

SENATE BILL NO. 867

April 24, 2020, Introduced by Senator HOLLIER and referred to the Committee on Elections.

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~~**Except as otherwise provided in subsection**
2 **(6), a** clerk who receives an absent voter ballot return envelope

1 containing the marked ballots of an absent voter shall not open
2 that envelope before delivering the envelope to the board of
3 election inspectors as provided in this section. ~~The~~ **Except as**
4 **otherwise provided in subsection (6), the** city or township clerk
5 shall safely keep in his or her office until election day any
6 absent voter ballot return envelopes received by the clerk before
7 election day containing the marked ballots of an absent voter.

8 (2) Before the opening of the polls on election day or as soon
9 after the opening of the polls as possible, the clerk shall deliver
10 the absent voter ballot return envelopes **and absent voter ballots**
11 to the chairperson or other member of the board of election
12 inspectors in the absent voter's precinct, together with the signed
13 absent voter ballot applications received by the clerk from any
14 voters of that precinct and the clerk's list or record kept
15 relative to those absent voters. However, if higher numbered
16 ballots are used under section 717, the clerk shall retain the
17 applications and lists in his or her office and shall keep the
18 applications and lists open to public inspection at all reasonable
19 hours. ~~Absent~~ **Except as otherwise provided in subsection (6),**
20 **absent** voter ballots must not be tabulated before the opening of
21 the polls on election day.

22 (3) The city or township clerk, or authorized designee of the
23 clerk, shall call for and receive absent voter ballots from the
24 post office at which the city or township clerk regularly receives
25 mail addressed to the city or township clerk on election day. Any
26 envelopes containing absent voter ballots that are received from
27 the post office or from voters who voted by absentee ballot in
28 person in the clerk's office on election day must be delivered to
29 the board of election inspectors or the absent voter counting

1 boards to be tabulated.

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

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

1 state office appears on the ballot.

2 **(6) The secretary of state may promulgate rules pursuant to**
3 **the administrative procedures act of 1969, 1969 PA 306, MCL 24.201**
4 **to 24.328, to allow city or township clerks to open and prepare**
5 **absent voter ballots for tabulation before election day and to**
6 **adjust the spoiled absent voter ballot deadlines provided in**
7 **section 765b.**

8 Sec. 765a. (1) If a city or township decides to use absent
9 voter counting boards, the board of election commissioners of that
10 city or township shall establish an absent voter counting board for
11 each election day precinct in that city or township. The ballot
12 form of an absent voter counting board must correspond to the
13 ballot form of the election day precinct for which it is
14 established. After the polls close on election day, the county,
15 city, or township clerk responsible for producing the accumulation
16 report of the election results submitted by the boards of precinct
17 election inspectors shall format the accumulation report to clearly
18 indicate all of the following:

19 (a) The election day precinct returns.

20 (b) The corresponding absent voter counting board returns.

21 (c) A total of each election day precinct return and each
22 corresponding absent voter counting board return.

23 (2) The board of election commissioners shall establish the
24 absent voter counting boards. The board of election commissioners
25 shall appoint the election inspectors to those absent voter
26 counting boards not less than 21 days or more than 40 days before
27 the election at which they are to be used. Sections 673a and 674
28 apply to the appointment of election inspectors to absent voter
29 counting boards under this section. The board of election

1 commissioners shall determine the number of ballots that may be
2 expeditiously counted by an absent voter counting board in a
3 reasonable period of time, taking into consideration the size and
4 complexity of the ballot to be counted pursuant to the guidelines
5 of the secretary of state. Combined ballots must be regarded as the
6 number of ballots as there are sections to the ballot.

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

13 (4) In a city or township that uses absent voter counting
14 boards under this section, absent voter ballots must be counted in
15 the manner provided in this section and absent voter ballots must
16 not be delivered to the polling places. The board of election
17 commissioners shall provide a place for each absent voter counting
18 board to count the absent voter ballots. Section 662 applies to the
19 designation and prescribing of the absent voter counting place or
20 places in which the absent voter counting board performs its duties
21 under this section, except the location may be in a different
22 jurisdiction if the county provides a tabulator for use at a
23 central absent voter counting board location in that county. The
24 places must be designated as absent voter counting places. Except
25 as otherwise provided in this section, laws relating to paper
26 ballot precincts, including laws relating to the appointment of
27 election inspectors, apply to absent voter counting places. The
28 provisions of this section relating to placing of absent voter
29 ballots on electronic voting systems apply. More than 1 absent

1 voter counting board may be located in 1 building.

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

8 (6) ~~Absent~~ **Except as otherwise provided in section 765(6),**
9 **absent** voter ballots received by the clerk before election day must
10 be delivered to the absent voter counting board by the clerk or the
11 clerk's authorized assistant at the time the election inspectors of
12 the absent voter counting boards report for duty, which time must
13 be established by the board of election commissioners. Absent voter
14 ballots received by the clerk before the time set for the closing
15 of the polls on election day must be delivered to the absent voter
16 counting boards. ~~Absent~~ **Except as otherwise provided in section**
17 **765(6), absent** voter ballots must be delivered to the absent voter
18 counting boards in the sealed absent voter ballot return envelopes
19 in which they were returned to the clerk. Written or stamped on
20 each of the return envelopes must be the time and the date that the
21 envelope was received by the clerk and a statement by the clerk
22 that the signatures of the absent voters on the envelopes have been
23 checked and found to agree with the signatures of the voters on the
24 registration cards or the digitized signatures of voters contained
25 in the qualified voter file as provided under section 766. If a
26 signature on the registration card or a digitized signature
27 contained in the qualified voter file and on the absent voter
28 ballot return envelope does not agree as provided under section
29 766, if the absent voter failed to sign the envelope, or if the

1 statement of the absent voter is not properly executed, the clerk
2 shall mark the envelope "rejected" and the reason for the rejection
3 and shall place his or her name under the notation. An envelope
4 marked "rejected" must not be delivered to the absent voter
5 counting board but must be preserved by the clerk until other
6 ballots are destroyed in the manner provided in this act. The clerk
7 shall also comply with section 765(5).

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

16 (8) The absent voter counting boards shall process the ballots
17 and returns in as nearly as possible the same manner as ballots are
18 processed in paper ballot precincts. The poll book may be combined
19 with the absent voter list or record required by section 760, and
20 the applications for absent voter ballots may be used as the poll
21 list. ~~The~~ **Except as otherwise provided in section 765(6), the**
22 processing and tallying of absent voter ballots may commence at 7
23 a.m. on the day of the election.

24 (9) An election inspector, challenger, or any other person in
25 attendance at an absent voter counting place at any time after the
26 processing of ballots has begun shall take and sign the following
27 oath that may be administered by the chairperson or a member of the
28 absent voter counting board:

29 "I (name of person taking oath) do solemnly swear (or affirm)

1 that I shall not communicate in any way any information relative to
2 the processing or tallying of votes that may come to me while in
3 this counting place until after the polls are closed.".

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

15 (11) Voted absent voter ballots must be placed in an approved
16 ballot container, and the ballot container must be sealed in the
17 manner provided by this act for paper ballot precincts. The seal
18 numbers must be recorded on the statement sheet and in the poll
19 book.

20 (12) Subject to this subsection, a local election official who
21 has established an absent voter counting board, the deputy or
22 employee of that local election official, an employee of the state
23 bureau of elections, a county clerk, an employee of a county clerk,
24 or a representative of a voting equipment company may enter and
25 leave an absent voter counting board after the tally has begun but
26 before the polls close. A person described in this subsection may
27 enter an absent voter counting board only for the purpose of
28 responding to an inquiry from an election inspector or a challenger
29 or providing instructions on the operation of the counting board.

1 Before entering an absent voter counting board, a person described
 2 in this subsection must take and sign the oath prescribed in
 3 subsection (9). The chairperson of the absent voter counting board
 4 shall record in the poll book the name of a person described in
 5 this subsection who enters the absent voter counting board. A
 6 person described in this subsection who enters an absent voter
 7 counting board and who discloses an election result or in any
 8 manner characterizes how any ballot being counted has been voted in
 9 a precinct before the time the polls can be legally closed on
 10 election day is guilty of a felony. As used in this subsection,
 11 "local election official" means a county, city, or township clerk.

12 (13) The secretary of state shall develop instructions
 13 consistent with this act for the conduct of absent voter counting
 14 boards. The secretary of state shall distribute the instructions
 15 developed under this subsection to city and township clerks 40 days
 16 or more before a general election in which absent voter counting
 17 boards will be used. A city or township clerk shall make the
 18 instructions developed under this subsection available to the
 19 public and shall distribute the instructions to each challenger in
 20 attendance at an absent voter counting board. The instructions
 21 developed under this subsection are binding upon the operation of
 22 an absent voter counting board used in an election conducted by a
 23 county, city, or township.

24 Sec. 765b. (1) ~~Not~~ **Except as otherwise provided in section**
 25 **765(6), not** later than 2 p.m. on the Saturday immediately before an
 26 election, an elector may submit a signed, written statement to his
 27 or her city or township clerk requesting that the clerk do both of
 28 the following:

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

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

2 (2) Upon receipt of a signed, written statement from an
3 elector as described in subsection (1), the city or township clerk
4 shall mark the absent voter ballot return envelope of that elector
5 as "spoiled" and retain the envelope. In addition, the city or
6 township clerk shall provide or mail a new absent voter ballot to
7 that elector.

8 (3) ~~An~~ **Except as otherwise provided in section 765(6), an**
9 elector who has returned an absent voter ballot may, before 4 p.m.
10 on the day before an election except Sunday or a legal holiday,
11 appear in person at his or her city or township clerk's office to
12 do both of the following:

13 (a) Spoil his or her absent voter ballot by submitting a
14 signed, written statement to the city or township clerk indicating
15 that the elector wishes to have his or her absent voter ballot
16 spoiled.

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

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

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

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

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

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

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

12 (a) Spoil his or her absent voter ballot by submitting a
13 signed, written statement to the city or township clerk indicating
14 that the elector wishes to have his or her absent voter ballot
15 spoiled.

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

17 (8) Upon receipt of the signed, written statement from an
18 elector described in subsection (7)(a), the city or township clerk
19 shall indicate in the qualified voter file that the original ballot
20 is spoiled. In addition, the city or township clerk shall issue the
21 elector a new absent voter ballot that must be voted by the elector
22 in the clerk's office.