MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Senator(s) Jackson (32nd) To: Elections

SENATE BILL NO. 2385

AN ACT TO AMEND SECTIONS 23-15-631, 23-15-635, 23-15-639, 23-15-719 AND 23-15-721, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT ABSENTEE BALLOTS BE PLACED IN AN UNMARKED ENVELOPE INSIDE THE ENVELOPE UPON WHICH THE REQUIRED AFFIDAVITS ARE PRINTED IN ORDER TO ENSURE SECRECY OF THE BALLOT; TO REVISE THE PROCEDURES FOR HANDLING ABSENTEE BALLOTS TO CONFORM TO THIS REQUIREMENT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 23-15-631, Mississippi Code of 1972, is amended as follows:

23-15-631. (1) The registrar shall enclose with each ballot mailed to an absent elector separate printed instructions furnished by the registrar containing the following:

(a) All absentee voters, excepting those with temporary or permanent physical disabilities or those who are sixty-five (65) years of age or older, who mark their ballots in the county of the residence shall use the registrar of that county as the witness. The absentee voter shall come to the office of the registrar and neither the registrar nor his or her deputy shall be

required to go out of the registrar's office to serve as an attesting witness.

(b) Upon receipt of the enclosed ballot, you will not mark the ballot except in view or sight of the attesting witness. In the sight or view of the attesting witness, mark the ballot according to instructions.

(c) After marking the ballot, place the ballot in the unmarked envelope, and place the unmarked envelope in the envelope with the "ELECTOR'S CERTIFICATE" on the back of the envelope. Fill out and sign the "ELECTOR'S CERTIFICATE" on the back of * * * that envelope so that the signature is across the flap of the envelope to ensure the integrity of the ballot. All absent electors shall have the attesting witness sign the "ATTESTING WITNESS CERTIFICATE" across the flap on the back of * * * that envelope. Place the necessary postage on the envelope and deposit it in the post office or some government receptacle provided for deposit of mail so that the absent elector's ballot will be postmarked on or before the date of the election and received by the registrar no more than five (5) business days after the election.

Any notary public, United States postmaster, assistant United States postmaster, United States postal supervisor, clerk in charge of a contract postal station, or other officer having authority to administer an oath or take an acknowledgment may be an attesting witness * * *. However, * * * in the case of an

absent elector who is temporarily or permanently physically disabled, the attesting witness may be any person eighteen (18) years of age or older and such person is not required to have the authority to administer an oath. If a postmaster, assistant postmaster, postal supervisor, or clerk in charge of a contract postal station acts as an attesting witness, his or her signature on the elector's certificate must be authenticated by the cancellation stamp of their respective post offices. If an officer having authority to administer an oath or take an acknowledgement acts as attesting witness, his or her signature on the elector's certificate, together with his or her title and address, but no seal, shall be required. Any affidavits made by an absent elector who is in the Armed Forces may be executed before a commissioned officer, warrant officer, or noncommissioned officer not lower in grade than sergeant rating or any person authorized to administer oaths.

(d) When the application accompanies the ballot it shall not be returned in the same envelope as the ballot but shall be returned in a separate preaddressed envelope provided by the registrar.

(e) A candidate for public office, or the spouse, parent or child of a candidate for public office, may not be an attesting witness for any absentee ballot upon which the candidate's name appears, unless the voter is related within the

first degree to the candidate or the spouse, parent or child of the candidate.

(f) Any voter casting an absentee ballot who declares that he or she requires assistance to vote by reason of blindness, temporary or permanent physical disability or inability to read or write, shall be entitled to receive assistance in the marking of his or her absentee ballot and in completing the affidavit on the absentee ballot envelope. The voter may be given assistance by anyone of the voter's choice other than a candidate whose name appears on the absentee ballot being marked, the spouse, parent or child of a candidate whose name appears on the absentee ballot being marked or the voter's employer, an agent of that employer or a union representative; however, a candidate whose name is on the ballot or the spouse, parent or child of such candidate may provide assistance upon request to any voter who is related within the first degree. In order to ensure the integrity of the ballot, any person who provides assistance to an absentee voter shall be required to sign and complete the "Certificate of Person Providing Voter Assistance" on the absentee ballot envelope.

(2) The foregoing instructions required to be provided by the registrar to the elector shall also constitute the substantive law pertaining to the handling of absentee ballots by the elector and registrar.

(3) The Secretary of State shall prepare instructions on how absent voters may comply with the identification requirements of Section 23-15-563.

SECTION 2. Section 23-15-635, Mississippi Code of 1972, is amended as follows:

23-15-635. (1) The form of the elector's certificate, attesting witness certification and certificate of person providing voter assistance on the back of the envelope used by absentee voters who are not absent voters as defined in Section 23-15-673, shall be as follows:

"ELECTOR'S CERTIFICATE

STATE OF _____

COUNTY OF _____

I, _____, under penalty of perjury do solemnly swear that this envelope contains the ballot marked by me indicating my choice of the candidates or propositions to be submitted at the election to be held on the ___ day of _____, 2____, and I hereby authorize the registrar to place this envelope in the ballot box on my behalf, and I further authorize the election managers to open this envelope and place my *** * *** unmarked envelope among the other ballots cast before such ballots are counted, to open my unmarked envelope when the other ballots are counted, to remove my ballot from the unmarked envelope and count it, and record my name on the poll list as if I were present in person and voted.

I further swear that I marked the enclosed ballot in secret. **Penalties for vote fraud are up to five (5) years in prison and a fine of up to Five Thousand Dollars ($5,000.00). (Miss. Code. Ann. Section 23-15-753.) Penalties for voter intimidation are up to one (1) year in jail and a fine of up to One Thousand Dollars ($1,000.00). (Miss. Code. Ann. Section 97-13-37.)**

_____

(Signature of voter)

CERTIFICATE OF ATTESTING WITNESS

Under penalty of perjury I affirm that the above named voter personally appeared before me, on this the ___ day of _____, 2____, and is known by me to be the person named, and who, after being duly sworn or having affirmed, subscribed the foregoing oath or affirmation. That the voter exhibited to me his or her blank ballot; that the ballot was not marked or voted before the voter exhibited the ballot to me; that the voter was not solicited or advised by me to vote for any candidate, question or issue, and that the voter, after marking his or her ballot, placed it in the provided unmarked envelope, placed the unmarked envelop in this envelope, closed and sealed *** * *** this envelope in my presence, and signed and swore or affirmed the above certificate.

_____ _____

(Attesting witness) (Address)

_____ _____

(Official title) (City and State)

CERTIFICATE OF PERSON PROVIDING VOTER ASSISTANCE

(To be completed only if the voter has received assistance in marking the enclosed ballot.) I, under penalty of perjury, hereby certify that the above-named voter declared to me that he or she is blind, temporarily or permanently physically disabled, or cannot read or write, and that the voter requested that I assist the voter in marking the enclosed absentee ballot. I hereby certify that the ballot preferences on the enclosed ballot are those communicated by the voter to me, and that I have marked the enclosed ballot in accordance with the voter's instructions. **Penalties for vote fraud are up to five (5) years in prison and a fine of up to Five Thousand Dollars ($5,000.00). (Miss. Code. Ann. Section 23-15-753.) Penalties for voter intimidation are up to one (1) year in jail and a fine of up to One Thousand Dollars ($1,000.00). (Miss. Code. Ann. Section 97-13-37.)**

_____

Signature of person providing assistance

_____

Printed name of person providing assistance

_____

Address of person providing assistance

_____

Date and time assistance provided

_____

Family relationship to voter (if any)"

(2) The envelope shall have printed on the flap on the back of the envelope in bold print and in a distinguishing color, the following: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

SECTION 3. Section 23-15-639, Mississippi Code of 1972, is amended as follows:

23-15-639. (1) The examination and counting of all absentee ballots shall be conducted as follows:

(a) At the opening of the regular balloting and at the opening of the polls, the resolution board established under Section 23-15-523 and trained in the process of canvassing absentee ballots shall first take the envelopes containing the absentee ballots of such electors from the secure location at the circuit clerk's office, and the name, address and precinct inscribed on each envelope shall be announced by the election managers.

(b) The signature on the application shall then be compared with the signature on the back of the envelope. If it corresponds and the affidavit, if one is required, is sufficient and the resolution board find that the applicant is a registered and qualified voter or otherwise qualified to vote, the envelope shall then be opened and the unmarked envelope containing the ballot removed from the envelope, without * * * it being * * * opened.

(c) * * * The resolution board shall deposit * * * the unmarked ballot in the ballot box with the other ballots before counting any ballots and enter the voter's name in the receipt book provided for that purpose. All absentee ballots received prior to 7:00 p.m. the day before the election shall be counted in the registrar's office by the resolution board when the polls close and then added to the votes cast in each precinct. All absentee ballots received after 7:00 p.m. the day before the election but not later than the fifth business day after the election shall be processed by the resolution board. When the ballots are counted, the unmarked envelope shall be opened, at the time provided for in this paragraph, and the absentee ballot shall be removed from the envelope. After the election managers observe and find the ballot to be regular as far as can be observed from its official endorsement, the ballot shall be counted and added to the vote total.

(2) The resolution board shall also take such action as may be prescribed by the Secretary of State to ensure compliance with the identification requirements of Section 23-15-563.

(3) The resolution board shall process the absentee ballots using the procedure provided in subsection (1) of this section.

SECTION 4. Section 23-15-719, Mississippi Code of 1972, is amended as follows:

23-15-719. (1) Except where the registrar has already mailed a ballot with an application, upon receipt of a properly

completed application form by an elector qualified to vote absentee as provided in this article, the registrar shall mail the absent voter an absentee ballot within one (1) business day, or as soon as the absentee ballot is prepared and available, containing the names of all the candidates and propositions, if any, to be voted on in the election. The registrar shall include with the absentee ballot an official envelope that complies with the provisions of this article, as well as information to comply with Section 23-15-641(3) related to the status of the elector's ballot. The registrar shall identify the applicant by requiring him to present identification as required by Section 23-15-563, and shall then deliver the ballots to the applicant by mail or to the applicant in the registrar's office. The registrar shall not personally hand deliver ballots to voters. After the applicant has properly marked the ballot and properly folded it, he shall deposit it in the unmarked envelope furnished him by the registrar and place the unmarked envelope containing the affidavit required by this section.

After the absentee voter has sealed the envelope, he or she shall subscribe and swear to an affidavit and mail the ballot to the address provided on the absentee ballot official envelope. The affidavit shall be in the following form, which shall be printed on the back of the envelope containing the applicant's ballot:

"STATE OF MISSISSIPPI

COUNTY OF _____

I, _____, do solemnly swear that this envelope contains an unmarked envelope containing the ballot marked by me indicating my choice of the candidates or propositions to be submitted at the election to be held on the ___ day of _____, 2___, and I hereby authorize the registrar to place this envelope in the ballot box on my behalf, and I further authorize the election managers to open this envelope and place *** * *** the unmarked envelope ballot among the other ballots cast before such ballots are counted, to open my unmarked envelope when the other ballots are counted, to remove my ballot from the unmarked envelope and count it, and record my name on the poll list as if I were present in person and voted.

I further swear that I marked the enclosed ballot in secret.

_____

(Signature of voter)

SWORN TO AND SUBSCRIBED before me, _____, this the ___ day of _____, 2___.

(Registrar) _____

(Registrar)"

After the completion of the requirements of this section, the elector shall deliver the envelope containing the ballot to the registrar.

(2) If the voter has received assistance in marking his ballot, the person providing the assistance shall complete the

following form which shall be printed on the back of the envelope containing the unmarked envelope and the applicant's ballot:

"CERTIFICATE OF PERSON PROVIDING VOTER ASSISTANCE

(To be completed only if the voter has received assistance in marking the enclosed ballot.) I hereby certify that the above-named voter declared to me that he or she is blind, temporarily or permanently physically disabled, or cannot read or write, and that the voter requested that I assist the voter in marking the enclosed absentee ballot. I hereby certify that the ballot preferences on the enclosed ballot are those communicated by the voter to me, and that I have marked the enclosed ballot in accordance with the voter's instructions.

_____

Signature of person providing assistance

_____

Printed name of person providing assistance

_____

Address of person providing assistance

_____

Date and time assistance provided

_____

Family relationship to voter (if any)"

(3) The envelope used pursuant to this section shall not contain the form prescribed by Section 23-15-635 and shall have printed on the flap on the back of the envelope in bold print and

in a distinguishing color, the following: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

SECTION 5. Section 23-15-721, Mississippi Code of 1972, is amended as follows:

23-15-721. (1) Absentee ballots requested under the provisions of Section 23-15-715 for electors temporarily residing outside the county of residence shall be mailed to the elector's address outside of the county in which he or she is registered, and such electors shall appear before any official authorized to administer oaths or other official authorized to witness absentee balloting as provided in this article. The elector shall exhibit to such official his or her absentee ballot unmarked and thereupon proceed in secret to fill in the ballot. After the elector has properly marked the ballot and properly folded it, he or she shall deposit it in the unmarked envelope furnished him or her and shall place the unmarked envelope in the envelope with the affidavit printed on it. After the elector has sealed the envelope he or she shall deliver it to the official before whom he or she is appearing and shall subscribe and swear to the elector's certificate provided for in Section 23-15-635, which affidavit shall be printed on the back of the envelope as provided for in Section 23-15-635 containing the elector's ballot.

(2) Electors who are temporarily or permanently physically disabled shall sign the elector's certificate and the certificate

of attesting witness shall be signed by any person eighteen (18) years of age or older.

(3) After the completion of the requirements of this section, the elector shall mail the envelope containing the ballot to the registrar in the county wherein the elector is qualified to vote. The ballots must be postmarked by the date of the election and received by the registrar no more than five (5) business days after the election to be counted; any received after such time shall be handled as provided in Section 23-15-647 and shall not be counted.

SECTION 6. This act shall take effect and be in force from and after July 1, 2021.