

CHAPTER 3

VOTER'S SECTION

Summary of Contents:

- 3.1 The Right to Vote
- 3.2 Qualifications for Voting
- 3.3 Registration to Vote
- 3.4 Identification Required When Voting
- 3.5 Voting Place
- 3.6 Voting Assistance and Time Limits
- 3.7 Voting in a Primary Election
- 3.8 Write-in Votes
- 3.9 Voting a Provisional Ballot
- 3.10 Absentee Voting
- 3.11 Military and Overseas Absentee Voters

3.1 The Right to Vote

The Alabama Constitution confers the right to vote on residents of the State, if registered as provided by law. The legislature shall by law provide for registration, a procedure for registration, and may set nondiscriminatory requirements for registration. The legislature is required to provide for registration of voters, nomination of candidates, secrecy in voting, absentee voting, and the administration of elections. Ala. Const. § 177.

The United States Constitution secures the right to vote in several provisions barring discrimination. It also authorizes the U.S. Congress to adopt appropriate legislation to protect against discrimination in voting, for the election of Senators and members of Congress, and to set the time for choosing Presidential electors.

3.2 Qualifications for Voting

In addition to being a resident of the State, there are several minimum qualifications for a person to be eligible to vote:

- (a) The person must be 18 years old and a citizen of the United States.
- (b) The person must not be mentally incompetent.
- (c) The person must not have been convicted of a felony involving moral turpitude.
- (d) The person must be duly registered in Alabama to vote in Alabama elections. Ala. Const. § 177(a).

A person who has been convicted of a disqualifying felony or is mentally incompetent is qualified to vote if there is a restoration of civil and political rights or removal of disability. Ala. Const. § 177(b).

To be eligible to vote for municipal officeholders, or in municipal referenda, a person must have resided in the municipality at least 30 days prior to the election. § 11-46-38(b).

3.3 Registration to Vote

Any person possessing the qualifications of an elector is entitled to register to vote. All such persons may register to vote with the board of registrars in the county of residence. § 17-3-30. The board of registrars is normally located and meets at the courthouse of the county it serves, but it is authorized to meet in special session for registrations away from the courthouse. § 17-3-8. The board of registrars may refuse registration if the application fails to establish the qualifications to register. § 17-3-54. No board of registrars may register any person as a qualified elector within 14 days prior to an election. § 17-3-50.

Citizens who possess an Alabama driver's license or Alabama non-driver's identification card may submit their voter registration application electronically through the Secretary of State's election web site at www.alabamavotes.gov. Furthermore, mail-in registration forms are available at a wide number of locations. Mail-in voter registration forms are also available online at the Secretary of State's election website www.alabamavotes.gov.

Registration can also occur on a college or university campus on a limited basis. Each board of registrars is required by law to visit every public or private college or university located within its county that has 500 students or more. The county board of registrars must meet at least one full working day of every school year to register voters on each campus. Public notice

of dates, times, and location is required at least 12 days in advance of these on-campus registration days. § 17-3-11.

In the National Voter Registration Act of 1993 (“NVRA”), Congress established that citizens may also register to vote in federal elections when applying for or renewing state driver's licenses or state identification cards, or while receiving services at any of a number of state and local government offices. More information about NVRA registration opportunities can be found in Chapter 6.

Each registrant is furnished a written or electronic application that is submitted to the board of registrars directly, electronically, or through the various outlets permitted by the NVRA. This application for voter registration contains voter eligibility requirements and information necessary to aid the relevant election officer to pass upon the qualifications of each applicant, including the applicant's U.S. citizenship. The application for voter registration must also contain a statement that the applicant will be required to provide identification when voting. § 31-13-28.

3.4 Identification Required When Voting

With few exceptions, each voter, prior to voting, must present to the appropriate election official current valid photo identification. Valid photo identification includes, in addition to governmentally produced photo identifications, Native American tribal photo identification cards, governmental employee photo identification cards, and identification cards containing the photo of the elector produced by a public or private college, university, or postgraduate technical or professional school located within Alabama. § 17-9-30(a).

A registered voter who does not have a valid form of photo identification for voting may obtain an Alabama Photo Voter Identification card that is valid only for purposes of voting. Such identification is available at a local board of registrar's office, the office of the Secretary of State, or a mobile voting service location in your county. More information is available at alabamavotes.gov. See § 17-9-30 and Ala. Admin. Code 820-2-9 *et seq.*

A voter who is unable to meet the identification requirements is permitted to vote by a provisional ballot. In such cases the identification, including the address and telephone number of the voter, must be provided to the

board of registrars no later than 5:00 p.m. on the Friday following the election. If the voter fails to provide identification to the board of registrars by this deadline, the voter's ballot shall not be counted. § 17-10-2.

A few exceptions exist to the identification requirement. Notably, a voter who does not have identification in his or her possession at the polls is permitted to vote if the voter is positively identified as a voter on the poll list who is eligible to vote by two election officials who sign a sworn affidavit to that effect. § 17-9-30(f). Additionally, those who are entitled to vote by absentee ballot under federal law such as the Voting Accessibility for the Elderly and Handicapped Act or the Federal Uniformed and Overseas Absentee Voting Act are not required to present photo identification. 52 U.S.C. §§ 20102 and 20301; Ala. Code § 17-9-30(d).

3.5 Voting Place

Unless voting absentee, a voter casts a ballot on election day only in the county and voting place where the voter is domiciled and registered. § 17-9-10. A voter's domicile is the residence at a particular place accompanied by an intention to remain there permanently or for an indefinite length of time. Voters do not lose their domicile by temporary absence or being absent due to military service. § 17-3-32.

The voting place assigned to each voter is published by each county on a list before the primary election. § 17-4-1. Voters should pay special attention to these published voting lists for several reasons. Often precinct boundaries are changed for one reason or another prior to elections, usually to keep all precincts roughly equal in number of voters. Hence, voters who have voted in a particular location for many years may find themselves assigned to an entirely new polling place. Another reason for checking the voters' list is that the voting locations may vary as the type of election changes. For instance, voting precincts for municipal elections may be entirely different from those for county or state elections. Also, checking the voters' lists when they are published allows voters to correct any discrepancies in their listings.

Voters who have been designated inactive (who have a letter "I" beside their name) have not been removed from the voter list and are entitled to vote on election day after completing a voter reidentification form at the polling place. § 17-4-9. *See also Chapter 16.*

3.6 Voting Assistance and Time Limits

Any voter who is either mobility disabled or over the age of 70 may move to the front of the line at the polling place, upon request. § 17-9-13(c). A public notice must be posted at each polling place explaining that this accommodation is available to any voter who requests it and is either mobility disabled or over the age of 70. § 17-9-13(e). This accommodation and public notice requirement should be available in general, primary, and special elections. § 17-9-13(d).

Any voter who wishes can receive assistance, and the voter is not required to state the reason for requesting assistance. The assistant cannot be the voter's employer, an agent of the employer, or an officer or agent of the voter's union. § 17-9-13(a).

Any voter remaining in the voting booth more than four minutes may be asked by a poll official if the voter requires assistance. If the voter does not desire assistance they will be allotted one additional minute. At the end of the additional minute, where voters are waiting in line, the voter will be told it is time to leave. If there is no line, the voter may take any time necessary. § 17-9-13(b).

However, if the voter requests assistance, the person will be permitted to freely select the person of his or her choosing who is in the polling place and have an additional five minutes to vote. § 17-9-13(b).

3.7 Voting in a Primary Election

In primary elections, a voter chooses candidates from only one political party to be its nominee in a general election. Each political party has a separate ballot. The voter must request a ballot for the party in which the voter wishes to vote. Voting a "split ticket" is only allowed in a general election.

If a voter participates in a political party's primary election, then that voter may not vote in another political party's primary runoff election. § 17-13-7.1

In voting for municipal office holders, there are no primary elections.

3.8 Write-in Votes

Write-in votes may be cast in general elections for state and county offices but not in primaries or municipal elections. *See also Chapter 8.*

3.9 Voting a Provisional Ballot

A voter is required to cast a provisional ballot in any of the following situations listed in § 17-10-2(a):

- (a) The voter's name does not appear on the list of eligible voters for the precinct in which they are seeking to vote.
- (b) An inspector has knowledge that the individual is not entitled to vote and challenges the individual.
- (c) The voter is required to present valid photo ID but is unable to do so.
- (d) A court extends the time for closing polls beyond the statutorily prescribed time and the voter casts a ballot during this extended time period.
- (e) The voter has requested, but not voted, an absentee ballot.

Additionally, a voter is required to cast a provisional ballot if the registration list clerk cannot determine their eligibility to vote in a primary election or if the voter objects to the political party reference on the list of registered voters for a primary runoff election. Ala. Admin. Code 820-2-6.1-.01(4)

Any voter who casts a provisional ballot may ascertain from the board of registrars whether the vote was counted and the reason. § 17-10-2(g). *See also "Provisional Ballots" in Chapter 10.*

3.10 Absentee Voting

Qualified voters can apply for an absentee ballot that can be cast by mail, commercial carrier, or in-person hand delivery if they meet one of the following conditions found in § 17-11-3:

- (a) The voter expects to be out of the county or the state on election day;

- (b) The voter has any physical illness or infirmity which prevents his or her attendance at the polls, whether or not he or she is within the county on election day;
- (c) The voter expects to work a shift which has at least ten hours which coincide with the hours the polls are open at his or her regular polling place;
- (d) The voter is enrolled as a student in an educational institution located outside the county of his or her personal residence, which prevents his or her presence at the polls;
- (e) The voter is a member of, or spouse or dependent of a member of, the armed forces of the United States or is similarly qualified to vote absentee pursuant to the Federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301;
- (f) The voter has been appointed as an election officer or named as a poll watcher at a polling place other than his or her regular polling place;
- (g) The voter is a caregiver for a family member to the second degree of kinship who is confined to their home; or
- (h) The voter is incarcerated in prison or jail but has not been disqualified by conviction of a felony involving moral turpitude as defined by § 17-3-30.1.

Any qualified voter falling within these categories must file an application for a regular absentee ballot in writing and, if returning the application by hand, must submit it not less than five days prior to the election. If the qualified voter returns the application for a regular absentee ballot by mail, the application must be received by the absentee election manager not less than seven days prior to the election. However, in the event of a business or medical emergency one may cast an emergency absentee ballot. § 17-11-3.

Another category of absentee ballots exists for qualified voters who respond to a government-declared “state of emergency,” and for whom substantial compliance with the other voting rules is impossible or unreasonable. The Secretary of State establishes emergency rules to allow affected voters to vote by absentee ballot in this type of situation. *See also “Absentee Voting” in Chapter 7.*

An application to vote absentee can be obtained from the circuit clerk or person designated as the absentee election manager. The application must include the applicant's name, address, and other information necessary to verify the applicant as a registered voter. The application must also include the list of disqualifying felonies involving moral turpitude in § 17-3-30.1. § 17-11-4.

Where the absentee ballot application identifies the voter as requesting an absentee ballot in a voting place other than the one where he or she is registered to vote, the absentee election manager marks the affidavit envelope with the word "Provisional" and provide the voter with the ballot and other materials and instructions to vote a provisional ballot. § 17-10-2(c)(2). Individuals applying for an absentee ballot who do not appear on the state voter registration list should not be given an absentee ballot, not even a provisional ballot. § 17-11-9.

An applicant may request assistance in completing the application but must actually sign the form. If the applicant signs by a mark, then the name of a witness to the signature must be included as well. The completed application can then be mailed, sent by commercial carrier, or delivered by the voter (or by the voter's designee for medical emergency absentee voting) to the absentee election manager. § 17-11-4.

Absentee ballot applications must be accompanied by a copy of current, valid photo identification, unless the voter is otherwise exempt from the identification requirement. If an absentee ballot application arrives on or after the eighth day before the election without identification, the ballot must be issued as a provisional ballot. §§ 17-9-30(c) and 17-10-2. However, the law does not provide for what the absentee election manager (AEM) should do if an application lacking identification arrives *before* the eighth day prior to the election. The absentee law does not explicitly require that any notice be sent to these applicants. However, the Secretary of State as authorized by § 17-1-3 has provided uniform guidance for AEM's to notify applicants that their application has been denied for lack of identification. This guidance does not specify how applicants may be notified, but the Secretary of State recommends sending notice via U.S. mail.

When the absentee election manager mails a provisional absentee ballot to the voter, it should include:

- (a) Information on why the ballot is a provisional ballot;

- (b) A written explanation that photo identification must be provided by the Friday after the election at 5:00 p.m.;
- (c) A written explanation that if photo identification is not provided by the deadline, the vote will not be counted;
- (d) A voter reidentification form and an affirmation of provisional voter form;
- (e) An explanation of how the voter can later determine if their ballot was counted, and if it was not counted, why; and
- (f) A third envelope for identification as specified by § 17-11-9. §§ 17-10-2 and 17-11-9.

Photo identification is not required for those entitled to vote by absentee ballot pursuant to the Voting Accessibility for the Elderly and Handicapped Act. 52 U.S.C. § 20102. A voter assigned a voting place that is not accessible to the handicapped and elderly voters may vote absentee without producing identification prior to voting. Persons entitled to vote by absentee ballot pursuant to any other federal law also are not required to produce identification prior to voting. § 17-9-30(c).

Absentee ballots are submitted in an envelope that also functions as an affidavit signed by the voter indicating that the qualifications to vote absentee are satisfied. The voter's signature on the affidavit must be either notarized or witnessed by two individuals in order to validate the ballot. No absentee ballot can be counted that is not witnessed by the signatures of two witnesses or a notary public. § 17-11-10(b). Remote notarization may not be used to notarize an absentee ballot application or an absentee ballot affidavit, or for any purpose related to voting. § 36-20-73.1. Absentee ballots voted by members of the military, their spouses and dependents, and U.S. citizens residing overseas must be witnessed by two individuals in order to validate the ballot.

3.11 Military and Overseas Absentee Voters

There are special rules for members of the armed services, their spouses and dependents and U.S. citizens voting pursuant to the Federal Uniformed and Overseas Absentee Voting Act (“UOCAVA”). 52 U.S.C. § 20301 et seq. The U.S. Secretary of Defense prescribes standardized military and overseas voter registration applications and applications for absentee ballots. 52 U.S.C. § 20301(b)(2); *see also* Exec. Order No. 12642, 53 Fed.

Reg. 21975 (June 8, 1988). These voters may make application for an absentee ballot by filling out the Federal Post Card Application provided by the Federal Voting Assistance Program. § 17-11-3(c). Their ballot may be mailed to their active duty address. AG AO 97-00209. Unlike other voters, persons entitled to vote by absentee ballot pursuant to UOCAVA are not required to produce voter identification prior to voting. § 17-9-30(d).

These persons are eligible to vote just like others at the voting place of their domicile. They do not lose their domicile by temporary absence or being absent due to military service. § 17-3-32. However, if a UOCAVA voter no longer requires an absentee ballot during a year in which they have applied for one, they should notify the circuit clerk's office to avoid being required to vote by provisional ballot at the voting place.

An application for an absentee ballot from a military or overseas voter shall remain valid for all elections through the end of the calendar year in which the application is filed unless the applicant indicates otherwise. The absentee election manager shall provide an absentee ballot to the military and overseas voters for each subsequent election through the end of the calendar year in which the application is filed. If an election cycle begins one year and continues into the subsequent year, the application shall be valid for the whole election cycle. § 17-11-5(d).

All UOCAVA voters have the option of having their blank absentee ballot transmitted to them electronically by their respective absentee election manager.

UOCAVA voters located outside the territorial limits of the United States also have the additional option of returning their voted absentee ballot electronically if they requested electronic delivery of their blank absentee ballot pursuant to the Military and Overseas Voter Empowerment Act. § 17-11-40, et. seq.