

Senate Bill 194

By: Senators Staton of the 18th, Williams of the 19th, Wiles of the 37th, Harp of the 29th,
Carter of the 13th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and primaries generally, so as to provide in certain circumstances that the county election superintendent may begin the tabulation of absentee ballots prior to the close of the polls on the day of a primary, election, or runoff; to provide procedures for such tabulation; to provide that absentee ballots that are enclosed in an outer envelope but not contained in an inner envelope shall be counted; to provide that a person may cancel his or her absentee ballot under certain circumstances; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and primaries generally, is amended by revising Code Section 21-2-386, relating to safekeeping, certification, and validation of absentee ballots, as follows:

"21-2-386.

(a)(1)(A) The board of registrars or absentee ballot clerk shall keep safely and unopened all official absentee ballots received from absentee electors prior to the closing of the polls on the day of the primary or election except as otherwise provided in this subsection.

(B) Upon receipt of each ballot, a registrar or clerk shall write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk shall then compare the identifying information on the oath with the information on file in his or her office, shall compare the signature or mark on the oath with the signature or mark on the absentee elector's voter registration card and application for absentee ballot or a facsimile of said signature or mark taken from said card or application, and shall, if the information and signature appear to be valid and other identifying information appears

1 to be correct, so certify by signing or initialing his or her name below the voter's oath.
2 Each elector's name so certified shall be listed by the registrar or clerk on the numbered
3 list of absentee voters prepared for his or her precinct.

4 (C) If the elector has failed to sign the oath, or if the signature does not appear to be
5 valid, or if the elector has failed to furnish required information or information so
6 furnished does not conform with that on file in the registrar's or clerk's office, or if the
7 elector is otherwise found disqualified to vote, the registrar or clerk shall write across
8 the face of the envelope 'Rejected,' giving the reason therefor. The board of registrars
9 or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of
10 which notification shall be retained in the files of the board of registrars or absentee
11 ballot clerk for at least one year.

12 (D) An elector who registered to vote by mail, but did not comply with subsection (c)
13 of Code Section 21-2-220, and who votes for the first time in this state by absentee
14 ballot shall include with his or her application for an absentee ballot or in the outer oath
15 envelope of his or her absentee ballot either one of the forms of identification listed in
16 subsection (a) of Code Section 21-2-417 or a copy of a current utility bill, bank
17 statement, government check, paycheck, or other government document that shows the
18 name and address of such elector. If such elector does not provide any of the forms of
19 identification listed in this subparagraph with his or her application for an absentee
20 ballot or with the absentee ballot, such absentee ballot shall be deemed to be a
21 provisional ballot and such ballot shall only be counted if the registrars are able to
22 verify current and valid identification of the elector as provided in this subparagraph
23 within the time period for verifying provisional ballots pursuant to Code Section
24 21-2-419.

25 (E) Three copies of the numbered list of voters shall also be prepared for such rejected
26 absentee electors, giving the name of the elector and the reason for the rejection in each
27 case. Three copies of the numbered list of certified absentee voters and three copies of
28 the numbered list of rejected absentee voters for each precinct shall be turned over to
29 the poll manager in charge of counting the absentee ballots and shall be distributed as
30 required by law for numbered lists of voters.

31 (F) All absentee ballots returned to the board or absentee ballot clerk after the closing
32 of the polls on the day of the primary or election shall be safely kept unopened by the
33 board or absentee ballot clerk and then transferred to the appropriate clerk for storage
34 for the period of time required for the preservation of ballots used at the primary or
35 election and shall then, without being opened, be destroyed in like manner as the used
36 ballots of the primary or election. The board of registrars or absentee ballot clerk shall
37 promptly notify the elector by first-class mail that the elector's ballot was returned too

late to be counted and that the elector will not receive credit for voting in the primary or election. All such late absentee ballots shall be delivered to the appropriate clerk and stored as provided in Code Section 21-2-390.

(G) Notwithstanding any provision of this chapter to the contrary, until the United States Department of Defense notifies the Secretary of State that the Department of Defense has implemented a system of expedited absentee voting for those electors covered by this subparagraph, absentee ballots cast in a primary, election, or runoff by eligible absentee electors who reside outside the county or municipality in which the primary, ~~runoff or election,~~ or runoff is held and are members of the armed forces of the United States, members of the merchant marine of the United States, spouses or dependents of members of the armed forces or merchant marine residing with or accompanying such members, or overseas citizens that are postmarked by the date of such primary, election, or runoff and are received within the three-day period following such primary, election, or runoff, if proper in all other respects, shall be valid ballots and shall be counted and included in the certified election results.

(2) ~~After 12:00 Noon and until the closing~~ the opening of the polls on the day of the primary, ~~or election, or runoff,~~ the registrars or absentee ballot clerks shall be authorized to open the outer envelope on which is printed the oath of the elector in such a manner as not to destroy the oath printed thereon; provided, however, that the registrars or absentee ballot clerk shall not be authorized to remove the contents of such outer envelope or to open the inner envelope marked 'Official Absentee Ballot,' except as otherwise provided in this Code section. At least three persons who are registrars, deputy registrars, poll workers, or absentee ballot clerks must be present before commencing; and three persons who are registrars, deputy registrars, or absentee ballots clerks shall be present at all times while the outer envelopes are being opened. After opening the outer envelopes, the ballots shall be safely and securely stored until the time for tabulating such ballots.

(3) A county ~~If the election superintendent desires to open the inner envelopes containing the absentee ballots after 3:00 P.M., but before 7:00 P.M., may, in his or her discretion, after 7:00 A.M.~~ on the day of the primary, election, ~~the election superintendent shall petition in writing the chief judge of the superior court of the county or, if such judge is a candidate in such election, such petition shall be submitted to the administrative judge of the judicial administrative district in which such county is located who shall assign such petition to a judge of the district who is not a candidate in such election at least seven days prior to the election for permission to~~ or runoff open the inner envelopes in accordance with the procedures prescribed in this subsection. ~~Such petition shall contain the names of persons designated to act as monitors of the process of opening the inner~~

1 envelopes by the election superintendent or his or her designee. The and begin tabulating
2 the absentee ballots. If the county election superintendent chooses to open the inner
3 envelopes and begin tabulating such ballots prior to the close of the polls on the day of
4 the primary, election, or runoff, the superintendent shall notify in writing, at least seven
5 days prior to the primary, election, or runoff, the county executive committee or, if there
6 is no organized county executive committee, the state executive committee of each
7 political party and political body having candidates whose names appear on the ballot for
8 such election in such county and each independent and nonpartisan candidate whose
9 name appears on the ballot for such primary, election, or runoff in such county of the
10 superintendent's intent to begin the absentee ballot tabulation prior to the close of the
11 polls and their right to appoint monitors to observe the tabulation. Such committee shall
12 have the right to designate two persons and each independent and nonpartisan candidate
13 whose name appears on the ballot for such election in such county shall have the right to
14 designate one person to act as monitors. ~~Such executive committees and candidates shall~~
15 ~~be given notice by the election superintendent of the superintendent's intent to request~~
16 ~~permission to open the inner envelopes early and their right to designate monitors. The~~
17 ~~executive committees and candidates shall be given at least seven days after the notice~~
18 ~~by the election superintendent to designate monitors for inclusion in the petition for such~~
19 ~~process. In the event that the only issue to be voted upon in an election is a referendum~~
20 ~~question, the chief judge of the superior court of the county shall appoint two electors of~~
21 ~~the county to monitor such process.~~

22 (4) The county election superintendent shall publish a written notice in the
23 superintendent's office of the superintendent's intent to begin the absentee ballot
24 tabulation prior to the close of the polls and publish such notice at least one week prior
25 to the primary, election, or runoff in the legal organ of the county. The chief judge, after
26 considering the petition, shall authorize the opening of the inner envelope of the absentee
27 ballots provided that the names of the persons to serve as monitors on behalf of the
28 political parties, political bodies, independent candidates, and nonpartisan candidates are
29 submitted in the petition by the election superintendent. The judge shall:

30 (A) ~~Designate the location where the inner envelopes shall be opened within the~~
31 ~~county;~~

32 (B) ~~Designate additional monitors for the process to be present during the opening of~~
33 ~~the inner envelopes, if the judge deems such persons necessary;~~

34 (C) ~~Administer an oath to each person who shall serve as a monitor and to each~~
35 ~~election official who shall participate in any manner in the process of opening the inner~~
36 ~~envelopes to which such persons shall swear or affirm that no inner envelopes shall be~~
37 ~~opened unless all monitors are present in the location designated by the judge, unless~~

such monitor shall specifically give his or her permission for such process to continue in his or her absence; that no attempt shall be made to ascertain how any ballot was voted or to view the contents of any ballot; that no monitor shall handle, touch, or possess any ballot; and that no discussion of the procedure or of anything viewed during the opening of the envelopes will be held with any person who is not a part of the opening process before 7:00 P.M. on the day of the election;

~~(D) Designate no less than two persons to take possession of and keep secure all such opened envelopes and ballots at all times prior to such envelopes and ballots being released to the manager of the absentee ballot precinct for counting; and~~

~~(E) Provide such additional conditions and requirements as he or she deems necessary to preserve the integrity and confidentiality of such process, including instructions to monitors and election officials for the reporting of any unauthorized activity.~~

~~Intentional and willful violation of such oath shall be a felony punishable pursuant to Code Section 21-2-600.~~

(5) The process for opening the inner envelopes of and tabulating absentee ballots after ~~12:00 Noon and before 7:00 P.M.~~ on the day of an a primary, election, or runoff as provided in this subsection shall be a confidential process to maintain the secrecy of all ballots and to protect the disclosure of any balloting information before 7:00 P.M. on election day. No absentee ballots shall be ~~counted~~ tabulated before 7:00 P.M. A.M. on the day of a primary, election, or runoff day.

(6) All persons conducting the tabulation of absentee ballots during the day of a primary, election, or runoff, including the vote review panel required by Code Section 21-2-483, and all monitors and observers shall be sequestered until the time for the closing of the polls. All such persons shall have no contact with the news media; shall have no contact with other persons not involved in monitoring, observing, or conducting the tabulation; shall not use any type of communication device including radios, telephones, and cellular telephones; shall not utilize computers for the purpose of electronic mail, instant messaging, or other forms of communication; and shall not communicate any information concerning the tabulation until the time for the closing of the polls; provided, however, that supervisory and technical assistance personnel shall be permitted to enter and leave the area in which the tabulation is being conducted but shall not communicate any information concerning the tabulation to anyone other than the county election superintendent; the staff of the superintendent; those persons conducting, observing, or monitoring the tabulation; and those persons whose technical assistance is needed for the tabulation process to operate.

(7) The absentee ballots shall be tabulated in accordance with the procedures of this chapter for the tabulation of absentee ballots. As such ballots are tabulated, they shall be

1 placed into locked ballot boxes and may be transferred to locked ballot bags, if needed,
 2 for security. The persons conducting the tabulation of the absentee ballots shall not cause
 3 the tabulating equipment to produce any count, partial or otherwise, of the absentee votes
 4 cast until the time for the closing of the polls.

5 (b) As soon as practicable after ~~12:00 Noon~~ 7:00 A.M. on the day of the primary, ~~or~~
 6 election, or runoff, in precincts other than those in which optical scanning tabulators are
 7 used, a registrar or absentee ballot clerk shall deliver the official absentee ballot of each
 8 certified absentee elector, each rejected absentee ballot, applications for such ballots, and
 9 copies of the numbered lists of certified and rejected absentee electors to the manager in
 10 charge of the absentee ballot precinct of the county or municipality, which shall be located
 11 in the precincts containing the county courthouse or polling place designated by the
 12 municipal superintendent. In those precincts in which optical scanning tabulators are used,
 13 such absentee ballots shall be taken to the tabulation center or other place designated by
 14 the superintendent, and the official receiving such absentee ballots shall issue his or her
 15 receipt therefor. ~~In~~ Except as otherwise provided in this Code section, in no event shall the
 16 counting of the ballots begin before the polls close.

17 (c) Except as otherwise provided in this Code section, after the close of the polls on the
 18 day of the primary, ~~or~~ election, or runoff, a manager shall then open the outer envelope in
 19 such manner as not to destroy the oath printed thereon and shall deposit the inner envelope
 20 marked 'Official Absentee Ballot' in a ballot box reserved for absentee ballots. In the event
 21 that an outer envelope is found to contain an absentee ballot that is not in an inner
 22 envelope, the ballot shall be sealed in an inner envelope, initialed and dated by the person
 23 sealing the inner envelope, and deposited in the ballot box and counted in the same manner
 24 as other absentee ballots, provided that such ballot is otherwise proper. Such manager with
 25 two assistant managers, appointed by the superintendent, with such clerks as the manager
 26 deems necessary shall count the absentee ballots following the procedures prescribed by
 27 this chapter for other ballots, insofar as practicable, and prepare an election return for the
 28 county or municipality showing the results of the absentee ballots cast in such county or
 29 municipality.

30 (d) Any other provision of law to the contrary notwithstanding, if at any primary, general,
 31 or special election in any county any question is to be voted on involving any political
 32 subdivision which includes less than the entire county, all absentee ballots shall be
 33 separated by precinct for counting purposes; and separate returns shall be certified for each
 34 precinct in which absentee ballots were cast.

35 (e) If an absentee elector's right to vote has been challenged for cause, a poll officer shall
 36 open the envelopes and write 'Challenged,' the elector's name, and the alleged cause of
 37 challenge on the back of the ballot, without disclosing the markings on the face thereof, and

shall deposit the ballot in the box; and it shall be counted as other challenged ballots are counted. Where direct recording electronic voting systems are used for absentee balloting and a challenge to an elector's right to vote is made prior to the time that the elector votes, the elector shall vote on a paper or optical scanning ballot and such ballot shall be handled as provided in this subsection. The board of registrars or absentee ballot clerk shall promptly notify the elector of such challenge.

(f) It shall be unlawful at any time prior to the close of the polls for any person to disclose or for any person to receive any information regarding the results of the tabulation of absentee ballots except as expressly provided by law."

SECTION 2.

Said chapter is further amended by revising Code Section 21-2-388, relating to cancellation of absentee ballots of electors who are present in the election precinct during primaries and elections, as follows:

"21-2-388.

When an absentee ballot which has been voted shall be returned to and received by the board of registrars, it shall be deemed to have been voted then and there; and no other ~~absentee~~ ballot shall be issued to the same elector. ~~However, if~~ If an elector ~~who~~ has requested to vote by absentee ballot ~~based upon the reason that the elector is required to be absent from the elector's precinct during the time of the primary or election in which the elector desires to vote is present in the precinct of the elector's residence during the time the polls are open in any primary, election, or runoff for which the elector has requested an absentee ballot or if the elector's circumstances change and the elector is no longer eligible to vote by absentee ballot under Code Section 21-2-380~~ and has not received such absentee ballot, has such ballot in his or her possession, or has returned such ballot but the registrars have not received such ballot, such elector ~~shall~~ may have the absentee ballot canceled and vote in person on the day of the primary, election, or runoff in one of the following ways:

(1) ~~By~~ If the elector is in possession of the ballot, by surrendering the absentee ballot to the poll manager of the precinct in which the elector's name appears on the electors list and then being permitted to vote the regular ballot. The poll manager shall mark 'Canceled' and the date and time across the face of the absentee ballot and shall initial same. The poll manager shall also make appropriate notations beside the name of the elector on the electors list. All such canceled absentee ballots shall be returned with other ballots to the superintendent; or

(2) If the elector has not received the ballot or if the elector has returned the ballot but the registrars have not received the ballot, by ~~By~~ appearing in person before the registrars

1 or the absentee ballot clerk and requesting in writing that the envelope containing the
2 elector's absentee ballot be marked 'Canceled.' After having satisfied themselves as to
3 the identity of such elector, the registrars or the absentee ballot clerk shall grant the
4 request and shall notify the managers of the elector's precinct as to such action so as to
5 permit the elector to vote in person in that precinct. ~~If the absentee ballot is in the~~
6 ~~possession of the registrars or the absentee ballot clerk, it shall be promptly marked~~
7 ~~'Canceled' and the date and time written across the face of the envelope.~~ If the absentee
8 ballot is in the mail or its exact location is unknown, the registrar or the absentee ballot
9 clerk shall write 'Canceled' beside the elector's name on the master list of absentee voters
10 and shall cancel the ballot itself as soon as it is received. Canceled absentee ballots shall
11 be disposed of in the same manner as provided in subsection (a) of Code Section
12 21-2-386 for absentee ballots returned too late to be cast."

13 **SECTION 3.**

14 All laws and parts of laws in conflict with this Act are repealed.