

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 431

By: Senator A. Clark
By: Representative Furman

For An Act To Be Entitled

TO AMEND ARKANSAS LAW CONCERNING ABSENTEE BALLOTS;
REPEALING DESIGNATED BEARERS AS PERSONS PERMITTED TO
HANDLE ABSENTEE BALLOTS; CLARIFYING WHO MAY HANDLE
ABSENTEE BALLOTS; ESTABLISHING CRIMINAL PENALTIES FOR
THE HANDLING OF ABSENTEE BALLOTS IN VIOLATION OF
ARKANSAS LAW; AND FOR OTHER PURPOSES.

Subtitle

AMENDING ARKANSAS LAW CONCERNING THE
HANDLING OF ABSENTEE BALLOTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 7-1-101(9), concerning the definition of "designated bearer", is repealed.

~~(9) "Designated bearer" means any person who is identified and authorized by the applicant to obtain from the county clerk or to deliver to the county clerk the applicant's ballot;~~

SECTION 2. Arkansas Code § 7-5-403 is amended to read as follows:

7-5-403. ~~Designated bearers, authorized~~ Authorized agents, and administrators - Penalties.

~~(a)(1) A designated bearer may obtain absentee ballots for no more than two (2) voters per election.~~

~~(2)(A) A designated bearer shall not have more than two (2) absentee ballots in his or her possession at any time.~~



~~(B) — If the county clerk knows or reasonably suspects that a designated bearer has more than two (2) absentee ballots in his or her possession, the county clerk shall notify the prosecuting attorney.~~

~~(3)(A) — A designated bearer receiving an absentee ballot from the county clerk for a voter shall obtain the absentee ballot directly from the county clerk and deliver the absentee ballot directly to the voter.~~

~~(B) — A designated bearer receiving an absentee ballot from a voter shall obtain the absentee ballot directly from the voter and deliver the absentee ballot directly to the county clerk.~~

~~(4)(A) — A designated bearer may deliver to the county clerk the absentee ballots for not more than two (2) voters.~~

~~(B) — The designated bearer shall be named on the voter statement accompanying the absentee ballot.~~

~~(5) — In order to obtain an absentee ballot from the county clerk:~~

~~(A) — The designated bearer shall show a form of current photographic identification to the county clerk;~~

~~(B) — The county clerk shall print the designated bearer's name and address beside the voter's name on a register;~~

~~(C) — The designated bearer shall sign the register under oath indicating receipt of the voter's absentee ballot; and~~

~~(D) — The county clerk shall indicate beside the designated bearer's name on the register that he or she obtained an absentee ballot for a voter.~~

~~(6) — When a designated bearer delivers an absentee ballot to the county clerk:~~

~~(A) — The designated bearer shall present current and valid photographic identification to the county clerk;~~

~~(B) — The county clerk shall print the designated bearer's name and address beside the voter's name on a register;~~

~~(C) — The designated bearer shall sign the register under oath indicating delivery of the voter's absentee ballot;~~

~~(D) — The county clerk shall not accept an absentee ballot from a designated bearer who does not sign the register under oath; and~~

~~(E) — The county clerk shall write or stamp the word "BEARER" and write the designated bearer's name and address on the voter's absentee ballot return envelope.~~

~~(7) When providing an absentee ballot to a designated bearer or receiving an absentee ballot from a designated bearer, the county clerk shall provide to the designated bearer a written notice informing the designated bearer that:~~

~~(A) A designated bearer may obtain ballots for no more than two (2) voters per election;~~

~~(B) A designated bearer shall at no time have more than two (2) ballots in his or her possession;~~

~~(C) A designated bearer shall not deliver ballots to the county clerk for more than two (2) voters per election; and~~

~~(D) Possession of an absentee ballot with the intent to defraud a voter or an election official is a felony under § 7-1-104.~~

~~(8) The county clerk shall post a notice of the rules concerning designated bearers and authorized agents in each county clerk's office where absentee ballots are distributed or returned.~~

~~(b)(1)(a)(1)~~ An authorized agent may deliver applications for absentee ballots to the county clerk and obtain absentee ballots from the county clerk for not more than two (2) voters per election who cannot cast a ballot at the appropriate polling place on election day because the voter is a patient in a hospital or long-term care or residential care facility licensed by the state.

(2) At no time shall an authorized agent have more than two (2) absentee ballots in his or her possession.

(3)(A) An authorized agent receiving an absentee ballot from the county clerk for a voter shall deliver the absentee ballot directly to the voter.

(B) An authorized agent receiving an absentee ballot from a voter shall deliver the absentee ballot directly to the county clerk.

(4)(A) In order for an authorized agent to obtain a ballot from the county clerk, the authorized agent shall submit to the county clerk an affidavit from the administrative head of a hospital or long-term care or residential care facility licensed by the state that the applicant is a patient of the hospital or long-term care or residential care facility licensed by the state and is thereby unable to vote on the election day at his or her regular polling site.

(B) A copy of the affidavit shall be retained by the

county clerk as an attachment to the application for an absentee ballot.

(5) In order to obtain an absentee ballot from the county clerk, the:

(A) Authorized agent shall present current photographic identification to the clerk;

(B) Clerk shall print the authorized agent's name and address beside the voter's name on a register; and

(C) Authorized agent shall sign the register under oath indicating receipt of the voter's ballot.

(6) When an authorized agent delivers an absentee ballot to the county clerk, the:

(A) Authorized agent shall show some form of current photographic identification to the clerk;

(B) Clerk shall print the authorized agent's name and address beside the voter's name on a register;

(C) Authorized agent shall sign the register under oath indicating delivery of the voter's ballot; and

(D) The county clerk shall not accept an absentee ballot from an authorized agent who does not sign the register under oath.

(7) The county clerk shall write or stamp the words "AUTHORIZED AGENT" and the agent's name and address on the voter's absentee ballot return envelope.

(8) The county clerk shall post a notice of the rules concerning designated bearers and authorized agents in each county clerk's office where absentee ballots are distributed or returned.

~~(e)(1)(b)(1)~~ (b)(1) The county clerk shall keep a register of ~~designated bearers and~~ authorized agents.

(2) The ~~designated bearer and~~ authorized agent register shall contain the following oath on each page: "I ACKNOWLEDGE THAT ARKANSAS LAW PROHIBITS ~~DESIGNATED BEARERS AND~~ AUTHORIZED AGENTS FROM RECEIVING OR RETURNING MORE THAN TWO (2) ABSENTEE BALLOTS PER ELECTION. I HAVE COMPLIED WITH THE ARKANSAS LAW. I UNDERSTAND THAT IF I PROVIDE FALSE INFORMATION ON THIS FORM, I MAY BE GUILTY OF PERJURY AND SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR UP TO TEN (10) YEARS, OR BOTH, UNDER FEDERAL AND STATE LAWS."

~~(d)(1)(A)(c)(1)(A)~~ (c)(1)(A) An administrator may deliver to the county clerk an

application for an absentee ballot for any voter who is a patient of a long-term care or residential care facility licensed by the state and who authorizes the administrator to obtain an absentee ballot on his or her behalf.

(B) The absentee ballot application shall identify the administrator by name as the administrator of the facility where the voter resides.

(2) Upon presentation of photographic identification to the county clerk, an administrator may receive absentee ballots for as many qualified residents of the facility as:

(A) Apply for absentee ballots; and

(B) Identify the administrator in the voter's absentee ballot application.

(3)(A) An administrator may deliver the absentee ballot to the county clerk for any voter who names the administrator on his or her application and voter statement.

(B) Absentee ballots may be delivered to the county clerk in person by the administrator or by mail.

(4) Before obtaining an absentee ballot, an administrator shall submit to the county clerk an affidavit, signed and dated by the administrator, stating:

(A) That he or she is the administrative head of a long-term care or residential care facility licensed by the state;

(B) The name and address of the facility;

(C) That he or she has been authorized by the voters who reside in his or her facility to obtain from the county clerk and return to the county clerk absentee ballots on their behalf;

(D) That each of the voters for whom the administrator seeks to obtain an absentee ballot has named the administrator on his or her application; and

(E) That the administrator understands that Arkansas law requires that the administrator assist the voter by marking or casting a ballot on behalf of the voter without any comment or interpretation.

(5) The county clerk shall attach a copy of the administrator's affidavit to each application for an absentee ballot delivered by the administrator to the county clerk.

(6) When the ballots are returned by the administrator in person or by mail, the county clerk shall write or stamp the word "ADMINISTRATOR" and write the administrator's name on the voter's absentee ballot return envelope.

~~(e)~~(d) Any person who knowingly makes a false statement on an affidavit required by this section shall be guilty of perjury and subject to a fine of up to ten thousand dollars (\$10,000) or imprisonment of up to ten (10) years.

(e)(1) Any person other than an authorized agent or administrator who purposely obtains an absentee ballot for a voter:

(A) Shall be guilty of a Class D felony;

(B) Shall be considered to have committed an infamous crime as defined under § 7-1-101; and

(C) Shall not be permitted to:

(i) Serve as an election official at subsequent elections; or

(ii) Obtain an absentee ballot for a voter as an authorized agent or administrator under this section.

(2) If an absentee ballot is found in the possession of a person who is not an authorized agent or administrator:

(A) The possession of the absentee ballot shall be prima facie evidence of a violation of this subsection (e); and

(B) The absentee ballot, if completed, shall not be counted.

(f)(1) An authorized agent or administrator who purposely violates the provisions of this section:

(A) Shall be guilty of a Class D felony;

(B) Shall be considered to have committed an infamous crime as defined under § 7-1-101; and

(C) Shall not be permitted to:

(i) Serve as an election official at subsequent elections; or

(ii) Obtain an absentee ballot for a voter as an authorized agent or administrator under this section.

(2) If an authorized agent or administrator is found in the possession of an absentee ballot in violation of this section:

(A) The possession of the absentee ballot shall be prima facie evidence of a violation of this subsection (f); and

(B) The absentee ballot, if completed, shall not be counted.

SECTION 3. Arkansas Code § 7-5-404(a)(3)(A), concerning applications for absentee ballots, is amended to read as follows:

(A) For applications submitted using the form prescribed in § 7-5-405:

(i) In person at the office of the county clerk of the county of residence of the voter no later than the time the county clerk's office regularly closes on the Friday before election day;

(ii) Applications by mail must be received in the office of the county clerk of the county of residence of the voter not later than seven (7) days before the election for which the application was made;

~~(iii) A designated bearer may deliver the completed application to the office of the county clerk of the county of residence of the applicant not later than the time the county clerk's office regularly closes on the Friday before election day;~~

~~(iv)~~(iii) A person declared as the authorized agent of the applicant may deliver the application to the office of the county clerk of the county of residence of the applicant not later than 1:30 p.m. on the day of the election;

~~(v)~~(iv) An administrator may deliver the application in person at the office of the county clerk of the county of residence of the voter no later than the time the county clerk's office regularly closes on the Friday before election day; or

~~(vi)~~(a)(v)(a) Delivery by electronic means to the county clerk's office of the county of residence of the voter not later than seven (7) days before the election for which the application was made.

(b) The completed application sent by electronic means will be accepted only upon verification of the facsimile signature of the applicant by the county clerk.

(c) Once verified as a reasonable likeness of the voter's signature, the signature appearing on a copy of an application sent by electronic means shall be presumed to be authentic until proven

otherwise; or

SECTION 4. Arkansas Code § 7-5-405(a)(2)(F), concerning applications for absentee ballots, is amended to read as follows:

(F) Mailing information for the ballot or the name and signature of ~~a designated bearer~~, an administrator, or an authorized agent;

SECTION 5. Arkansas Code § 7-5-409 is amended to read as follows:
7-5-409. Materials furnished to qualified voters.

(a)(1)(A) The county clerk shall satisfy himself or herself that the applicant for an absentee ballot is a qualified registered elector in the ward, precinct, or township in which he or she claims to be a resident or that the applicant does not require prior registration under § 7-5-406.

(B) The county clerk shall verify that the application has been properly signed by the applicant and, if necessary, the ~~designated bearer~~, administrator, or authorized agent. If the application is not properly signed, the application shall be rejected by the county clerk.

(C) The county clerk shall notify the applicant of the reason for the rejection.

(2) If the county clerk is unable to contact the applicant to cure the deficiency, the county clerk shall forward the application with the reason for the rejection to the county board of election commissioners. The county board of election commissioners shall determine whether the applicant is a qualified elector.

(b) If the applicant is registered or is otherwise eligible to vote absentee, the county clerk, prior to mailing or delivering the ballot, shall detach the ballot stub and deposit the ballot stub into a sealed box designated as "Absentee Stub Box" and deliver to the applicant or to the applicant's ~~designated bearer~~, authorized agent, or administrator for delivery to the applicant the following materials:

(1) An official absentee ballot for each election named in the application;

(2) Instructions for voting and returning the official absentee ballot to the county clerk;

(3) An official absentee ballot secrecy envelope on which there shall be written or printed the words "Ballot Only";

(4)(A)(i) A uniform voter statement created and approved by the State Board of Election Commissioners.

(ii) The voter statement shall include the following heading in bold capitalized letters: "THIS VOTER STATEMENT SHALL BE COMPLETED AND RETURNED IN THE MAILING ENVELOPE OR THE ABSENTEE BALLOT WILL NOT BE COUNTED."

(iii) The voter statement shall include the following statement in bold capitalized letters at the bottom of the page: "THE INFORMATION I HAVE PROVIDED IS TRUE TO THE BEST OF MY KNOWLEDGE UNDER PENALTY OF PERJURY. IF I HAVE PROVIDED FALSE INFORMATION, I MAY BE SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR UP TO TEN (10) YEARS, OR BOTH, UNDER FEDERAL OR STATE LAWS."

(iv) The voter statement shall include a statement that the voter resides at the address on his or her application.

(v) The voter statement shall include a statement for a first-time voter who registers by mail: "If I am a newly registered voter of this county and this is the first time I am voting in this county, I am enclosing a copy of a current and valid photo identification card or a current utility bill, bank statement, government check, paycheck, or other government document that shows my name and address."

(B) Blanks shall be provided for the voter to provide his or her printed name, signature, mailing address, residential voting address, date of birth, printed name and address of the administrator, or authorized agent, ~~or designated bearer~~, signature of administrator, or authorized agent, ~~or designated bearer~~, and address of the administrator, or authorized agent, ~~or designated bearer~~.

(C)(i) The voter statement shall include a sworn statement portion that may be completed by the voter stating that the voter is registered to vote and that he or she is the person who is registered.

(ii) The sworn statement portion of the voter statement is not required to be notarized, but the voter shall execute the sworn statement under penalty of perjury;

(5) A sealable envelope upon which shall be printed or written the words: "Return Envelope", the address of the county clerk, the precinct of the voter, and the words: "ABSENTEE BALLOT,,, ELECTION"; and

(6) An authorized agent authorization form, as follows:

“AGENT AUTHORIZATION FORM

If applicable, fill out and sign this form and place it in the Return Envelope

I hereby authorize(insert his or her name) as my authorized agent, to deliver this ballot as I am medically unable to vote on election day. An affidavit verifying my medical status as unable to deliver the application or to vote on the day of the election is attached or has been provided with my application.

.....
Signature of voter

.....
Printed name of voter

.....
Address of voter

.....
Date of birth of voter.”

(c)(1) Except for absentee ballots mailed to an address outside the county in which the applicant is registered, an absentee ballot shall be mailed to the address that appears on the applicant’s registration record or absentee ballot application if the voter is temporarily at a different address.

(2) The county clerk shall not mail more than two (2) absentee ballots to the same address unless:

(A) The address is outside the territorial limits of the United States;

(B) The address is for a long-term care or residential care facility licensed by the state; or

(C) There are more than two (2) persons lawfully registered at the same address.

(d) The county clerk shall not deliver an absentee ballot to any person other than the absentee voter unless the person picking up the ballot provides current and valid photographic identification to the county clerk that he or she is:

(1) The voter’s:

- (A) Designated bearer; or
- (B) Authorized agent; or

(2) The administrator of a long-term care or residential care facility licensed by the state in which the voter resides.

(e) The county clerk shall not provide more than two (2) absentee ballots per election to any ~~designated bearer or~~ authorized agent, nor shall the county clerk accept delivery of more than two (2) absentee ballots per election from any ~~designated bearer or~~ authorized agent.

~~(f) A designated bearer shall be allowed to pick up only two (2) absentee ballots from the county clerk only during the fifteen (15) days prior to a school election, special election, preferential primary election, or general election and seven (7) days prior to a runoff election, including a general primary election.~~

~~(g)~~(f) Upon delivery of an absentee ballot to an individual authorized to receive an absentee ballot, the county clerk shall mark the electronic voter registration list and the precinct voter registration list to indicate that an absentee ballot has been delivered to the voter.

~~(h)~~(g) The county clerk or other designated election official providing materials to qualified voters shall not distribute:

- (1) Unsolicited absentee ballot applications to electors; or
- (2) Unsolicited absentee ballots to electors.

~~(i)~~(h) The county clerk and other designated election officials providing materials to qualified voters may:

- (1) Display a printable or downloadable absentee ballot application form on the internet;
- (2) Post links to the absentee ballot application form on social media of any type; and
- (3) Make paper copies of absentee ballot application forms available for distribution or to be available upon request by a qualified voter in:

- (A) The county clerk's office; or
- (B) Other governmental offices.

SECTION 6. Arkansas Code § 7-5-411(a)(3), concerning methods of voting absentee, is amended to read as follows:

- (3) By delivery of the ballot to the physical office of the

county clerk of the county of residence of the voter not later than the time the county clerk's office regularly closes on the Friday before election day by the registered voter, ~~designated bearer,~~ or administrator of the absentee voter, upon proper verification of the signature of the voter by the county clerk and validation of the identity of the registered voter, ~~designated bearer,~~ or administrator; or

SECTION 7. Arkansas Code § 7-5-412(a)(1), concerning the marking and return of absentee ballots, is amended to read as follows:

(1) The completed and executed voter statement, including identification of the ~~designated bearer,~~ authorized agent, or administrator when appropriate; and

SECTION 8. Arkansas Code § 7-5-416(b)(1)(G)(ii) and (iii), concerning the counting of absentee ballots, are amended to read as follows:

(ii) The election officials shall compare the name of the bearer written on the absentee ballot application with the information on the voter statement, and if the information does not compare, the ballot shall be a provisional ballot;

~~(iii) An absentee ballot designated as a provisional ballot for the lack of a designation of, or name of, a designated bearer shall be counted only if the county board of election commissioners does not determine that the provisional ballot is invalid and should not be counted based on other grounds;~~

SECTION 9. Arkansas Code § 7-5-416(c)(2), concerning the counting of absentee ballots, is amended to read as follows:

(2) Signed, dated, and delivered to the county clerk by a ~~designated bearer,~~ an authorized agent, or administrator before the date of death; or