

1 SB306
2 203941-2
3 By Senator Chesteen
4 RFD: Governmental Affairs
5 First Read: 12-MAR-20

SYNOPSIS: Existing law does not provide for a contingency plan in the event an election is disrupted because of a declared state of emergency.

This bill would establish the Elections Emergency Act and authorize the Governor to suspend or delay elections in the event of a declared state of emergency.

A BILL
TO BE ENTITLED
AN ACT

Relating to elections; to amend Section 17-11-3, Code of Alabama 1975 and to add a new Article 4, commencing with Section 17-9-70, to Chapter 9 of Title 17 of the Code of Alabama 1975; to establish the Elections Emergency Act; and to authorize the Governor to suspend or delay elections in the event of a declared state of emergency.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 17-11-3, as last amended by Act
2 2019-507, 2019 Regular Session, Code of Alabama 1975, is
3 amended to read as follows:

4 "§17-11-3.

5 "(a) Any qualified elector of this state may apply
6 for and vote an absentee ballot by mail, by hand delivery, or
7 by commercial carrier, as determined by rule by the Secretary
8 of State, as provided in Sections 17-11-5 and 17-11-9, in any
9 primary, general, special, or municipal election, if he or she
10 makes application in writing therefor not less than five days
11 prior to the election in which he or she desires to vote and
12 meets one or more of the following requirements:

13 "(1) The person expects to be out of the county or
14 the state, or the municipality for municipal elections, on
15 election day.

16 "(2) The person has any physical illness or
17 infirmity which prevents his or her attendance at the polls,
18 whether he or she is within or without the county on the day
19 of the election.

20 "(3) The person expects to work a shift which has at
21 least 10 hours which coincide with the hours the polls are
22 open at his or her regular polling place.

23 "(4) The person is enrolled as a student at an
24 educational institution located outside the county of his or
25 her personal residence, attendance at which prevents his or
26 her attendance at the polls.

1 "(5) The person is a member of, or spouse or
2 dependent of a member of, the Armed Forces of the United
3 States or is similarly qualified to vote absentee pursuant to
4 the federal Uniformed and Overseas Citizens Absentee Voting
5 Act, 42 U.S.C. 1973ff.

6 "(6) The person has been appointed as an election
7 officer or named as a poll watcher at a polling place other
8 than his or her regular polling place.

9 "(7) The person is a caregiver for a family member
10 to the second degree of kinship by affinity or consanguinity
11 and the family member is confined to his or her home.

12 "(8) The person is incarcerated in prison or jail
13 and has not been convicted of a felony involving moral
14 turpitude, as provided in Section 17-3-30.1.

15 "(b) An applicant for an absentee ballot who is a
16 member of the Armed Forces of the United States, including the
17 Alabama National Guard, the United States ~~Naval Reserves~~ Navy
18 Reserve, the United States Air Force ~~Reserves~~ Reserve, and the
19 United States Army Reserve on active duty or active duty for
20 training or an applicant who is the spouse of any member of
21 the armed forces or any other applicant qualified to vote
22 absentee pursuant to the federal Uniformed and Overseas
23 Citizens Absentee Voting Act, 42 U.S.C. §1973ff, may make
24 application for an absentee ballot by filling out the federal
25 postcard application form, authorized and provided for under
26 the provisions of The Federal Voting Assistance Act of 1955,

1 Public Law 296, Chapter 656, H.R. 4048, approved August 9,
2 1955, 84th Congress 1st Session.

3 "(c) Any registered elector who requires emergency
4 treatment ~~of~~ by a licensed physician within five days of an
5 election may apply for an emergency absentee ballot for the
6 election and may vote by returning the absentee ballot no
7 later than noon on the day the election is held. The attendant
8 physician shall describe and certify the circumstances as
9 constituting an emergency on a special form designed by the
10 Secretary of State and provided by his or her office to local
11 absentee election managers. The special form shall be attached
12 to the application.

13 "(d) (1) Any registered elector whose name appears on
14 the poll list of qualified voters may vote by an emergency
15 absentee ballot if any of the following situations arise:

16 "a. The elector is required by his or her employer
17 under unforeseen circumstances within five days before an
18 election to be unavailable to vote at the polls on election
19 day.

20 "b. The elector is a caregiver of a person who
21 requires emergency treatment by a licensed physician within
22 five days before an election.

23 "c. A family member to the second degree of kinship
24 by affinity or consanguinity of an elector dies within five
25 days before an election.

26 "(2) Under such circumstances, the elector shall
27 apply for an emergency absentee ballot at the office of the

1 absentee election manager no later than the close of the
2 business day one day prior to the election. The applicant
3 shall complete and file an application form designed by the
4 Secretary of State for emergency absentee voters. The form
5 shall contain an affidavit which the applicant shall sign or
6 swear acknowledging that he or she was not aware of the
7 situation constituting the emergency prior to five days before
8 the election. An applicant who meets the requirements of this
9 subsection may vote by an emergency absentee ballot. After
10 voting the ballot, the voter shall hand the ballot to the
11 absentee election manager.

12 "(e) If the occurrence of a state of emergency as
13 declared in this or any other state, or by the federal
14 government, renders substantial compliance with this article
15 impossible or unreasonable for a group of qualified voters who
16 respond to the emergency, the Secretary of State, pursuant to
17 Section 41-22-5, may adopt an emergency rule to allow those
18 qualified voters to vote by absentee ballot. Notwithstanding
19 any other laws to the contrary, all expenses and costs
20 incurred by the state or any county in carrying out the
21 responsibilities and duties included in an emergency rule
22 adopted pursuant to this subsection shall be paid by the State
23 of Alabama from any funds made available for election expenses
24 under state and federal law.

25 "~~(f) Notwithstanding any other provision of~~
26 ~~otherwise applicable law~~ Except as provided for in Article 4,
27 commencing with Section 17-9-70, of Chapter 9, in the event

1 more than one absentee ballot is cast in the name of the
2 single voter, whether any such multiple ballot is cast by mail
3 or otherwise, none of the affidavit envelopes containing the
4 multiple ballots shall be opened, and none of the multiple
5 ballots shall be counted, except in the event of an election
6 contest, upon the order of the election contest tribunal. Upon
7 the conclusion of an election contest or, in the event no such
8 contest is filed, upon the expiration of time for filing such
9 a contest, the multiple ballots shall be provided to the
10 district attorney, with photocopies provided to the state
11 Attorney General, for the investigation, prosecution, or other
12 action as may be appropriate under applicable law."

13 Section 2. A new Article 4, commencing with Section
14 17-9-70, is added to Chapter 9 of Title 17 of the Code of
15 Alabama 1975, to read as follows:

16 ARTICLE 4. Emergencies.

17 §17-9-70.

18 This article shall be known and may be cited as the
19 Elections Emergency Act.

20 §17-9-71.

21 (a) As used in this article, imminent threat of
22 emergency means the imminent threat of a natural or man-made
23 disaster, including, but not limited to, fire, flood, storm,
24 earthquake, epidemic, technological failure or accident, riot,
25 sudden and severe energy shortage, act of terror, or other
26 condition that is likely to substantially impair the ability

1 of electors in any precinct, district, or county, to exercise
2 their right to vote in an upcoming election.

3 (b) Because of the existing and continuing
4 possibility of an emergency, act of terrorism, or common
5 disaster occurring before or during a regularly scheduled or
6 special election, and in order to ensure maximum citizen
7 participation in the electoral process and provide a safe and
8 orderly procedure for persons seeking to exercise their right
9 to vote, to generally minimize, to whatever degree possible, a
10 person's exposure to danger during declared states of
11 emergency, and to protect the integrity of the electoral
12 process, it is hereby found and declared to be necessary to
13 designate a procedure for the emergency suspension or delay
14 and rescheduling of elections.

15 (c) Upon the issuance of a proclamation or an
16 executive order declaring a state of emergency, as provided in
17 Chapter 9 of Title 31, or when the Governor issues a
18 declaration that there exists an imminent threat of emergency,
19 the Governor may suspend or delay any election. The Governor
20 may take such action independently or at the request of the
21 Secretary of State, the judge of probate from the county
22 affected by the emergency, or the municipal clerk from the
23 municipality affected by the emergency.

24 (d) The Governor, upon consultation with the
25 Secretary of State, shall reschedule any election suspended or
26 delayed due to an emergency. The election shall be held not
27 more than 21 calendar days after the date of the suspended or

1 delayed election. Time permitting, notice of the election
2 shall be published at least once in a newspaper of general
3 circulation in the affected area and, where practicable,
4 broadcast as a public service announcement on radio and
5 television stations starting at least one week prior to the
6 date the rescheduled election is to be held.

7 (e) Any subsequent election, including a runoff
8 election, within the same election cycle in the area affected
9 shall receive the same delay or suspension.

10 (f) Official ballots may not be invalidated on the
11 basis that the ballots contain the original election date.

12 (g) (1) If, as a direct result of the emergency, any
13 voted ballots at the polling places or equipment on which
14 ballots have been voted, or any voted absentee ballots already
15 received by the appropriate election officials or any
16 equipment on which voted absentee ballots have been destroyed
17 or otherwise damaged so that the ballots cannot be counted,
18 the Governor shall specify that the ballots or votes
19 previously cast need to be recast on or by the rescheduled
20 election date so that the ballots may be counted. The Governor
21 shall direct the appropriate election officials to immediately
22 send replacement absentee ballots to all absentee voters whose
23 voted ballots are known to have been destroyed or damaged.

24 (2) Any absentee ballots cast and received by the
25 rescheduled election date and able to be counted shall be
26 valid and counted when determining the results of the
27 rescheduled election; provided, however, if more than one

1 absentee ballot is received from any voter, only the first
2 absentee ballot received and able to be counted shall be
3 counted.

4 (h) If the postponement of the election is ordered
5 after voting at the polls on the original election date has
6 already commenced and any voted ballots, voting equipment
7 containing voted ballots, or pollbooks recording who has
8 already voted in that election in that precinct have been
9 destroyed or damaged as a direct result of the emergency so
10 that the votes cannot be counted or it cannot be determined
11 who has already voted, all qualified voters in the affected
12 precinct shall be allowed to vote in the rescheduled election,
13 and no votes cast at the polls on the original election date
14 shall be counted.

15 (i) If the postponement of the election is ordered
16 after voting at the polls on the original election date has
17 already commenced but no voted ballots have been destroyed or
18 damaged, no voting equipment containing voted ballots have
19 been destroyed or damaged, or no pollbooks recording who has
20 already voted in that election in that precinct have been
21 destroyed or damaged as a direct result of the emergency, only
22 qualified voters who had not yet voted shall be eligible to
23 vote on the rescheduled election day, and all votes cast on
24 the original and rescheduled election dates shall be counted
25 at the close of the polls on the rescheduled election day.

26 (j) The Secretary of State, by rule, shall adopt an
27 elections emergency contingency plan that contains goals and

1 policies that give specific direction to state and local
2 elections officials when an election has been suspended or
3 delayed due to an emergency. The contingency plan shall be
4 statewide in scope and shall provide, at a minimum, all of the
5 following:

6 (1) A procedure for state and local elections
7 officials to follow when an election has been suspended or
8 delayed to ensure notice of the suspension or delay to the
9 proper authorities, the electorate, the communications media,
10 and poll workers.

11 (2) A procedure for the orderly conduct of a
12 rescheduled election, whether municipal, county, district, or
13 statewide in scope; coordinating those efforts with the
14 appropriate elections officials and the members of the
15 governing body holding the election, if appropriate; and
16 working with the appropriate emergency management officials in
17 determining the safety of existing polling places or
18 designating additional polling places.

19 (3) A procedure for the release and certification of
20 election returns to the Secretary of State for suspended or
21 delayed and subsequently rescheduled elections.

22 §17-9-72.

23 In the event the Governor declares a state of
24 emergency pursuant to Chapter 9 of Title 31 in any precinct on
25 the day of an election, the county commission or municipal
26 governing body may establish, at any safe and convenient place
27 outside of the affected precinct, an additional polling place

1 for the qualified electors of that precinct to vote. The
2 registration books of the affected precinct shall be
3 applicable to and shall be used at the polling place
4 established pursuant to this section.

5 §17-9-73.

6 For all state and county elections, all expenses and
7 costs incurred under this article shall be reimbursed in
8 accordance with Article 1 of Chapter 16, commencing with
9 Section 17-16-1.

10 Section 3. This act shall become effective
11 immediately following its passage and approval by the
12 Governor, or its otherwise becoming law.