

SECOND REGULAR SESSION

HOUSE BILL NO. 1769

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CARNAHAN.

Read 1st time April 29, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5091L.011

AN ACT

To repeal sections 115.126, 115.277, 115.279, 115.283, and 115.290, RSMo, and to enact in lieu thereof five new sections relating to absentee voting, with a penalty provision and an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 115.126, 115.277, 115.279, 115.283, and 115.290, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections 115.126, 115.277,
3 115.279, 115.283, and 115.290, to read as follows:

115.126. 1. Notwithstanding any provision of this chapter to the contrary, election
2 authorities shall establish a plan to implement an advance voting period when eligible registered
3 voters may vote before any [general] election [in presidential election years] at the office of the
4 election authority and up to four other polling places designated by and under the control of the
5 election authority. **The election authority may utilize more than four locations but shall**
6 **have no more than four advance voting locations in operation simultaneously.** [Such plan
7 shall provide that] The permissible advance voting period shall begin fourteen days prior to
8 [such] **an** election and end at 5:00 p.m. on the Wednesday before the day of such election.

9 2. [Election authorities shall, pursuant to subsection 1 of this section, establish in their
10 plans the hours and locations for advance voting.] The election authority shall have all advance
11 voting locations open on all business days during the advance voting period, and may have all
12 advance voting locations open on Saturdays, Sundays and holidays during the advance voting
13 period. **The election authority shall post the hours, dates, and locations for advance voting**
14 **at the election authority's office and in such locations as the election authority may select.**

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

15 3. Except as provided in this section, advance voting procedures shall be conducted
16 pursuant to sections 115.407 to 115.445. [The secretary of state shall design the necessary
17 application for use in an advance voting program pursuant to this section. All election
18 authorities in this state shall submit to the secretary of state a plan to implement the advance
19 voting period by December 31, 2002. The secretary of state shall assist election authorities in
20 developing a plan for the implementation of an advance voting program.]

21 4. [The plans established pursuant to this section shall also require that] Before the
22 precinct registers are delivered to the polling places for an election, the election authority shall
23 record in the precinct registers the names of all voters who have submitted an advance voting
24 ballot. The election judge shall not allow any person who has voted an advance voting ballot in
25 the election to vote at the polls on election day. If it is determined that any voter submitted an
26 advance voting ballot and voted at the polls on election day, such person, having voted more than
27 once, is guilty of a class one election offense pursuant to subdivision (2) of section 115.631.

28 5. [The secretary of state may promulgate rules to effectuate the provisions of this
29 section.

30 6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
31 is created under the authority delegated in this section shall become effective only if it complies
32 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
33 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers
34 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
35 effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the
36 grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be
37 invalid and void.] **The advance voting plans submitted under this section shall be
38 implemented for the presidential election in 2004 upon the payment to election authorities
39 under this section.**

40 **6. To implement the advance voting plans as submitted under this section for the
41 presidential election in 2004, the office of administration shall prepay, not later than
42 August 1, 2004, to each election authority the estimated amount for implementation as
43 submitted in the plan filed under this section. The office of administration shall use the
44 funds transferred to the state election subsidy fund under subsection 5 of section 115.077.**

45 **7. The election authority shall use the payments under this section to cover all costs
46 of implementing the advance voting plan. If the costs for advance voting do not exceed the
47 payments made, then any excess amounts shall be refunded to the state election subsidy
48 fund no later than December 31, 2004. If the costs for advance voting exceed the amount
49 of the office of administration prepayment, the election authority shall bill the office of
50 administration for any excess costs. If the total amounts billed to the office of**

51 **administration exceed the amounts transferred to the state election subsidy fund under**
52 **subsection 5 of section 115.077 in fiscal year 2005, the office of administration shall**
53 **proportionally pay for all billed amounts in fiscal year 2005 and pay the balance upon the**
54 **transfer of funds under subsection 5 of section 115.077 in fiscal year 2006.**

115.277. 1. Except as provided in subsections 3, 4 and 5 of this section, any registered
2 voter of this state may vote by absentee ballot for all candidates and issues for which such voter
3 would be eligible to vote at the polling place [if such voter expects to be prevented from going
4 to the polls to vote on election day due to:

5 (1) Absence on election day from the jurisdiction of the election authority in which such
6 voter is registered to vote;

7 (2) Incapacity or confinement due to illness or physical disability, including a person
8 who is primarily responsible for the physical care of a person who is incapacitated or confined
9 due to illness or disability;

10 (3) Religious belief or practice;

11 (4) Employment as an election authority, as a member of an election authority, or by an
12 election authority at a location other than such voter's polling place;

13 (5) Incarceration, provided all qualifications for voting are retained.]

14 2. Any person in federal service, as defined in section 115.275, who is eligible to register
15 and vote in this state but is not registered may vote only in the election of presidential and vice
16 presidential electors, United States senator and representative in Congress even though the
17 person is not registered. Each person in federal service may vote by absentee ballot or, upon
18 submitting an affidavit that the person is qualified to vote in the election, may vote at the person's
19 polling place.

20 3. Any interstate former resident, as defined in section 115.275, may vote by absentee
21 ballot for presidential and vice presidential electors.

22 4. Any intrastate new resident, as defined in section 115.275, may vote by absentee ballot
23 at the election for presidential and vice presidential electors, United States senator, representative
24 in Congress, statewide elected officials and statewide questions, propositions and amendments
25 from such resident's new jurisdiction of residence after registering to vote in such resident's new
26 jurisdiction of residence.

27 5. Any new resident, as defined in section 115.275, may vote by absentee ballot for
28 presidential and vice presidential electors after registering to vote in such resident's new
29 jurisdiction of residence.

115.279. 1. Application for an absentee ballot may be made by the applicant in person,
2 or by mail, or for the applicant, in person, by his or her guardian or a relative within the second
3 degree by consanguinity or affinity. The election authority shall accept applications by facsimile

4 transmission within the limits of its telecommunications capacity.

5 2. Each application shall be made to the election authority of the jurisdiction in which
6 the person is or would be registered. Each application shall be in writing and shall state the
7 applicant's name, address at which he or she is or would be registered, [his or her reason for
8 voting an absentee ballot] and the address to which the ballot is to be mailed, if mailing is
9 requested. Each application to vote in a primary election shall also state which ballot the
10 applicant wishes to receive. If any application fails to designate a ballot, the election authority
11 shall, within three working days after receiving the application, notify the applicant by mail that
12 it will be unable to deliver an absentee ballot until the applicant designates which political party
13 ballot he or she wishes to receive. If the applicant does not respond to the request for political
14 party designation, the election authority is authorized to provide the voter with that part of the
15 ballot for which no political party designation is required.

16 3. All applications for absentee ballots received prior to the sixth Tuesday before an
17 election shall be stored at the office of the election authority until such time as the applications
18 are processed in accordance with section 115.281. No application for an absentee ballot received
19 in the office of the election authority by mail, by facsimile transmission or by a guardian or
20 relative after 5:00 p.m. on the Wednesday immediately prior to the election shall be accepted by
21 any election authority. No application for an absentee ballot submitted by the applicant in person
22 after 5:00 p.m. on the day before the election shall be accepted by any election authority, except
23 as provided in subsections 6, 8 and 9 of this section.

24 4. Each application for an absentee ballot shall be signed by the applicant or, if the
25 application is made by a guardian or relative pursuant to this section, the application shall be
26 signed by the guardian or relative, who shall note on the application his or her relationship to the
27 applicant. If an applicant, guardian or relative is blind, unable to read or write the English
28 language or physically incapable of signing the application, he or she shall sign by mark,
29 witnessed by the signature of an election official or person of his or her own choosing. Any
30 person who knowingly makes, delivers or mails a fraudulent absentee ballot application shall be
31 guilty of a class one election offense.

32 5. (1) Notwithstanding any law to the contrary, any resident of the state of Missouri who
33 resides outside the boundaries of the United States or who is on active duty with the armed forces
34 of the United States or members of their immediate family living with them may request an
35 absentee ballot for both the primary and subsequent general election with one application. In
36 addition, the election authority shall provide to each absent uniformed services voter and each
37 overseas voter who submits an absentee ballot request an absentee ballot through the next two
38 regularly scheduled general elections for federal office.

39 (2) The election authority shall provide each absent uniformed services voter and each

40 overseas voter who submits a voter registration application or an absentee ballot request, if the
41 election authority rejects the application or request, with the reasons for the rejection.

42 (3) Notwithstanding any other law to the contrary, if a standard oath regarding material
43 misstatements of fact is adopted for uniformed and overseas voters pursuant to the Help America
44 Vote Act of 2002, the election authority shall accept such oath for voter registration, absentee
45 ballot, or other election-related materials.

46 (4) Not later than sixty days after the date of each regularly scheduled general election
47 for federal office, each election authority which administered the election shall submit to the
48 secretary of state in a format prescribed by the secretary a report on the combined number of
49 absentee ballots transmitted to, and returned by, absent uniformed services voters and overseas
50 voters for the election. The secretary shall submit to the Election Assistance Commission a
51 combined report of such information not later than ninety days after the date of each regularly
52 scheduled general election for federal office and in a standardized format developed by the
53 commission pursuant to the Help America Vote Act of 2002. The secretary shall make the report
54 available to the general public.

55 (5) As used in this section, the terms "absent uniformed services voter" and "overseas
56 voter" shall have the meaning prescribed in 42 U.S.C. 1973ff-6.

57 6. An application for an absentee ballot by a new resident, as defined in section 115.275,
58 shall be submitted in person by the applicant in the office of the election authority in the election
59 jurisdiction in which such applicant resides. The application shall be received by the election
60 authority no later than 7:00 p.m. on the day of the election. Such application shall be in the form
61 of an affidavit, executed in duplicate in the presence of the election authority or any authorized
62 officer of the election authority, and in substantially the following form:

63 "STATE OF.....

64 COUNTY OF....., ss.

65 I,....., do solemnly swear that:

66 (1) Before becoming a resident of this state, I resided at
67 (residence address) in (town, township, village or city) of
68 County in the state of

69 (2) I moved to this state after the last day to register to vote in such general presidential
70 election and I am now residing in the county of, state of Missouri;

71 (3) I believe I am entitled pursuant to the laws of this state to vote in the presidential
72 election to be held November, (year);

73 (4) I hereby make application for a presidential and vice presidential ballot. I have not
74 voted and shall not vote other than by this ballot at such election.

75 Signed

76 (Applicant)
 77
 78 (Residence Address)
 79 Subscribed and sworn to before me this day of,
 80 Signed
 81 (Title and name of officer authorized to administer oaths)"

82 7. The election authority in whose office an application is filed pursuant to subsection
 83 6 of this section shall immediately send a duplicate of such application to the appropriate official
 84 of the state in which the new resident applicant last resided and shall file the original of such
 85 application in its office.

86 8. An application for an absentee ballot by an intrastate new resident, as defined in
 87 section 115.275, shall be made in person by the applicant in the office of the election authority
 88 in the election jurisdiction in which such applicant resides. The application shall be received by
 89 the election authority no later than 7:00 p.m. on the day of the election. Such application shall
 90 be in the form of an affidavit, executed in duplicate in the presence of the election authority or
 91 an authorized officer of the election authority, and in substantially the following form:

92 "STATE OF
 93 COUNTY OF, ss.

94 I,, do solemnly swear that:

95 (1) Before becoming a resident of this election jurisdiction, I resided at
 96 (residence address) in (town, township,
 97 village or city) of county in the state of

98 (2) I moved to this election jurisdiction after the last day to register to vote in such
 99 election;

100 (3) I believe I am entitled pursuant to the laws of this state to vote in the election to be
 101 held (date);

102 (4) I hereby make application for an absentee ballot for candidates and issues on which
 103 I am entitled to vote pursuant to the laws of this state. I have not voted and shall not vote other
 104 than by this ballot at such election.

105 Signed
 106 (Applicant)
 107
 108 (Residence Address)
 109 Subscribed and sworn to before me this day of,
 110 Signed
 111 (Title and name of officer authorized to administer oaths)"

112 9. An application for an absentee ballot by an interstate former resident, as defined in
 113 section 115.275, shall be received in the office of the election authority where the applicant was
 114 formerly registered by 5:00 p.m. on the Wednesday immediately prior to the election, unless the
 115 application is made in person by the applicant in the office of the election authority, in which
 116 case such application shall be made no later than 7:00 p.m. on the day of the election.

 115.283. 1. Each ballot envelope shall bear a statement on which the voter shall state
 2 the voter's name, the voter's voting address, **and** the voter's mailing address [and the voter's
 3 reason for voting an absentee ballot]. On the form, the voter shall also state under penalties of
 4 perjury that the voter is qualified to vote in the election, that the voter has not previously voted
 5 and will not vote again in the election, that the voter has personally marked the voter's ballot in
 6 secret or supervised the marking of the voter's ballot if the voter is unable to mark it, that the
 7 ballot has been placed in the ballot envelope and sealed by the voter or under the voter's
 8 supervision if the voter is unable to seal it, and that all information contained in the statement
 9 is true. In addition, any person providing assistance to the absentee voter shall include a
 10 statement on the envelope identifying the person providing assistance under penalties of perjury.
 11 Persons authorized to vote only for federal and statewide officers shall also state their former
 12 Missouri residence.

13 2. The statement for persons voting absentee ballots who are registered voters shall be
 14 in substantially the following form:

15 State of Missouri

16 County (City) of

17 I, (print name), a registered voter of County (City
 18 of St. Louis, Kansas City), [declare under the penalties of perjury that I expect to be prevented
 19 from going to the polls on election day due to (check one):

20 absence on election day from the jurisdiction of the election authority in which I am
 21 registered;

22 incapacity or confinement due to illness or physical disability, including caring for a
 23 person who is incapacitated or confined due to illness or disability;

24 religious belief or practice;

25 employment as an election authority or by an election authority at a location other than
 26 my polling place;

27 incarceration, although I have retained all the necessary qualifications for voting.

28

29 I] hereby state under penalties of perjury that I am qualified to vote at this election; I have not
 30 voted and will not vote other than by this ballot at this election. I further state that I marked the
 31 enclosed ballot in secret or that I am blind, unable to read or write English, or physically

32 incapable of marking the ballot, and the person of my choosing indicated below marked the
33 ballot at my direction; all of the information on this statement is, to the best of my knowledge
34 and belief, true.

35
36 Signature of Voter	Signature of Person
37	Assisting Voter
38	(if applicable)
39 Signed	Subscribed and sworn to
40 Signed	before me this day
41 Address of Voter	of,
42
43
44 Mailing addresses	Signature of notary or
45 (if different)	other officer authorized
46	to administer oaths

47 3. The statement for persons voting absentee ballots pursuant to the provisions of
48 subsection 2, 3, 4 or 5 of section 115.277 without being registered shall be in substantially the
49 following form:

50 State of Missouri
51 County (City) of

52 I, (print name), declare under the penalties of perjury that I am a citizen of
53 the United States and eighteen years of age or older. I am not adjudged incapacitated by any
54 court of law, and if I have been convicted of a felony or of a misdemeanor connected with the
55 right of suffrage, I have had the voting disabilities resulting from such conviction removed
56 pursuant to law. I hereby state under penalties of perjury that I am qualified to vote at this
57 election.

- 58 (1) I am a resident of the state of Missouri and (check one):
- 59 am a member of the U.S. armed forces in active service;
 - 60 am an active member of the U.S. merchant marine;
 - 61 am a civilian employee of the U.S. government working outside the United States;
 - 62 am an active member of a religious or welfare organization assisting servicemen;
 - 63 have been honorably discharged or terminated my service in one of the groups mentioned
64 above within sixty days of this election;
 - 65 am a spouse or dependent of one of the above;
 - 66 am a registered voter in County and moved from that county to
67 County, Missouri, after the last day to register to vote in this election.

68 OR (check if applicable)

69 (2) I am an interstate former resident of Missouri and authorized to vote
70 for presidential and vice presidential electors. I further state under penalties of perjury that I
71 have not voted and will not vote other than by this ballot at this election; I marked the enclosed
72 ballot in secret or am blind, unable to read or write English, or physically incapable of marking
73 the ballot, and the person of my choosing indicated below marked the ballot at my direction; all
74 of the information on this statement is, to the best of my knowledge and belief, true.

75 Subscribed to and sworn
76 Signature of Voter before me this day
77 of,

78
79
80 Address of Voter Signature of notary or
81 other officer authorized
82 to administer oaths

83
84
85 Mailing Address
86 (if different)
87
88

89 Signature of Person Address of Last Missouri
90 Assisting Voter Residence (if applicable)

91 4. The statement for persons voting absentee ballots who are entitled to vote at the
92 election pursuant to the provisions of subsection 2 of section 115.137 shall be in substantially
93 the following form:

94 State of Missouri
95 County (City) of

96 I, (print name), [declare under the penalties of perjury that I expect to
97 be prevented from going to the polls on election day due to (check one):

98 absence on election day from the jurisdiction of the election authority in which I am
99 directed to vote;

100 incapacity or confinement due to illness or physical disability, including caring for a
101 person who is incapacitated or confined due to illness or disability;

102 religious belief or practice;

103 employment as an election authority or by an election authority at a location other than my

104 polling place;
105 incarceration, although I have retained all the necessary qualifications of voting.
106

107 I] hereby state under penalties of perjury that I own property in the district and am
108 qualified to vote at this election; I have not voted and will not vote other than by this ballot at
109 this election. I further state that I marked the enclosed ballot in secret or that I am blind, unable
110 to read and write English, or physically incapable of marking the ballot, and the person of my
111 choosing indicated below marked the ballot at my direction; all of the information on this
112 statement is, to the best of my knowledge and belief, true.

113 Subscribed and sworn to
114 Signature of Voter before me this
115 day of,

116
117
118 Address Signature of notary or
119 other officer authorized
120 to administer oaths

121
122 Signature of Person
123 Assisting Voter
124 (if applicable)

125 5. The statement for persons providing assistance to absentee voters shall be in
126 substantially the following form:

127
128 The voter needed assistance in marking the ballot and signing above, because of blindness, other
129 physical disability, or inability to read or to read English. I marked the ballot enclosed in this
130 envelope at the voter's direction, when I was alone with the voter, and I had no other
131 communication with the voter as to how he or she was to vote. The voter swore or affirmed the
132 voter affidavit above and I then signed the voter's name and completed the other voter
133 information above. Signed under the penalties of perjury.

134 Reason why voter needed assistance:

135 ASSISTING PERSON SIGN HERE

- 136 1. (signature of assisting person)
- 137 2. (assisting person's name printed)
- 138 3. (assisting person's residence)
- 139 4. (assisting person's home city or town).

140 6. Notwithstanding any other provision of this section, any resident of the state of
141 Missouri who resides outside the boundaries of the United States or who is on active duty with
142 the armed forces of the United States or members of their immediate family living with them or
143 persons who have declared themselves to be permanently disabled pursuant to section 115.284,
144 otherwise entitled to vote, shall not be required to obtain a notary seal or signature on his or her
145 absentee ballot.

146 7. [Notwithstanding any other provision of this section or section 115.291 to the
147 contrary, the subscription, signature and seal of a notary or other officer authorized to administer
148 oaths shall not be required on any ballot, ballot envelope, or statement required by this section
149 if the reason for the voter voting absentee is due to the reasons established pursuant to
150 subdivision (2) of subsection 1 of section 115.277.

151 8.] No notary shall charge or collect a fee for notarizing the signature on any absentee
152 ballot or absentee voter registration.

153 [9.] **8.** A notary public who charges more than the maximum fee specified or who
154 charges or collects a fee for notarizing the signature on any absentee ballot or absentee voter
155 registration is guilty of official misconduct.

 115.290. Any person registered by mail under the provisions of section 115.159 and
2 voting by absentee ballot shall provide an affidavit subscribed and sworn to as provided in
3 section 115.291 [regardless of the cause for requesting such ballot] unless the voter is exempt
4 from such requirement under section 115.284 or section 1973ee-3, title 42, United States Code.

 Section B. Because immediate action is necessary to provide for the timely transfer of
2 election funds, section A of this act is deemed necessary for the immediate preservation of the
3 public health, welfare, peace, and safety, and is hereby declared to be an emergency act within
4 the meaning of the constitution, and section A of this act shall be in full force and effect upon
5 its passage and approval.