

An Act

ENROLLED SENATE
BILL NO. 869

By: Bingman of the Senate

and

Watson of the House

An Act relating to voting; amending 26 O.S. 2011, Sections 6-109, 6-116, 7-129.2, 14-105, 14-110.1, as amended by Section 1 of Enrolled Senate Bill No. 276 of the 1st Session of the 54th Oklahoma Legislature, 14-115.4, 14-118, 14-118.1, 14-123 and 14-125, which relate to ballots and voting procedures; modifying procedures for determination of order of names on ballots; specifying authority and duties of Secretary of the State Election Board; modifying procedures relating to ballots that cannot be read by voting device; requiring certain matters to be brought before election board; modifying procedures to apply for absentee ballot; allowing certain registered voters to request emergency absentee ballots and providing procedures; modifying days and hours during which in-person absentee voting allowed; allowing designation of additional polling places; modifying references to vote data packs; modifying statutory references; modifying date upon which counting of absentee ballots may begin; providing procedures; specifying duties of county sheriff; providing for codification; and providing an effective date.

SUBJECT: Voting

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 26 O.S. 2011, Section 6-109, is amended to read as follows:

Section 6-109. On all Primary and Runoff Primary Election ballots, except absentee ballots, the names of the candidates for each office shall be rotated in such a manner that all candidates' names appear in each position on ~~said~~ the ballots an equal number of times, to the extent practicable. Provided, however, the names of candidates for judicial, school, city and town offices shall be placed on the ballot according to lot.

SECTION 2. AMENDATORY 26 O.S. 2011, Section 6-116, is amended to read as follows:

Section 6-116. A. As soon as practicable, the State Election Board ~~and~~ or each county election board, when ballots are printed by a county election board, shall cause to be printed a sufficient number of absentee ballots, prepared as nearly as ~~practical~~ practicable in the same manner as provided for other ballots for the Primary, Runoff Primary and General Elections, in time for ~~said~~ the ballots to be issued during the time prescribed by law.

B. The Secretary of the State Election Board may authorize the use of regular ballots as absentee ballots in any county for any election. In the event that regular ballots are authorized for use as absentee ballots at any election, the first order of rotation of candidate names for all partisan offices in Primary Elections shall be determined as outlined in Section 6-107 of this title and the candidate names shall be rotated to the extent practicable on all ballots printed for the election. The first order of rotation of candidate names for all partisan offices in the Runoff Primary Election shall be determined as outlined in Section 6-108 of this title and the candidate names shall be rotated to the extent practicable on all ballots printed for the election. Regular ballots used as absentee ballots shall not be required to be designated on their face as absentee ballots.

SECTION 3. AMENDATORY 26 O.S. 2011, Section 7-129.2, is amended to read as follows:

Section 7-129.2. A. In the event an absentee ballot is mutilated, defaced or damaged in a manner that it cannot be read by

the voting device and thus not counted during the counting process, then two members of the county election board of different political party affiliations or two members of an absentee voting board under the supervision of the county election board shall be authorized to mark a substitute ballot in identical fashion, insofar as is possible. ~~In the event a ballot is mutilated to such an extent that the two members cannot agree upon how it was marked, it shall be invalidated.~~ Once so marked, the substitute ballot shall be entered for counting into the voting device. A written record of such action shall be made by the two county election board members.

B. In the event of an absentee ballot that was delivered electronically to a voter as described in Section 14-118 of this title, or an absentee ballot that was received from a voter by facsimile device as described by Section 14-118.1 of this title, and the ballot cannot be read by the voting device, then two members of the county election board of different political party affiliations or two members of an absentee voting board under the supervision of the county election board shall be authorized to mark a substitute ballot in identical fashion, insofar as is possible. Once so marked, the substitute ballot shall be entered for counting into the voting device. A written record of such action shall be made by the two county election board members.

C. In the event there is a disagreement about how a substitute ballot should be marked for any race, the matter shall be brought immediately before the full county election board, which shall vote to decide how to mark the ballot.

SECTION 4. AMENDATORY 26 O.S. 2011, Section 14-105, is amended to read as follows:

Section 14-105. Any registered voter may apply for an absentee ballot in person at the county election board, by United States mail, by telegraph ~~or~~, by facsimile device as defined in Section 1862 of Title 21 of the Oklahoma Statutes or by a means of electronic communication designated by the Secretary of the State Election Board. The Secretary of the State Election Board shall prescribe a form to be used for ~~said~~ the application, although any application setting forth substantially the same facts shall be valid.

SECTION 5. AMENDATORY 26 O.S. 2011, Section 14-110.1, as amended by Section 1 of Enrolled Senate Bill No. 276 of the 1st Session of the 54th Oklahoma Legislature, is amended to read as follows:

Section 14-110.1. A registered voter who swears or affirms that the voter is physically unable to vote in person at the precinct on the day of the election because the voter is:

1. Physically incapacitated; or
2. Charged with the care of another person who is physically incapacitated and who cannot be left unattended;

may apply for an absentee ballot. Such applications may be made by United States mail ~~or~~, by facsimile device as defined by Section 1862 of Title 21 of the Oklahoma Statutes, or by a means of electronic communication designated by the Secretary of the State Election Board or may be made in person at the office of the county election board by an agent of the voter. Such an agent shall be a person of the voter's choosing who is at least sixteen (16) years of age and who is not employed by or related within the third degree of consanguinity or affinity to any person whose name appears on the ballot. No person may be the agent for more than one voter at any election. The Secretary of the State Election Board shall prescribe a form to be used for the application, although any application setting forth substantially the same facts shall be valid.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-115.6 of Title 26, unless there is created a duplication in numbering, reads as follows:

A. A registered voter who, within ten (10) days preceding an election, is deployed as a first responder or emergency worker to assist with the rescue, recovery, or relief efforts of a declared natural disaster or state of emergency, may make a written request for an emergency absentee ballot in a form prescribed by the Secretary of the State Election Board. The request shall be signed by the voter and shall be provided by the voter to the secretary of the county election board in the county where the voter is registered.

B. Upon receipt of the voter's request, the secretary of the county election board shall issue to the voter the appropriate ballots and envelopes required for voting an emergency absentee ballot. Provided, the voter shall present proof of identity as required by Section 7-114 of this title.

C. The ballots must be returned in person by the voter, by United States mail, or by other means of delivery approved by the Secretary of the State Election Board, to the secretary of the county election board no later than 7:00 p.m. on the day of the election.

D. Upon return of the absentee ballots, the secretary of the county election board shall cause the ballots to be processed in the same manner as is prescribed for other absentee ballots.

E. The Secretary of the State Election Board shall promulgate rules to implement the procedures described in this section.

SECTION 7. AMENDATORY 26 O.S. 2011, Section 14-115.4, is amended to read as follows:

Section 14-115.4. A. 1. A registered voter may apply for an in-person absentee ballot at a location designated by the secretary of the county election board from 8 a.m. to 6 p.m. on Thursday and Friday and ~~Monday~~ immediately preceding any election and from ~~8~~ 9 a.m. to ~~4~~ 2 p.m. on Saturday immediately preceding a state or federal election. As part of the application for an in-person absentee ballot such registered voter shall swear or affirm that the voter has not voted a regular mail absentee ballot and that the voter will not vote at the regular polling place in the election for which the in-person absentee ballot is requested.

2. The secretary of the county election board in counties with one hundred thousand (100,000) or more registered voters may designate more than one location as an in-person absentee polling place for an election, subject to the approval of and pursuant to the rules and procedures prescribed by the Secretary of the State Election Board.

B. 1. The voter also shall provide proof of identity as defined in Section 7-114 of this title. If the voter declines to or

is unable to produce proof of identity, the voter may sign a statement under oath, in a form approved by the Secretary of the State Election Board, swearing or affirming that the person is the person identified on the precinct registry, and shall be allowed to cast a provisional ballot as provided in Section 7-116.1 of this title.

2. False swearing or affirming under oath shall be punishable as a felony as provided in Section 16-103 of this title, and the penalty shall be distinctly set forth on the face of the statement.

C. One or more absentee voting boards shall be on duty ~~from 8 a.m. to 6 p.m.~~ at the in-person absentee polling place on ~~Friday and Monday immediately preceding any election and from 8 a.m. to 1 p.m. on Saturday immediately preceding a state or federal election~~ the days and during the hours set forth in subsection A of this section. If the secretary of a county election board receives an application from a registered voter requesting to vote by in-person absentee ballot the secretary shall cause to be implemented the following procedures:

1. An absentee voting board shall provide to each registered voter who applies for an in-person absentee ballot appropriate ballots and materials as may be necessary to vote;

2. The voter must sign an in-person absentee voter record, and the signature of the voter on such record must be certified by both members of the absentee voting board, except that the secretary of the county election board and one other member of the absentee voting board may certify the signature of another member of the absentee voting board;

3. The voter must mark the ballots of the voter in the manner provided by law in the presence of the absentee voting board, but in such a manner as to make it impossible for any person other than the voter to ascertain how such ballots are marked. Insofar as is possible, the voting procedure shall be the same as if the voter were casting a vote in person at a precinct;

4. The voter shall then deposit the ballot in a voting device designated for in-person absentee voting by the secretary of the county election board;

5. When the in-person polling place is closed on each day of in-person absentee voting the in-person absentee voting board shall, without obtaining a printout of results, remove the ~~vote data pack~~ electronic results storage media from the voting device and seal ballots counted that day in a transfer case which shall be secured by the sheriff of the county in the same manner as provided in Section 8-110 of this title. The ~~vote data pack~~ electronic results storage media shall be sealed in a container prescribed by the Secretary of the State Election Board. The sheriff shall secure the sealed ~~vote data pack~~ electronic results storage media container and return it to the in-person absentee voting board no later than 7:45 a.m. on the next day of in-person absentee voting or to the secretary of the county election board at the time of the county election board meeting to count absentee ballots on election day; and

6. ~~The vote data pack or packs used for in person absentee voting shall be used by the county election board to count absentee ballots on election day as provided in Section 14-125 of this title; and~~

7. If there is a malfunction in such a way that the ~~vote data pack~~ electronic results storage media used for in-person absentee voting will not function, the sheriff is authorized to return the transfer cases containing in-person absentee ballots to the county election board to be recounted as provided in Section 7-134.1 of this title.

SECTION 8. AMENDATORY 26 O.S. 2011, Section 14-118, is amended to read as follows:

Section 14-118. A. When an application for an absentee ballot pursuant to Section ~~14-117~~ 14-142 of this title is received by the secretary of a county election board, it shall be the duty of the secretary to transmit by United States mail, by facsimile device as defined in Section 1862 of Title 21 of the Oklahoma Statutes, or as provided in subsection B of this section the ballots which the elector has requested and is entitled to receive. When an application for an absentee ballot is received at least forty-five (45) days before an election involving state or federal offices, the absentee ballot shall be transmitted by mail, by electronic mail, or

by other means of electronic communication, as provided in this section, or by facsimile device as provided in Section 14-118.1 of this title, not less than forty-five (45) days preceding the election. When an application for an absentee ballot for an election involving state or federal offices is received less than forty-five (45) days preceding the election, the absentee ballot shall be transmitted by mail, by electronic mail, or by other means of electronic communication, as provided in this section, or by facsimile device as provided in Section 14-118.1 of this title, within forty-eight (48) hours of receipt of the application.

B. The secretary of the county election board may transmit balloting materials for any state or federal election, or for any other election as designated by the Secretary of the State Election Board as provided in subsection D of this section, by electronic mail or by other means of electronic communication in a form and manner prescribed by the Secretary of the State Election Board, if the voter:

1. Is a Federal Post Card Application registrant and is eligible to receive an absentee ballot as provided by law;
2. Provides an electronic mail address; and
3. Requests that balloting materials be sent by electronic mail.

If the secretary of the county election board transmits a ballot to a voter by electronic mail or by other means of electronic communication as provided in this subsection, the secretary shall amend the voter's federal postcard application for future elections to include the voter's electronic mail address.

C. An electronic mail address provided under this section is confidential and does not constitute public information for purposes of the Oklahoma Open Records Act. The secretary of the county election board shall ensure that an electronic mail address provided under this section is excluded from disclosure.

D. The Secretary of the State Election Board shall determine if balloting materials for any election other than a state or federal election may be produced in a form which would allow them to be

transmitted by electronic mail or by other means of electronic communication. If so, the Secretary shall so designate them. If such designation is not made, the balloting materials may be transmitted to the voter as provided in subsection A of this section.

E. All other provisions of this title that would normally apply to a ballot voted under this title apply to a ballot provided pursuant to the provisions of subsection B of this section.

F. The Secretary of the State Election Board may suspend the provisions of subsection B of this section if the Secretary determines that electronic transmission of balloting materials is not in the best interest of the people of this state due to a potential problem with the security of the balloting materials.

SECTION 9. AMENDATORY 26 O.S. 2011, Section 14-118.1, is amended to read as follows:

Section 14-118.1. In the event that an absentee ballot mailed to a voter identified by Section ~~14-116~~ 14-142 of this title or otherwise transmitted to a voter as provided by law cannot be received by the voter, voted and returned to the secretary of the county election board in the county of the residence of the voter in time to be counted, the secretary shall be authorized to transmit a ballot for federal offices by facsimile device as defined in Section 1862 of Title 21 of the Oklahoma Statutes, provided that the voter has made a timely application for an absentee ballot. ~~Instructions and an affidavit as required by paragraph 2 of Section 14-119 of this title and a statement waiving the right to a secret ballot also shall accompany the ballot that was transmitted by facsimile device.~~ The voter may transmit by facsimile device the voted ballot only to the location designated by the Secretary of the State Election Board. Regular absentee ballots also shall be mailed to the voter, and if the regular ballots are returned by the voter and received by the secretary of the county election board in time to be counted, the ballot transmitted by facsimile device shall not be counted. The Secretary of the State Election Board shall promulgate rules setting forth procedures and prescribe appropriate forms to transmit and to receive absentee ballots pursuant to this section.

SECTION 10. AMENDATORY 26 O.S. 2011, Section 14-123, is amended to read as follows:

Section 14-123. At 10 a.m. on Thursday preceding the election, or at such time thereafter as the county election board may desire, the county election board may meet and publicly remove the outer envelopes from all absentee ballots then received, examine and remove properly executed affidavits and place the plain opaque envelopes in a ballot box, locked with three locks. ~~Said~~ The procedure shall be repeated until such time as all ballots have been received. Provided, such procedure may begin at an earlier date upon the written approval of the Secretary of the State Election Board.

SECTION 11. AMENDATORY 26 O.S. 2011, Section 14-125, is amended to read as follows:

Section 14-125. A. On the day of the election at such time as the secretary of the county election board may prescribe, the county election board shall meet at the county courthouse or at the offices of the county election board if located elsewhere to count absentee ballots in the following manner:

The ballot box containing the plain opaque envelopes shall be shaken to mix the envelopes, after which the box shall be opened, the envelopes removed, and the ballots counted by a voting device assigned to count absentee ballots and operated by persons appointed by the secretary of the county election board.

B. The procedure described in this section shall be repeated as is necessary until all ballots have been counted. In no event shall fewer than twelve ballots be counted at any time, unless fewer than twelve ballots are received in total or after the first count is made. The results of the absentee ballots shall not be printed, made known to any person nor announced earlier than 7:00 p.m. on the day of the election.

C. 1. Upon written approval by the Secretary of the State Election Board, the county election board may begin the process of counting absentee ballots as described in this section on a date earlier than the day of the election. The results of the absentee

ballots shall not be printed, made known to any person nor announced earlier than 7:00 p.m. on the day of the election.

2. When the counting of absentee ballots occurs on a date prior to the day of the election, the county election board shall, without obtaining a printout of results, remove the election results storage media from the voting device and seal ballots counted that day in a transfer case which shall be secured by the sheriff of the county in the same manner as provided in Section 8-110 of this title. The election results storage media shall be sealed in a container prescribed by the Secretary of the State Election Board. The sheriff shall secure the sealed election results storage media container and return it to the county election board at the time the county election board next meets for the purpose of counting absentee ballots.

3. If there is a malfunction in such a way that the election results storage media used for absentee voting will not function, the sheriff is authorized to return the transfer cases containing absentee ballots to the county election board to be recounted as provided in Section 7-134.1 of this title.

SECTION 12. This act shall become effective November 1, 2013.

Passed the Senate the 5th day of March, 2013.

Eddie Filer
Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of April, 2013.

Mike John
Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this Monday
day of ~~Apr~~ April 29, 20 13, at 3:37 o'clock P M.
By: Kandi C. Ball

Approved by the Governor of the State of Oklahoma this 3rd
day of May, 20 13, at 2:19 o'clock P M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 3rd
day of May, 20 13, at 2:30 o'clock P. M.
By: Chris Ramsey