

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 ENGROSSED SENATE
5 BILL NO. 869

By: Bingman of the Senate

and

Watson of the House

6
7
8
9
10 An Act relating to voting; amending 26 O.S. 2011,
11 Sections 6-109, 6-116, 7-129.2, 14-105, 14-110.1, 14-
12 115.4, 14-118, 14-118.1, 14-123 and 14-125, which
13 relate to ballots and voting procedures; modifying
14 procedures for determination of order of names on
15 ballots; specifying authority and duties of Secretary
16 of the State Election Board; modifying procedures
17 relating to ballots that cannot be read by voting
18 device; requiring certain matters to be brought
19 before election board; modifying procedures to apply
20 for absentee ballot; allowing certain registered
21 voters to request emergency absentee ballots and
22 providing procedures; modifying days and hours during
23 which in-person absentee voting allowed; allowing
24 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.

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

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

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

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

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

19 B. The Secretary of the State Election Board may authorize the
20 use of regular ballots as absentee ballots in any county for any
21 election. In the event that regular ballots are authorized for use
22 as absentee ballots at any election, the first order of rotation of
23 candidate names for all partisan offices in Primary Elections shall
24 be determined as outlined in Section 6-107 of this title and the

1 candidate names shall be rotated to the extent practicable on all
2 ballots printed for the election. The first order of rotation of
3 candidate names for all partisan offices in the Runoff Primary
4 Election shall be determined as outlined in Section 6-108 of this
5 title and the candidate names shall be rotated to the extent
6 practicable on all ballots printed for the election. Regular
7 ballots used as absentee ballots shall not be required to be
8 designated on their face as absentee ballots.

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

11 Section 7-129.2. A. In the event an absentee ballot is
12 mutilated, defaced or damaged in a manner that it cannot be read by
13 the voting device and thus not counted during the counting process,
14 then two members of the county election board of different political
15 party affiliations or two members of an absentee voting board under
16 the supervision of the county election board shall be authorized to
17 mark a substitute ballot in identical fashion, insofar as is
18 possible. In the event a ballot is mutilated to such an extent that
19 the two members cannot agree upon how it was marked, it shall be
20 invalidated. Once so marked, the substitute ballot shall be entered
21 for counting into the voting device. A written record of such
22 action shall be made by the two county election board members.

23 B. In the event of an absentee ballot that was delivered
24 electronically to a voter as described in Section 14-118 of this

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

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

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

17 Section 14-105. Any registered voter may apply for an absentee
18 ballot in person at the county election board, by United States
19 mail, by telegraph ~~or~~, by facsimile device as defined in Section
20 1862 of Title 21 of the Oklahoma Statutes or by a means of
21 electronic communication designated by the Secretary of the State
22 Election Board. The Secretary of the State Election Board shall
23 prescribe a form to be used for ~~said~~ the application, although any
24

1 application setting forth substantially the same facts shall be
2 valid.

3 SECTION 5. AMENDATORY 26 O.S. 2011, Section 14-110.1, is
4 amended to read as follows:

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

8 1. Physically incapacitated; or

9 2. Charged with the care of another person who is physically
10 incapacitated and who cannot be left unattended;
11 may apply for an absentee ballot by United States mail, by telegraph
12 ~~or~~, by facsimile device as defined by Section 1862 of Title 21 of
13 the Oklahoma Statutes or by a means of electronic communication
14 designated by the Secretary of the State Election Board. The
15 Secretary of the State Election Board shall prescribe a form to be
16 used for ~~said~~ the application, although any application setting
17 forth substantially the same facts shall be valid.

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

21 A. A registered voter who, within ten (10) days preceding an
22 election, is deployed as a first responder or emergency worker to
23 assist with the rescue, recovery, or relief efforts of a declared
24 natural disaster or state of emergency, may make a written request

1 for an emergency absentee ballot in a form prescribed by the
2 Secretary of the State Election Board. The request shall be signed
3 by the voter and shall be provided by the voter to the secretary of
4 the county election board in the county where the voter is
5 registered.

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

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

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

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

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

23 Section 14-115.4. A. 1. A registered voter may apply for an
24 in-person absentee ballot at a location designated by the secretary

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

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

15 B. 1. The voter also shall provide proof of identity as
16 defined in Section 7-114 of this title. If the voter declines to or
17 is unable to produce proof of identity, the voter may sign a
18 statement under oath, in a form approved by the Secretary of the
19 State Election Board, swearing or affirming that the person is the
20 person identified on the precinct registry, and shall be allowed to
21 cast a provisional ballot as provided in Section 7-116.1 of this
22 title.

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

4 C. One or more absentee voting boards shall be on duty ~~from 8~~
5 ~~a.m. to 6 p.m.~~ at the in-person absentee polling place on ~~Friday and~~
6 ~~Monday immediately preceding any election and from 8 a.m. to 1 p.m.~~
7 ~~on Saturday immediately preceding a state or federal election~~ the
8 days and during the hours set forth in subsection A of this section.

9 If the secretary of a county election board receives an application
10 from a registered voter requesting to vote by in-person absentee
11 ballot the secretary shall cause to be implemented the following
12 procedures:

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

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

22 3. The voter must mark the ballots of the voter in the manner
23 provided by law in the presence of the absentee voting board, but in
24 such a manner as to make it impossible for any person other than the

1 voter to ascertain how such ballots are marked. Insofar as is
2 possible, the voting procedure shall be the same as if the voter
3 were casting a vote in person at a precinct;

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

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

22 6. ~~The vote data pack or packs used for in-person absentee~~
23 ~~voting shall be used by the county election board to count absentee~~
24

1 ~~ballots on election day as provided in Section 14-125 of this title;~~
2 and

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

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

11 Section 14-118. A. When an application for an absentee ballot
12 pursuant to Section ~~14-117~~ 14-142 of this title is received by the
13 secretary of a county election board, it shall be the duty of the
14 secretary to transmit by United States mail, by facsimile device as
15 defined in Section 1862 of Title 21 of the Oklahoma Statutes, or as
16 provided in subsection B of this section the ballots which the
17 elector has requested and is entitled to receive. When an
18 application for an absentee ballot is received at least forty-five
19 (45) days before an election involving state or federal offices, the
20 absentee ballot shall be transmitted by mail, by electronic mail, or
21 by other means of electronic communication, as provided in this
22 section, or by facsimile device as provided in Section 14-118.1 of
23 this title, not less than forty-five (45) days preceding the
24 election. When an application for an absentee ballot for an

1 election involving state or federal offices is received less than
2 forty-five (45) days preceding the election, the absentee ballot
3 shall be transmitted by mail, by electronic mail, or by other means
4 of electronic communication, as provided in this section, or by
5 facsimile device as provided in Section 14-118.1 of this title,
6 within forty-eight (48) hours of receipt of the application.

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

14 1. Is a Federal Post Card Application registrant and is
15 eligible to receive an absentee ballot as provided by law;

16 2. Provides an electronic mail address; and

17 3. Requests that balloting materials be sent by electronic
18 mail.

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

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

6 D. The Secretary of the State Election Board shall determine if
7 balloting materials for any election other than a state or federal
8 election may be produced in a form which would allow them to be
9 transmitted by electronic mail or by other means of electronic
10 communication. If so, the Secretary shall so designate them. If
11 such designation is not made, the balloting materials may be
12 transmitted to the voter as provided in subsection A of this
13 section.

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

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

22 SECTION 9. AMENDATORY 26 O.S. 2011, Section 14-118.1, is
23 amended to read as follows:
24

1 Section 14-118.1. In the event that an absentee ballot mailed
2 to a voter identified by Section ~~14-116~~ 14-142 of this title or
3 otherwise transmitted to a voter as provided by law cannot be
4 received by the voter, voted and returned to the secretary of the
5 county election board in the county of the residence of the voter in
6 time to be counted, the secretary shall be authorized to transmit a
7 ballot for federal offices by facsimile device as defined in Section
8 1862 of Title 21 of the Oklahoma Statutes, provided that the voter
9 has made a timely application for an absentee ballot. ~~Instructions~~
10 ~~and an affidavit as required by paragraph 2 of Section 14-119 of~~
11 ~~this title and a statement waiving the right to a secret ballot also~~
12 ~~shall accompany the ballot that was transmitted by facsimile device.~~
13 The voter may transmit by facsimile device the voted ballot only to
14 the location designated by the Secretary of the State Election
15 Board. Regular absentee ballots also shall be mailed to the voter,
16 and if the regular ballots are returned by the voter and received by
17 the secretary of the county election board in time to be counted,
18 the ballot transmitted by facsimile device shall not be counted.
19 The Secretary of the State Election Board shall promulgate rules
20 setting forth procedures and prescribe appropriate forms to transmit
21 and to receive absentee ballots pursuant to this section.

22 SECTION 10. AMENDATORY 26 O.S. 2011, Section 14-123, is
23 amended to read as follows:
24

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

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

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

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

23 B. The procedure described in this section shall be repeated as
24 is necessary until all ballots have been counted. In no event shall

1 fewer than twelve ballots be counted at any time, unless fewer than
2 twelve ballots are received in total or after the first count is
3 made. The results of the absentee ballots shall not be printed,
4 made known to any person nor announced earlier than 7:00 p.m. on the
5 day of the election.

6 C. 1. Upon written approval by the Secretary of the State
7 Election Board, the county election board may begin the process of
8 counting absentee ballots as described in this section on a date
9 earlier than the day of the election. The results of the absentee
10 ballots shall not be printed, made known to any person nor announced
11 earlier than 7:00 p.m. on the day of the election.

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

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

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

7
8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/03/2013 - DO
9 PASS.