the emergency absentee ballot

1 commissioners refuse to sign ~~any~~ an application for voting an
 2 emergency absentee ballot, the voter may vote as an emergency
 3 absentee and the ballot will be challenged in accordance with the
 4 provisions of section ten of this article in addition to those
 5 absentee ballots subject to challenge as provided in that section.

6 (j) ~~Any~~ A voter who receives assistance in voting an emergency
 7 absentee ballot shall comply with the provisions of section six of
 8 this article. ~~Any~~ Other provisions of this chapter relating to
 9 absentee ballots not altered by the provisions of this section ~~are~~
 10 ~~to~~ govern the treatment of emergency absentee ballots.

11 **§3-3-8. Disposition and counting of absent voters' ballots.**

12 (a) In counties using paper ballots instead of electronic
 13 voting systems, all absentee ballots shall be processed as follows:

14 (1) The ballot boxes containing the absentee ballots shall be
 15 opened in the presence of the clerk of the county commission and two
 16 representatives of opposite political parties;

17 (2) The ballots shall be separated by precincts as stated on
 18 the sealed envelopes containing the ballots; and

19 (3) Absentee ballots shall be delivered to the polls to be
 20 opened and counted in accordance with section thirty-three, article
 21 one of this chapter, section fifteen, article five of this chapter;
 22 and section six, article six of this chapter. Disclosure of any
 23 results before the voting has been closed and the precinct returns
 24 posted on the door of the polling place ~~shall be~~ is a per se

1 violation of the oath taken by the counting board. In all other
2 counties, counting is to begin immediately after closing of the
3 polls.

4 (4) Except as otherwise provided in this article, in counties
5 using paper ballots instead of electronic voting systems, the
6 absentee ballots of each precinct and forms, lists and records as
7 designated by the Secretary of State, are to be delivered in a
8 sealed carrier envelope to the election commissioner of the precinct
9 at the time he or she picks up the official ballots and other
10 election supplies as provided in section twenty-four, article one
11 of this chapter.

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

24 (b) In counties using ~~optical scan systems,~~ paper based

1 electronic voting systems, the absentee ballots shall be processed
2 as follows:

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

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

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

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

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

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

23 (4) The appropriate election officials shall follow the
24 procedures set out in subsections (a), (b), (d) and (e), section

1 twenty-seven, article four-a of this chapter and subdivisions (3),
 2 (4), (5) and (6), subsection (c) of ~~said~~ section twenty-seven,
 3 article four-a of this chapter.

4 (d) The provisional ballots shall be deposited in a provisional
 5 ballot envelope and delivered to the board of canvassers.

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

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

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

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

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

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

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

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

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

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

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

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

19 (b) ~~Any~~ One or more of the election commissioners or poll
20 clerks in a precinct may challenge an absent voter's ballot on any
21 of the following grounds:

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

24 (2) That ~~any~~ a statement or declaration contained in the

1 application for an absent voter's ballot is not true;

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

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

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

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

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

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

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

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

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

6 (9) On any other ground or for any reason ~~on which or for which~~
7 the ballot of a voter voting in person at the polls on election day
8 may be challenged.

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

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

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

1 of this chapter.

2 **§3-3-11. Preparation, number and handling of absent voters'**
3 **ballots.**

4 (a) Absent voters' ballots are to be in all respects like other
5 ballots. Not less than ~~seventy~~ eighty-four days before the date on
6 which ~~any~~ a primary, general or special election is to be held,
7 unless a lesser number of days is provided in ~~any~~ a specific
8 election law in which case the lesser number of days applies, the
9 clerks of the county commissions of the several counties shall
10 estimate and determine the number of absent voters' ballots of all
11 kinds which will be required in their respective counties for that
12 election. The ballots for the election of all officers, or the
13 ratification, acceptance or rejection of ~~any~~ a measure, proposition
14 or other public question to be voted on by the voters, are to be
15 prepared and printed under the direction of the board of ballot
16 commissioners ~~constituted~~ as provided in article one of this
17 chapter. The several county boards of ballot commissioners shall
18 prepare and have printed, in the number they may determine, absent
19 voters' ballots that are to be printed under their directions as
20 provided in this chapter. ~~and those~~ These ballots are to be
21 delivered to the clerk of the county commission of the county not
22 less than forty-six days before the day of the election at which
23 they are to be used.

24 (b) The official designated to supervise and conduct absentee

1 voting ~~shall be~~ is responsible for the mailing, transmitting,
2 receiving, delivering and otherwise handling of all absent voters'
3 ballots. He or she shall keep a record within the statewide voter
4 registration system, as may be prescribed by the Secretary of State,
5 of all ballots delivered for ~~the purpose of~~ absentee voting, as well
6 as all ballots, if any, marked before him or her. ~~and~~ The official
7 shall deliver to the commissioner of election a certificate stating
8 the number of ballots delivered, transmitted or mailed to absent
9 voters and those marked before him or her, if any, and the names of
10 the voters to whom those ballots have been delivered, transmitted
11 or mailed or by whom they have been marked, if marked before him or
12 her.

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

§3-3-3b and §3-3-3c are new; therefore, strike-throughs and underscoring have been omitted.

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