

## CHAPTER 3

## (HB 23)

AN ACT relating to elections and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 117.077 is amended to read as follows:

In case of a medical emergency within **fourteen (14)**~~seven (7)~~ days or less of an election, a registered voter **and the registered voter's spouse** may apply for an absentee ballot. The application shall state that the emergency condition occurred within the **fourteen (14)**~~seven (7)~~ day period. **The application**~~and~~ shall be notarized. The application form **may be requested by and delivered by**~~shall be restricted to the use of~~ the voter or the spouse, parents, or children of the voter. If the voter has no spouse, parents, or children, the application form **may be requested by and delivered by**~~shall be restricted to the use of the voter or~~ the brother, sister, niece,~~or~~ nephew, **or designee** of the voter. **The application form shall be restricted to the use of the voter.** Upon receipt of the application and verification, the county clerk shall issue an absentee ballot.

Section 2. KRS 117.085 is amended to read as follows:

- (1) All requests for an application for an absentee ballot may be transmitted by telephone, facsimile machine, by mail, or in person. Except as provided in paragraph (b) of this subsection, all applications for an absentee ballot shall be transmitted only by mail **to the voter** or in person at the option of the voter, except that the county clerk shall hand an application for an absentee ballot to a voter permitted to vote by absentee ballot who appears in person to request the application, or shall mail the application to a voter permitted to vote by absentee ballot who requests the application by telephone, facsimile machine, or mail. The absentee ballot application **may be requested by the voter, the spouse, parents, or children of the voter, but** shall be restricted to the use of the voter~~or the spouse, parents, or children of the voter~~. Except for qualified voters who apply pursuant to the requirements of KRS 117.075 and 117.077,~~and~~ those who are incarcerated in jail but have yet to be convicted, **military personnel confined to a military base on election day**, and persons who qualify under subparagraph ~~6.5~~ of paragraph (a) of this subsection, no absentee ballots shall be mailed to a voter who resides within the county in which he is registered. In the case of ballots returned by mail, the county clerk shall provide an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting to a voter who presents a completed application for an absentee ballot as provided in this section and who is properly registered as stated in his application.
  - (a) The following voters may apply to cast their votes by **mail-in** absentee ballot **if the application is received**~~at any time~~ not later than the close of business hours seven (7) days before the election:
    1. Voters permitted to vote by absentee ballot pursuant to KRS 117.075;
    2. Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and citizens residing overseas;
    3. Students who temporarily reside outside the county of their residence and other voters who temporarily reside outside the state but who are still eligible to vote in this state;

4. Persons who are incarcerated in jail who have been charged with a crime but have not been convicted of the crime;~~and~~
  5. *Voters who change their place of residence to a different state while the registration books are closed in the new state of residence before an election of electors for President and Vice President of the United States, who shall be permitted to cast an absentee ballot for electors for President and Vice President of the United States only; and*
  6. Persons who are prevented from voting in person at the polls on election day and from casting an absentee ballot in person in the county clerk's office on all days absentee voting is conducted prior to election day because their employment location requires them to be absent from the county all hours and all days absentee voting is conducted in the county clerk's office.
- (b) Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and overseas citizens, may apply for an absentee ballot by means of the federal post-card application, which may be transmitted to the county clerk's office by mail or by facsimile machine. The application may be used to register, reregister, and to apply for an absentee ballot. If the federal post-card application is received at any time not less than seven (7) days before the election, the county clerk shall affix his seal to the application form upon receipt.
- (c) *Absentee voting shall be conducted in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections during normal business hours for at least the twelve (12) working days before the election. A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election.*
- (d) Any~~other~~ qualified voter in the county who is not permitted to vote by absentee ballot under paragraph (a) of subsection (1) of this section who shall be absent from the county on any election day may, at any time during normal business hours on *those days absentee voting is conducted in the county clerk's office*~~at least any of the twelve (12) working days before the election~~, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections.~~[A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election prescribed above.]~~
- (e) *Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and citizens residing overseas who shall be absent from the county on any election day may, at any time during normal business hours on those days absentee voting is conducted in the county clerk's office, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections.*
- (f) *Students who temporarily reside outside the county of their residence and other voters who temporarily reside outside the state but who are still eligible to vote in this state who shall be absent from the county on any election day may, at any time*

*during normal business hours on those days absentee voting is conducted in the county clerk's office, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections.*

- (g) *Voters who have surgery scheduled that will require hospitalization on election day, and the spouse of the voter, may, at any time during normal business hours on those days absentee voting is conducted in the county clerk's office, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections.*
- (h) *Voters who change their place of residence to a different state while the registration books are closed in the new state of residence before a presidential election shall be permitted to cast an absentee ballot for President and Vice President only, by making application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections.*
- (i)~~(d)~~ Any member of the county board of elections, any precinct election officer appointed to serve in a precinct other than that in which he is registered, ~~and~~ any alternate precinct election officer, *any deputy county clerk, any staff for the State Board of Elections, and any staff for the county board of elections* may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. The application form for those persons shall be prescribed by the State Board of Elections and, in the case of application by precinct election officers, shall contain a verification of appointment signed by a member of the county board of elections. If an alternate precinct election officer or a precinct election officer appointed to serve in a precinct other than that in which he is registered receives his appointment while absentee voting is being conducted in the county, such officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. In case of such voters, the verification of appointment shall also contain the date of appointment. The applications shall be restricted to the use of the voter only.
- (j)~~(e)~~ Any pregnant woman who is in her last trimester of pregnancy at the time she wishes to vote under this paragraph may *at any time during normal business hours on those days absentee voting is conducted in the county clerk's office, make application to* vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections. ~~She may vote at any time during business hours on at least any of the twelve (12) working days before the election up to the close of business hours on the day before the election.~~ The application form for those persons shall be prescribed by the State Board of Elections, which shall contain the woman's sworn statement that she is in fact in her last trimester of pregnancy at the time she wishes to vote~~, and shall be made in person to the county clerk, at any time during any of the twelve (12) working days before the election. A county board of elections may permit absentee~~

~~voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election as prescribed above].~~

~~(k)~~~~(f)~~ The members of the county board of elections or their designees who provide equal representation of both political parties may serve as precinct election officers, without compensation, for all absentee voting performed on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. If the members of the county board of elections or their designees serve as precinct election officers for the absentee voting, they shall perform the same duties and exercise the same authority as precinct election officers who serve on the day of an election. If the members of the county board of elections or their designees do not serve as precinct election officers for the absentee voting, the county clerk or deputy county clerks shall supervise the absentee voting.

~~(l)~~~~(g)~~ Any individual qualified to appoint challengers for the day of an election may also appoint challengers to observe all absentee voting performed at the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and those challengers may exercise the same privileges as challengers appointed for observing voting on the day of an election at a regular polling place.

- (2) The clerk shall type the name of the voter permitted to vote by absentee ballot on the application form for that person's use and no other. The absentee ballot application form shall be in the form prescribed by the State Board of Elections, shall bear the seal of the county clerk, and shall contain the following information: name, residential address, precinct, party affiliation, statement of the reason the person cannot vote in person on election day, statement of where the voter shall be on election day, statement of compliance with residency requirements for voting in the precinct, and the voter's mailing address for an absentee ballot. The form shall be verified and signed by the voter. A notice of the actual penalty provisions in KRS 117.995(2) and (5) shall be printed on the application.
- (3) If the county clerk finds that the voter is properly registered as stated in his application and qualifies to receive an absentee ballot by mail, he shall mail to the voter an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting. The county clerk shall complete a postal form for a certificate of mailing for ballots mailed within the fifty (50) states, and it shall be stamped by the postal service when the ballots are mailed. An absentee ballot may be transmitted by facsimile machine to a resident of Kentucky who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas.
- (4) Absentee ballots which are requested prior to the printing of the ballots shall be mailed by the county clerk to the voter within three (3) days of the receipt of the printed ballots; and absentee ballots which are requested subsequent to the receipt of the ballots by the county clerk shall be mailed to the voter within three (3) days of the receipt of the request.
- (5) The clerk shall cause ballots to be printed fifty (50) days prior to each primary or general election and fifteen (15) days prior to each runoff primary.
- (6) The outer envelope shall bear the words "Absentee Ballot" and the address and official title of the county clerk and shall provide space for the voter's signature, voting address, ~~and~~ precinct number, **and signatures of two (2) witnesses if the voter signs the form with the use of a mark instead of the voter's signature.** A detachable flap on the inner envelope

shall provide space for the voter's signature, voting address, precinct number, *signatures of two (2) witnesses if the voter signs the form with the use of a mark instead of the voter's signature* and notice of penalty provided in KRS 117.995(5). The clerk shall type the voter's address and precinct number in the upper left hand corner of the outer envelope and of the detachable flap on the inner envelope immediately below the blank space for the voter's signature. The inner envelope shall be blank. The clerk shall retain the application and the postal form required by subsection (3) of this section for twenty-two (22) months after the election.

- (7) Any person who has received an absentee ballot by mail but who knows at least seven (7) days before the date of the election that he will be in the county on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his absentee ballot and vote in person. He shall return his absentee ballot to the county clerk's office no later than seven (7) days prior to the date of the election. Upon the return of the absentee ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words "Canceled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from the list of persons who were sent absentee ballots, and the voter may vote in the precinct in which he is properly registered.
- (8) *Any voter qualified for a mail-in absentee ballot who does not receive a requested mail-in ballot within a reasonable amount of time shall contact the county clerk, who shall reissue a second ballot. The county clerk shall keep a record of the absentee ballots issued and returned by mail, and the absentee voting that is performed on the voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections, to verify that only the first voted ballot to be returned by the voter is counted. Upon the return of any ballot after the first ballot is returned, the clerk shall mark on the outer envelope of the sealed ballot the words "Cancelled because ballot reissued".*

Section 3. KRS 117.086 is amended to read as follows:

- (1) The voter returning his absentee ballot by mail shall mark his ballot, seal it in the inner envelope and then in the outer envelope and mail it to the county clerk as shall be provided by this chapter. The voter shall sign the detachable flap and the outer envelope in order to validate the ballot. *A person having power of attorney for the voter and who signs the detachable flap and outer envelope for the voter shall complete the voter assistance form as required by KRS 117.255. The signatures of two (2) witnesses are required if the voter signs the form with the use of a mark instead of the voter's signature.* A resident of Kentucky who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas who has received an absentee ballot transmitted by facsimile machine shall transmit the voted ballot to the county clerk by mail only, conforming with ballot security requirements that may be promulgated by the state board by administrative regulation. In order to be counted, the ballots shall be received by the clerk by at least the time established by the election laws generally for the closing of the polls, which time shall not include the extra hour during which those voters may vote who were waiting in line to vote at the scheduled poll closing time.
- (2) Any voter who shall be absent from the county on election day, but who does not qualify to receive an absentee ballot by mail under the provisions of KRS 117.085, and all ~~voters~~~~members of county boards of elections, precinct election officers, and pregnant women~~ qualified to vote prior to the election under the provisions of KRS 117.085, shall

vote at the main office of the county clerk or other place designated by the county board of elections, and approved by the State Board of Elections, prior to the day of election. The clerk may provide for such voting by the voting equipment in general use in the county either at the precinct, the equipment as may be used to tabulate absentee ballots, or any other voting equipment approved by the State Board of Elections for use in Kentucky, except as follows:

- (a) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, who receives assistance to vote shall complete the voter assistance form required by KRS 117.255.
  - (b) Any voter qualifying to vote in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, whose qualifications are challenged by any clerk or deputy shall complete an "Oath of Voter" affidavit.
- (3) When the clerk uses general voting equipment as provided for in subsection (2) of this section, each voter casting his vote at the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, shall sign an "Absentee Ballot Signature Roster."
  - (4) The clerk shall designate a location within his office where the ballots shall be cast secretly. The county clerk, with the approval of the State Board of Elections, may establish locations other than his main office in which the voters may execute their ballots. Public notice of the locations shall be given pursuant to KRS Chapter 424 and similar notice by mail shall be given to the county chairmen of the two (2) political parties whose candidates polled the largest number of votes in the county at the last general election.
  - (5) The State Board of Elections shall promulgate administrative regulations to provide for casting ballots as provided in subsection (2) of this section.
  - (6) The clerk shall deposit all of the absentee ballots returned by mail in a locked ballot box immediately upon receipt without opening the outer envelope. The ballot box shall be locked with three (3) locks. The keys to the box shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the box shall remain locked until the ballots are counted. All voting equipment on which ballots are cast as permitted in subsection (2) of this section shall also remain locked and the keys shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the equipment shall remain locked until the ballots are counted.
  - (7) The clerk shall keep a list of all persons who return their absentee ballots by mail or cast their ballots in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and send a copy of that list to the state board after election day. The county clerk and the Secretary of State shall keep a record of the number of votes cast by absentee ballots returned by mail and on the voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, cast in any election as a part of the official returns of the election.
  - (8) ***The county board of elections shall report to the State Board of Elections within ten (10) days after any primary or general election as to the number of rejected absentee ballots***

***and the reasons for rejected absentee ballots on a form prescribed by the State Board of Elections in administrative regulations promulgated under KRS Chapter 13A.***

Section 4. KRS 117.087 is amended to read as follows:

- (1) The challenge of an absentee ballot returned by mail shall be in writing and in the hands of the county clerk before 3:00 p.m. on election day.
- (2) The county board of elections shall count the absentee ballots returned by mail and the votes cast on the voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. The board may appoint a central ballot counting board of not less than three (3) members, who shall be qualified voters and no more than two-thirds (2/3) of whom shall be members of the same political party, to count the ballots at the direction of the county board of elections.
- (3) Beginning at 3:00 p.m. on election day, the board shall meet at the clerk's office to count the absentee ballots returned by mail and the ballots cast on the voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. Candidates or their representatives shall be permitted to be present. The county board of elections shall authorize representatives of the news media to observe the counting of the ballots. The board shall open the boxes containing absentee ballots returned by mail and remove the envelopes one (1) at a time. As each envelope is removed, it shall be examined to ascertain whether the outer envelope and the detachable flap are in proper order and have been signed by the voter. ***A person having power of attorney for the voter and who signs the detachable flap and outer envelope for the voter shall complete the voter assistance form required by KRS 117.255. The signatures of two (2) witnesses are required if the voter signs the form with the use of a mark instead of the voter's signature.*** All unsigned absentee ballots shall be rejected automatically. The chairman of the county board of elections shall compare the signatures on the outer envelope and the detachable flap with the signature of the voter that appears on the registration card. If the outer envelope and the detachable flap are found to be in order, the chairman shall read aloud the name of the voter. If the vote of the voter is not rejected on a challenge then made as provided in subsection (4) of this section, the chairman shall remove the detachable flap and place the inner envelope unopened in a ballot box which has been provided for the purpose.
- (4) When the name of a voter who cast an absentee ballot by mail is read aloud by the chairman, the vote of the voter may be challenged by any board member or by the written challenge provided in subsection (1) of this section and the challenge may be determined and the vote accepted or rejected by the board as if the voter was present and voting in person; but if the outer envelope and the detachable flap are regular, and substantially comply with the provisions of this chapter, they shall be considered as showing that the voter is prima facie entitled to vote. If the vote of a voter is rejected pursuant to the challenge, the inner envelope shall not be opened, but returned to the outer envelope upon which the chairman shall write on the envelope the word "rejected".
- (5) After the challenges have been made and all the blank inner envelopes have been placed in a ballot box, the box shall be thoroughly shaken to redistribute the absentee ballots in the box. The board shall open the ballot box, remove the absentee ballots from the inner envelopes, and count the ballots.

- (6) The board shall unlock any voting equipment used to cast ballots in the clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, as provided for in KRS 117.086 and a total of all ballots shall be made and recorded on the form provided by the State Board of Elections.
- (7) The county board of elections *and the county clerk* shall *not* make public the *absentee* ballot results determined as provided in this section *until* after 6 p.m. *prevailing time*.

Section 5. KRS 117.055(3), KRS 117.056, and any other provision of law to the contrary notwithstanding, county boards of elections shall meet immediately following the effective date of this Act for the purpose of altering election precinct boundaries to bring them into compliance with the new county commissioner and justice of the peace districts drawn under KRS 67.045 and in accordance with KRS 117.055(1). Any redrawing of precinct boundaries required under this section shall be accomplished no later than forty-five (45) days after the effective date of this Act. Any other provision of law to the contrary notwithstanding, the State Board of Elections shall adopt an expedited schedule so that the alteration of precinct boundaries under this section can be accomplished within the time frame established by the State Board of Elections.

Section 6. Whereas this Act relates to absentee voting and it is necessary for these provisions to be in place prior to the 2002 primary election, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved February 15, 2002**