

HOUSE BILL NO. 5435

January 30, 2020, Introduced by Reps. Guerra, Love, Wittenberg, Sneller, Manoogian, Sowerby, Camilleri, Anthony, Hope and Brann and referred to the Committee on Elections and Ethics.

A bill to amend 1954 PA 116, entitled
"Michigan election law,"

by amending sections 765, 765a, and 765b (MCL 168.765, 168.765a, and 168.765b), section 765 as amended by 2018 PA 603, section 765a as added by 2018 PA 123, and section 765b as added by 2018 PA 127.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 765. (1) A clerk who receives an absent voter ballot
- 2 return envelope containing the marked ballots of an absent voter
- 3 shall not open that envelope before delivering the envelope to the
- 4 board of election inspectors as provided in this section. The city



1 or township clerk shall safely keep in his or her office until
2 election day, **or until an earlier day as provided in subsection**
3 **(2)**, any absent voter ballot return envelopes received by the clerk
4 before election day containing the marked ballots of an absent
5 voter.

6 (2) **If a city or township establishes absent voter counting**
7 **boards under section 765a that meet to open, process, and tabulate**
8 **absent voter ballots before election day, the clerk of that city or**
9 **township shall deliver the absent voter ballot return envelopes to**
10 **the chairperson or other member of the board of election inspectors**
11 **in that absent voter's absent voter counting board precinct each**
12 **day that the absent voter counting board meets before election day.**

13 Before the opening of the polls on election day or as soon after
14 the opening of the polls as possible, the clerk shall deliver the
15 absent voter ballot return envelopes to the chairperson or other
16 member of the board of election inspectors in the absent voter's
17 precinct, together with the signed absent voter ballot applications
18 received by the clerk from any voters of that precinct and the
19 clerk's list or record kept relative to those absent voters.

20 However, if higher numbered ballots are used under section 717, the
21 clerk shall retain the applications and lists in his or her office
22 and shall keep the applications and lists open to public inspection
23 at all reasonable hours. ~~Absent~~ **Except as otherwise provided in**
24 **section 765a, absent** voter ballots must not be tabulated before the
25 opening of the polls on election day.

26 (3) The city or township clerk, or authorized designee of the
27 clerk, shall call for and receive absent voter ballots from the
28 post office at which the city or township clerk regularly receives
29 mail addressed to the city or township clerk on election day. Any



1 envelopes containing absent voter ballots that are received from
2 the post office or from voters who voted by absentee ballot in
3 person in the clerk's office on election day must be delivered to
4 the board of election inspectors or the absent voter counting
5 boards to be tabulated.

6 (4) If a marked absent voter ballot is received by the clerk
7 after the close of the polls, the clerk shall plainly mark the
8 envelope with the time and date of receipt and shall file the
9 envelope in his or her office.

10 (5) On or before 8 a.m. on election day, the clerk shall post
11 in the clerk's office or otherwise make public the number of absent
12 voter ballots the clerk distributed to absent voters and the number
13 of absent voter ballot return envelopes containing the marked
14 ballots of absent voters received by the clerk before election day
15 and to be delivered to the board of election inspectors or the
16 absent voter counting boards under this act. On or before 9 p.m. on
17 election day, the clerk shall post in the clerk's office or
18 otherwise make public the number of absent voter ballot return
19 envelopes containing the marked ballots of absent voters received
20 by the clerk on election day and delivered to the board of election
21 inspectors, under subsection (3), along with the total number of
22 absent voter ballot return envelopes containing the marked ballots
23 of absent voters received by the clerk both before and on election
24 day and delivered to the board of election inspectors or the absent
25 voter counting boards under this act. As soon as possible after all
26 precincts in the city or township are processed, the clerk shall
27 post in the clerk's office or otherwise make public the number of
28 absent voter ballot return envelopes containing the marked ballots
29 of absent voters received by the election inspectors at the



1 precincts on election day, along with the total number of absent
2 voter ballot return envelopes containing the marked ballots of
3 absent voters received in the city or township for that election.
4 This subsection applies only to elections in which a federal or
5 state office appears on the ballot.

6 Sec. 765a. (1) If a city or township decides to use absent
7 voter counting boards, the board of election commissioners of that
8 city or township shall establish an absent voter counting board for
9 each election day precinct in that city or township. **A city or**
10 **township may authorize absent voter counting boards to be**
11 **established to meet not only on election day, but also for up to 7**
12 **days before election day. The city or township shall provide notice**
13 **of those absent voter counting boards authorized to meet on days**
14 **before election day as provided in subsection (14). Absent voter**
15 **counting boards established and authorized to meet on days before**
16 **election day must comply with the requirements in subsection (15).**
17 The ballot form of an absent voter counting board must correspond
18 to the ballot form of the election day precinct for which it is
19 established. After the polls close on election day, the county,
20 city, or township clerk responsible for producing the accumulation
21 report of the election results submitted by the boards of precinct
22 election inspectors shall format the accumulation report to clearly
23 indicate all of the following:

- 24 (a) The election day precinct returns.
25 (b) The corresponding absent voter counting board returns.
26 (c) A total of each election day precinct return and each
27 corresponding absent voter counting board return.

28 (2) The board of election commissioners shall establish the
29 absent voter counting boards. The board of election commissioners



1 shall appoint the election inspectors to those absent voter
2 counting boards not less than 21 days or more than 40 days before
3 the election at which they are to be used. Sections 673a and 674
4 apply to the appointment of election inspectors to absent voter
5 counting boards under this section. The board of election
6 commissioners shall determine the number of ballots that may be
7 expeditiously counted by an absent voter counting board in a
8 reasonable period of time, taking into consideration the size and
9 complexity of the ballot to be counted pursuant to the guidelines
10 of the secretary of state. Combined ballots must be regarded as the
11 number of ballots as there are sections to the ballot.

12 (3) If more than 1 absent voter counting board is to be used,
13 the city or township clerk shall determine the number of electronic
14 voting systems or the number of ballot boxes and the number of
15 election inspectors to be used in each of the absent voter counting
16 boards and to which absent voter counting board the absent voter
17 ballots for each precinct are assigned for counting.

18 (4) In a city or township that uses absent voter counting
19 boards under this section, absent voter ballots must be counted in
20 the manner provided in this section and absent voter ballots must
21 not be delivered to the polling places. The board of election
22 commissioners shall provide a place for each absent voter counting
23 board to count the absent voter ballots. Section 662 applies to the
24 designation and prescribing of the absent voter counting place or
25 places in which the absent voter counting board performs its duties
26 under this section, except the location may be in a different
27 jurisdiction if the county provides a tabulator for use at a
28 central absent voter counting board location in that county. The
29 places must be designated as absent voter counting places. Except



1 as otherwise provided in this section, laws relating to paper
2 ballot precincts, including laws relating to the appointment of
3 election inspectors, apply to absent voter counting places. The
4 provisions of this section relating to placing of absent voter
5 ballots on electronic voting systems apply. More than 1 absent
6 voter counting board may be located in 1 building.

7 (5) The clerk of a city or township that uses absent voter
8 counting boards shall supply each absent voter counting board with
9 supplies necessary to carry out its duties under this act. The
10 supplies must be furnished to the city or township clerk in the
11 same manner and by the same persons or agencies as for other
12 precincts.

13 (6) Absent voter ballots received by the clerk before election
14 day must be delivered to the absent voter counting board by the
15 clerk or the clerk's authorized assistant at the time the election
16 inspectors of the absent voter counting boards report for duty,
17 which time must be established by the board of election
18 commissioners **or, if absent voter counting boards are authorized to**
19 **be established before election day, by the city or township.** Absent
20 voter ballots received by the clerk before the time set for the
21 closing of the polls on election day must be delivered to the
22 absent voter counting boards. Absent voter ballots must be
23 delivered to the absent voter counting boards in the sealed absent
24 voter ballot return envelopes in which they were returned to the
25 clerk. Written or stamped on each of the return envelopes must be
26 the time and the date that the envelope was received by the clerk
27 and a statement by the clerk that the signatures of the absent
28 voters on the envelopes have been checked and found to agree with
29 the signatures of the voters on the registration cards or the

1 digitized signatures of voters contained in the qualified voter
2 file as provided under section 766. If a signature on the
3 registration card or a digitized signature contained in the
4 qualified voter file and on the absent voter ballot return envelope
5 does not agree as provided under section 766, if the absent voter
6 failed to sign the envelope, or if the statement of the absent
7 voter is not properly executed, the clerk shall mark the envelope
8 "rejected" and the reason for the rejection and shall place his or
9 her name under the notation. An envelope marked "rejected" must not
10 be delivered to the absent voter counting board but must be
11 preserved by the clerk until other ballots are destroyed in the
12 manner provided in this act. The clerk shall also comply with
13 section 765(5).

14 (7) This chapter does not prohibit an absent voter from voting
15 in person within the voter's precinct at an election,
16 notwithstanding that the voter may have applied for an absent voter
17 ballot and the ballot may have been mailed or otherwise delivered
18 to the voter. The voter, the election inspectors, and other
19 election officials shall proceed in the manner prescribed in
20 section 769. The clerk shall preserve the canceled ballots for 2
21 years.

22 (8) The absent voter counting boards shall process the ballots
23 and returns in as nearly as possible the same manner as ballots are
24 processed in paper ballot precincts. The poll book may be combined
25 with the absent voter list or record required by section 760, and
26 the applications for absent voter ballots may be used as the poll
27 list. ~~The~~ **Except as otherwise provided in this section, the**
28 processing and tallying of absent voter ballots may commence at 7
29 a.m. on ~~the election day. of the election.~~



1 (9) An election inspector, challenger, or any other ~~person~~
2 **individual** in attendance at an absent voter counting place at any
3 time after the processing of ballots has begun shall take and sign
4 the following oath that may be administered by the chairperson or a
5 member of the absent voter counting board:

6 "I (name of ~~person~~**individual** taking oath) do solemnly swear
7 (or affirm) that I shall not communicate in any way any information
8 relative to the processing or tallying of votes that may come to me
9 while in this counting place until after the polls are closed."

10 (10) The oaths administered under subsection (9) must be
11 placed in an envelope provided for the purpose and sealed with the
12 red state seal. Following the election, the oaths must be delivered
13 to the city or township clerk. Except as otherwise provided in
14 subsection (12), ~~a person~~**an individual** in attendance at the absent
15 voter counting place **on election day** shall not leave the counting
16 place after the tallying has begun until the polls close. ~~A person~~
17 **An individual** who causes the polls to be closed or who discloses an
18 election result or in any manner characterizes how any ballot being
19 counted has been voted in a voting precinct before the time the
20 polls can be legally closed on election day is guilty of a felony.

21 (11) Voted absent voter ballots must be placed in an approved
22 ballot container, and the ballot container must be sealed in the
23 manner provided by this act for paper ballot precincts. The seal
24 numbers must be recorded on the statement sheet and in the poll
25 book.

26 (12) Subject to this subsection, a local election official who
27 has established an absent voter counting board, the deputy or
28 employee of that local election official, an employee of the state
29 bureau of elections, a county clerk, an employee of a county clerk,



1 or a representative of a voting equipment company may enter and
2 leave an absent voter counting board after the tally has begun but
3 before the polls close, **and between 8 a.m. and 5 p.m. on any day**
4 **before election day authorized by a city or township if absent**
5 **voter counting boards are established to open, process, and**
6 **tabulate absent voter ballots before election day.** ~~A person~~ **An**
7 **individual** described in this subsection may enter an absent voter
8 counting board only for the purpose of responding to an inquiry
9 from an election inspector or a challenger or providing
10 instructions on the operation of the counting board. Before
11 entering an absent voter counting board, ~~a person~~ **an individual**
12 described in this subsection must take and sign the oath prescribed
13 in subsection (9). The chairperson of the absent voter counting
14 board shall record in the poll book the name of ~~a person~~ **an**
15 **individual** described in this subsection who enters the absent voter
16 counting board. ~~A person~~ **An individual** described in this subsection
17 who enters an absent voter counting board and who discloses an
18 election result or in any manner characterizes how any ballot being
19 counted has been voted in a precinct before the time the polls can
20 be legally closed on election day is guilty of a felony. As used in
21 this subsection, "local election official" means a county, city, or
22 township clerk.

23 (13) The secretary of state shall develop instructions
24 consistent with this act for the conduct of absent voter counting
25 boards. The secretary of state shall distribute the instructions
26 developed under this subsection to city and township clerks 40 days
27 or more before a general election in which absent voter counting
28 boards will be used. A city or township clerk shall make the
29 instructions developed under this subsection available to the



1 public and shall distribute the instructions to each challenger in
2 attendance at an absent voter counting board. The instructions
3 developed under this subsection are binding upon the operation of
4 an absent voter counting board used in an election conducted by a
5 county, city, or township.

6 (14) No later than 5 days before the first day absent voter
7 ballots can be opened, processed, and tabulated, a city or township
8 that authorizes absent voter counting boards to be established
9 before election day shall provide notice in a newspaper of general
10 circulation in that city or township of the location, dates, and
11 hours the absent voter counting boards will meet before election
12 day. In addition, the notice required under this subsection must
13 state that an absent voter who votes and returns his or her absent
14 voter ballot to the city or township clerk is not permitted to
15 spoil his or her absent voter ballot after the date the absent
16 voter counting boards in that city or township are authorized to
17 meet to open, process, and tabulate absent voter ballots. The city
18 or township shall also provide the notice described in this
19 subsection to the county chairperson of each political party where
20 that city or township is located.

21 (15) Absent voter counting boards established and authorized
22 to meet on days before election day shall meet only between 8 a.m.
23 and 5 p.m. on those days authorized by the city or township before
24 election day, and shall meet beginning at 7 a.m. on election day.
25 Absent voter counting boards established and authorized to meet on
26 days before election day are only permitted to open, process, and
27 tabulate absent voter ballots and are not permitted to tally or
28 count the results of those absent voter ballots. A tabulator used
29 in an absent voter counting board before election day must be



1 programmed to not reveal any election results until election day.
2 Each day before election day, the absent voter ballots that have
3 been opened, processed, and tabulated in an absent voter counting
4 board must be secured in an approved ballot container and sealed in
5 the manner as provided in subsection (11). The ballot container
6 must be kept in a secure location until election day.

7 Sec. 765b. (1) ~~Not~~**Except as otherwise provided in subsection**
8 **(9), not** later than 2 p.m. on the Saturday immediately before an
9 election, an elector may submit a signed, written statement to his
10 or her city or township clerk requesting that the clerk do both of
11 the following:

12 (a) Spoil the elector's absent voter ballot.

13 (b) Provide or mail a new absent voter ballot to the elector.

14 (2) Upon receipt of a signed, written statement from an
15 elector as described in subsection (1), the city or township clerk
16 shall mark the absent voter ballot return envelope of that elector
17 as "spoiled" and retain the envelope. In addition, the city or
18 township clerk shall provide or mail a new absent voter ballot to
19 that elector.

20 (3) ~~An~~**Except as otherwise provided in subsection (9), an**
21 elector who has returned an absent voter ballot may, before 4 p.m.
22 on the day before an election except Sunday or a legal holiday,
23 appear in person at his or her city or township clerk's office to
24 do both of the following:

25 (a) Spoil his or her absent voter ballot by submitting a
26 signed, written statement to the city or township clerk indicating
27 that the elector wishes to have his or her absent voter ballot
28 spoiled.

29 (b) Vote a new absent voter ballot in the clerk's office.



1 (4) Upon receipt of the signed, written statement from an
 2 elector as described in subsection (3) (a), the city or township
 3 clerk shall mark the absent voter ballot return envelope of that
 4 elector as "spoiled" and retain the envelope. In addition, the city
 5 or township clerk shall issue the elector a new absent voter ballot
 6 that must be voted by the elector in the clerk's office.

7 (5) Not later than 2 p.m. on the Saturday immediately before
 8 an election, an elector who has lost his or her absent voter ballot
 9 or not yet received his or her absent voter ballot in the mail may
 10 submit a signed, written statement to his or her city or township
 11 clerk requesting that the clerk do both of the following:

12 (a) Spoil the elector's absent voter ballot.

13 (b) Provide or mail a new absent voter ballot to the elector.

14 (6) Upon receipt of a signed, written statement from an
 15 elector as described in subsection (5), the city or township clerk
 16 shall indicate in the qualified voter file that the original ballot
 17 is spoiled. In addition, the city or township clerk shall provide
 18 or mail a new absent voter ballot to that elector.

19 (7) An elector who has lost his or her absent voter ballot or
 20 not yet received his or her absent voter ballot in the mail may,
 21 before 4 p.m. on the day before an election except Sunday or a
 22 legal holiday, appear in person at his or her city or township
 23 clerk's office to do both of the following:

24 (a) Spoil his or her absent voter ballot by submitting a
 25 signed, written statement to the city or township clerk indicating
 26 that the elector wishes to have his or her absent voter ballot
 27 spoiled.

28 (b) Vote a new absent voter ballot in the clerk's office.

29 (8) Upon receipt of the signed, written statement from an



1 elector described in subsection (7) (a), the city or township clerk
2 shall indicate in the qualified voter file that the original ballot
3 is spoiled. In addition, the city or township clerk shall issue the
4 elector a new absent voter ballot that must be voted by the elector
5 in the clerk's office.

6 **(9) If a city or township authorizes that absent voter**
7 **counting boards be established to open, process, and tabulate**
8 **absent voter ballots before election day as provided in section**
9 **765a, an elector who has voted and returned his or her absent voter**
10 **ballot to the city or township clerk is not permitted to spoil his**
11 **or her absent voter ballot after the date absent voter counting**
12 **boards in that city or township are authorized to meet and begin**
13 **opening, processing, and tabulating absent voter ballots.**

