

Senate Bill 40

By: Senators Jordan of the 6th, Au of the 48th, Merritt of the 9th, Jones II of the 22nd, Parent of the 42nd and others

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to
2 elections and primaries generally, so as to revise the time and method for opening and
3 tabulating absentee ballots; to provide for an effective date; to provide for related matters;
4 to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and
8 primaries generally, is amended by revising Code Section 21-2-386, relating to safekeeping,
9 certification, and validation of absentee ballots, rejection of ballot, delivery of ballots to
10 manager, duties of managers, precinct returns, and notification of challenged elector, as
11 follows:

12 "21-2-386.

13 (a)(1)(A) The board of registrars or absentee ballot clerk shall keep safely, unopened,
14 and stored in a manner that will prevent tampering and unauthorized access all official
15 absentee ballots received from absentee electors prior to the closing of the polls on the
16 day of the primary or election except as otherwise provided in this subsection.

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17 (B) Upon receipt of each ballot, a registrar or clerk shall write the day and hour of the
18 receipt of the ballot on its envelope. The registrar or clerk shall then compare the
19 identifying information on the oath with the information on file in his or her office,
20 shall compare the signature or mark on the oath with the signature or mark on the
21 absentee elector's voter registration card or the most recent update to such absentee
22 elector's voter registration card and application for absentee ballot or a facsimile of said
23 signature or mark taken from said card or application, and shall, if the information and
24 signature appear to be valid and other identifying information appears to be correct, so
25 certify by signing or initialing his or her name below the voter's oath. Each elector's
26 name so certified shall be listed by the registrar or clerk on the numbered list of
27 absentee voters prepared for his or her precinct.

28 (C) If the elector has failed to sign the oath, or if the signature does not appear to be
29 valid, or if the elector has failed to furnish required information or information so
30 furnished does not conform with that on file in the registrar's or clerk's office, or if the
31 elector is otherwise found disqualified to vote, the registrar or clerk shall write across
32 the face of the envelope 'Rejected,' giving the reason therefor. The board of registrars
33 or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of
34 which notification shall be retained in the files of the board of registrars or absentee
35 ballot clerk for at least two years. Such elector shall have until the end of the period for
36 verifying provisional ballots contained in subsection (c) of Code Section 21-2-419 to
37 cure the problem resulting in the rejection of the ballot. The elector may cure a failure
38 to sign the oath, an invalid signature, or missing information by submitting an affidavit
39 to the board of registrars or absentee ballot clerk along with a copy of one of the forms
40 of identification enumerated in subsection (c) of Code Section 21-2-417 before the
41 close of such period. The affidavit shall affirm that the ballot was submitted by the
42 elector, is the elector's ballot, and that the elector is registered and qualified to vote in
43 the primary, election, or runoff in question. If the board of registrars or absentee ballot

44 clerk finds the affidavit and identification to be sufficient, the absentee ballot shall be
45 counted.

46 (D) An elector who registered to vote by mail, but did not comply with subsection (c)
47 of Code Section 21-2-220, and who votes for the first time in this state by absentee
48 ballot shall include with his or her application for an absentee ballot or in the outer oath
49 envelope of his or her absentee ballot either one of the forms of identification listed in
50 subsection (a) of Code Section 21-2-417 or a copy of a current utility bill, bank
51 statement, government check, paycheck, or other government document that shows the
52 name and address of such elector. If such elector does not provide any of the forms of
53 identification listed in this subparagraph with his or her application for an absentee
54 ballot or with the absentee ballot, such absentee ballot shall be deemed to be a
55 provisional ballot and such ballot shall only be counted if the registrars are able to
56 verify current and valid identification of the elector as provided in this subparagraph
57 within the time period for verifying provisional ballots pursuant to Code
58 Section 21-2-419. The board of registrars or absentee ballot clerk shall promptly notify
59 the elector that such ballot is deemed a provisional ballot and shall provide information
60 on the types of identification needed and how and when such identification is to be
61 submitted to the board of registrars or absentee ballot clerk to verify the ballot.

62 (E) Three copies of the numbered list of voters shall also be prepared for such rejected
63 absentee electors, giving the name of the elector and the reason for the rejection in each
64 case. Three copies of the numbered list of certified absentee voters and three copies of
65 the numbered list of rejected absentee voters for each precinct shall be turned over to
66 the poll manager in charge of counting the absentee ballots and shall be distributed as
67 required by law for numbered lists of voters.

68 (F) All absentee ballots returned to the board or absentee ballot clerk after the closing
69 of the polls on the day of the primary or election shall be safely kept unopened by the
70 board or absentee ballot clerk and then transferred to the appropriate clerk for storage

71 for the period of time required for the preservation of ballots used at the primary or
72 election and shall then, without being opened, be destroyed in like manner as the used
73 ballots of the primary or election. The board of registrars or absentee ballot clerk shall
74 promptly notify the elector by first-class mail that the elector's ballot was returned too
75 late to be counted and that the elector will not receive credit for voting in the primary
76 or election. All such late absentee ballots shall be delivered to the appropriate clerk and
77 stored as provided in Code Section 21-2-390.

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

90 (2) ~~Beginning After the opening of the polls on the day of second Monday prior to the~~
91 primary, election, or runoff, the registrars or absentee ballot clerks shall ~~be authorized to~~
92 open the outer absentee ballot envelope on which is printed the oath of the elector in such
93 a manner as not to destroy the oath printed thereon; ~~provided, however, that the registrars~~
94 ~~or absentee ballot clerk shall not be authorized to~~ and remove the contents of such outer
95 envelope ~~or to~~ and open the inner envelope marked 'Official Absentee Ballot;' ~~except and~~
96 tabulate the ballot as otherwise provided in this Code section. At least three persons who
97 are registrars, deputy registrars, poll workers, or absentee ballot clerks must be present

98 before commencing; and three persons who are registrars, deputy registrars, or absentee
99 ballot clerks shall be present at all times while the ~~outer envelopes~~ absentee ballots are
100 being opened and scanned. ~~After opening the outer envelopes, the ballots shall be safely~~
101 ~~and securely stored until the time for tabulating such ballots.~~

102 (3) ~~A county election superintendent may, in his or her discretion, after 7:00 A.M. on the~~
103 ~~day of the primary, election, or runoff open the inner envelopes in accordance with the~~
104 ~~procedures prescribed in this subsection and begin tabulating the absentee ballots. If the~~
105 ~~county election superintendent chooses to open the inner envelopes and begin tabulating~~
106 ~~such ballots prior to the close of the polls on the day of the primary, election, or runoff,~~
107 ~~the superintendent shall notify in writing, at least seven days prior to the primary,~~
108 ~~election, or runoff, the Secretary of State of the superintendent's intent to begin the~~
109 ~~absentee ballot tabulation prior to the close of the polls. The county executive committee~~
110 ~~or, if there is no organized county executive committee, the state executive committee of~~
111 ~~each political party and political body having candidates whose names appear on the~~
112 ~~ballot for such election in such county shall have the right to designate two persons to act~~
113 ~~as monitors, and each independent and nonpartisan candidate whose name appears on the~~
114 ~~ballot for such election in such county shall have the right to designate one person to act~~
115 ~~as monitors as a monitor for such process~~ the process of opening and scanning the
116 absentee ballots. In the event that the only issue to be voted upon in an election is a
117 referendum question, the superintendent shall ~~also~~ notify in writing the chief judge of the
118 superior court of the county on or before the third Monday prior to such election who
119 shall appoint two electors of the county to monitor such process.

120 (4) ~~The county election superintendent shall publish a written notice in the~~
121 ~~superintendent's office of the superintendent's intent to begin the absentee ballot~~
122 ~~tabulation prior to the close of the polls and publish such notice at least one week prior~~
123 ~~to the primary, election, or runoff in the legal organ of the county~~ Reserved.

124 (5) The process for opening the inner envelopes of and tabulating absentee ballots
125 beginning on the day of second Monday prior to a primary, election, or runoff as
126 provided in this subsection shall be a confidential process to maintain the secrecy of all
127 ballots and to protect the disclosure of any balloting information before 7:00 P.M. on
128 election day. ~~No absentee ballots shall be tabulated before 7:00 A.M. on the day of a~~
129 ~~primary, election, or runoff.~~

130 (6) None of the ~~All~~ persons conducting the tabulation of absentee ballots ~~during the day~~
131 ~~of a primary, election, or runoff, including the vote review panel required by Code~~
132 ~~Section 21-2-483, and all monitors and observers shall be sequestered until the time for~~
133 ~~the closing of the polls. All such persons shall have no contact with the news media;~~
134 ~~shall have no contact with other persons not involved in monitoring, observing, or~~
135 ~~conducting the tabulation; shall not use any type of communication device including~~
136 ~~radios, telephones, and cellular telephones; shall not utilize computers for the purpose of~~
137 ~~e-mail, instant messaging, or other forms of communication; and~~ no monitors or
138 observers shall not communicate any information concerning the tabulation until the time
139 for the closing of the polls; provided, however, that supervisory and technical assistance
140 personnel shall be permitted to ~~enter and leave the area in which~~ perform any necessary
141 duties while the tabulation is being conducted but shall not communicate any information
142 concerning the tabulation to anyone other than the county election superintendent; the
143 staff of the superintendent; those persons conducting, observing, or monitoring the
144 tabulation; and those persons whose technical assistance is needed for the tabulation
145 process to operate.

146 (7) The absentee ballots shall be tabulated in accordance with the procedures of this
147 chapter for the tabulation of absentee ballots. As such ballots are tabulated, they shall be
148 placed into locked ballot boxes and may be transferred to locked ballot bags, if needed,
149 for security. The persons conducting the tabulation of the absentee ballots shall not cause

150 the tabulating equipment to produce any count, partial or otherwise, of the absentee votes
151 cast until the time for the closing of the polls.

152 (b) When requested by the superintendent but not earlier than the second Monday prior to
153 a primary, election, or runoff, As soon as practicable after 7:00 A.M. on the day of the
154 primary, election, or runoff, in precincts other than those in which optical scanning
155 tabulators are used a registrar or absentee ballot clerk shall deliver the official absentee
156 ballot of each certified absentee elector, each rejected absentee ballot, applications for such
157 ballots, and copies of the numbered lists of certified and rejected absentee electors to the
158 manager in charge of the absentee ballot precinct of the county or municipality, which shall
159 be located in the precincts containing the county courthouse or polling place designated by
160 the municipal superintendent. In those precincts in which optical scanning tabulators are
161 used, such absentee ballots shall be taken to the tabulation center or other place location
162 designated by the superintendent, and the superintendent or official receiving such absentee
163 ballots and materials shall issue his or her receipt therefor. Except as otherwise provided
164 in this Code section, in no event shall the counting of the ballots begin before the polls
165 close.

166 (c) The superintendent shall cause the certified absentee ballots to be opened and tabulated
167 as provided in this Code section. A Except as otherwise provided in this Code section,
168 after the close of the polls on the day of the primary, election, or runoff, a manager shall
169 then open the outer envelope of the absentee ballot in such manner as not to destroy the
170 oath printed thereon and shall deposit the inner envelope containing the absentee ballot
171 marked 'Official Absentee Ballot' in a ballot box reserved for absentee ballots. In the event
172 that an outer envelope is found to contain an absentee ballot that is not in an inner
173 envelope, the ballot shall be sealed in an inner envelope, initialed and dated by the person
174 sealing the inner envelope, and deposited in the ballot box and counted in the same manner
175 as other absentee ballots, provided that such ballot is otherwise proper. A Such manager
176 with two assistant managers, appointed by the superintendent, with such clerks as the

177 manager deems necessary shall count the absentee ballots following the procedures
178 prescribed by this chapter for other ballots, insofar as practicable, ~~and prepare an election~~
179 ~~return for the county or municipality showing the results of the absentee ballots cast in such~~
180 ~~county or municipality.~~

181 (d) All absentee ballots shall be counted and tabulated in such a manner that returns may
182 be reported by precinct; and separate returns shall be made for each precinct in which
183 absentee ballots were cast showing the results by each precinct in which the electors reside.

184 (e) If an absentee elector's right to vote has been challenged for cause, a poll officer shall
185 write 'Challenged,' the elector's name, and the alleged cause of challenge on the outer
186 envelope and shall deposit the ballot in a secure, sealed ballot box; and it shall be counted
187 as other challenged ballots are counted. Where direct recording electronic voting systems
188 are used for absentee balloting and a challenge to an elector's right to vote is made prior to
189 the time that the elector votes, the elector shall vote on a paper or optical scanning ballot
190 and such ballot shall be handled as provided in this subsection. The board of registrars or
191 absentee ballot clerk shall promptly notify the elector of such challenge.

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

195 **SECTION 2.**

196 This Act shall become effective upon its approval by the Governor or upon its becoming law
197 without such approval.

198 **SECTION 3.**

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