



2023 South Dakota Legislature

House Bill 1165

SENATE STATE AFFAIRS ENGROSSED

Introduced by: **Representative Chaffee**

1 **An Act to modify certain provisions pertaining to absentee voting.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 12-19-2 be AMENDED:**

4 **12-19-2.** ~~An absentee~~A voter desiring to vote by mail may apply to the person in
 5 charge of the election for an absentee ballot. The application or request ~~shall~~ must be
 6 made in writing, signed by the applicant, and ~~shall~~ must contain the applicant's voter
 7 registration address. The application or request ~~shall~~ must contain an oath verifying the
 8 validity of the information in the application or request. The oath ~~shall~~ must be
 9 administered by a notary public or other officer authorized by this state to administer an
 10 oath or administered by an out-of-state notary public. If the application or request does
 11 not contain an oath, the application or request ~~shall~~ must be accompanied by a copy of
 12 the voter's identification card as required by § 12-18-6.1. The copy of the voter's
 13 identification card ~~shall~~ must be maintained by the person in charge of the election
 14 pursuant to § 12-20-31. ~~However, the~~ The voter's identification card is not available for
 15 public inspection. The application or request may be used to obtain an absentee ballot for
 16 all elections in that calendar year conducted by the jurisdiction receiving the application
 17 or request if so indicated. The ballot ~~shall~~ must be sent to the voter's residence, as shown
 18 in the voter registration file or any temporary residence address designated in writing by
 19 the voter, at the time of applying for the absentee ballot. If the application or request is
 20 from a voter identified as being covered by the Uniformed and Overseas Citizens Absentee
 21 Voting Act (~~42 U.S.C. 1973ff-1~~) as of January 1, 2010, 52 U.S.C. § 20301 et seq., as of
 22 January 1, 2023, the voter may designate on the application for the ballot to be sent
 23 electronically pursuant to this section through the system provided by the Office of the
 24 Secretary of State. The person in charge of the election shall stamp the application with
 25 the date it was received. The person in charge of the election shall preserve a record of
 26 the name, mailing address, and voting precinct of each applicant and, except as provided

1 by § 12-19-45, deliver a copy of the record to the superintendent of the election board of
2 the home precinct of the applicant.

3 **Section 2. That § 12-19-2.2 be AMENDED:**

4 **12-19-2.2.** If a person is an authorized messenger for more than one voter, ~~he~~
5 the person must notify the person in charge of the election of all voters for whom ~~he~~ that
6 person is a messenger. The person in charge of the election shall keep a record of the
7 authorized messenger requesting an absentee ballot to be delivered to another voter.

8 **Section 3. That § 12-19-2.3 be AMENDED:**

9 **12-19-2.3.** Any voter identified as being covered by the Uniformed and Overseas
10 Citizens Absentee Voting Act ~~(42 U.S.C. 1973ff-1) as of January 1, 2011,~~ 52 U.S.C.
11 § 20301 et seq., as of January 1, 2023, may submit an application or request for an
12 absentee ballot by facsimile or emailed image to the person in charge of the election. The
13 secretary of state may authorize a person in charge of an election to accept an application
14 or request for an absentee ballot pursuant to this section through the system provided by
15 the Office of the Secretary of State.

16 **Section 4. That § 12-19-2.5 be AMENDED:**

17 **12-19-2.5.** The State Board of Elections shall promulgate rules, pursuant to
18 chapter 1-26, to prescribe the absentee application form and a combined absentee ballot
19 application ~~form and~~ return envelope for absentee voting in the office of the person in
20 charge of the election. The application may be made by letter or upon any form containing
21 the required information or upon any form prescribed by the State Board of Elections or
22 the postcard form referred to in § 12-4-8.1, executed by any person authorized in
23 accordance with the Uniformed and Overseas Citizens Absentee Voting Act ~~(UOCAVA)(42~~
24 U.S.C. § 1973ff) as of January 1, 2006, 52 U.S.C. § 20301 et seq., as of January 1, 2023.

25 **Section 5. That § 12-19-4 be AMENDED:**

26 **12-19-4.** The return envelope for the ~~absent voter's~~ absentee ballot ~~shall~~ must
27 have printed on the reverse thereof a statement to be signed by the voter. The State
28 Board of Elections shall ~~prescribe~~ promulgate rules, pursuant to chapter 1-26, prescribing
29 the forms for the return envelope, ballots, and instructions to the voter, ~~and such~~

1 ~~certification to accommodate the federal service voter under the provisions of the~~
2 ~~Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)(42 U.S.C. § 1973cc-1).~~

3 **Section 6. That § 12-19-5 be AMENDED:**

4 **12-19-5.** The envelope containing the enclosures, if not delivered to the voter
5 personally by the person in charge of the election or the authorized messenger filing the
6 voter's request for an absentee ballot, ~~shall~~ must, except for federal service voters, be
7 mailed by first class mail to the address of the applicant stated in ~~his~~ the application, with
8 postage prepaid thereon.

9 ~~Both the~~ The return envelope and the envelope for transmitting the enclosures to
10 federal service voters ~~shall~~ must meet the requirements of the Uniformed and Overseas
11 Citizens Absentee Voting Act ~~(UOCAVA)(42 U.S.C. § 1973)~~, 52 U.S.C. § 20301 et seq., as
12 of January 1, 2023, and ~~shall~~ must be transmitted by air mail, free of United States
13 postage, including air mail.

14 No public official may mail an absentee ballot to a voter after the Monday prior to
15 election day.

16 **Section 7. That § 12-19-7 be AMENDED:**

17 **12-19-7.** A voter voting an absentee ballot shall mark it and fold it without
18 revealing the marks to any other person. The voter shall place the voted ballots in the
19 return envelope provided and seal the envelope. The voter shall sign the statement on the
20 return envelope. The voter shall ~~either mail~~ return the ballot to the office of the person in
21 charge of the election by:

22 (1) Mailing the ballot, ~~deliver it;~~

23 (2) Delivering the ballot in person ~~or have it delivered to the person in charge of the~~
24 ~~election;~~ or

25 (3) Providing the ballot to an absentee ballot messenger to deliver the ballot in person
26 as prescribed by this chapter.

27 **Section 8. That § 12-19-7.1 be AMENDED:**

28 **12-19-7.1.** No person who is a candidate for any elective office, except for political
29 party offices described in § 12-5-2 or county auditor or such deputy, at the election for
30 which the ballot or ballots are to be voted, may serve as an authorized messenger. A
31 violation of this section is a Class 2 misdemeanor.

1 **Section 9. That § 12-19-9 be AMENDED:**

2 **12-19-9.** An authorized messenger shall deliver the absentee ballot to the office
3 of the person in charge of the election unless there is not sufficient time for the person in
4 charge of the election to transmit the absentee ballot to the voter's home precinct or a
5 vote center as prescribed by § 12-14-17. In that instance, the authorized messenger shall
6 personally deliver the absentee ballot to the precinct superintendent of the voter's home
7 precinct. If the authorized messenger requests a receipt when returning the absentee
8 ballot, the person in charge of the election shall provide the authorized messenger a
9 receipt.

10 **Section 10. That § 12-19-9.1 be AMENDED:**

11 **12-19-9.1.** If there is any nursing facility, assisted living center, or hospital, as
12 defined in § 34-12-1.1, within any county from which there might reasonably be expected
13 to be five or more absentee applications, the county auditor shall notify the person in
14 charge of that facility and the chair of the county central committee of each party and any
15 other person who has filed a request to be notified of the date and time at which
16 representatives of the auditor's office will be present to assist the residents of that facility
17 to vote, utilizing the absentee procedure. Any political party, independent candidate, and
18 nonpolitical candidate may assign a person to accompany the county auditor's
19 representatives. At the date and time announced, the county auditor's representative shall
20 deliver ballots to and assist all persons at that facility who desire ~~such assistance and who~~
21 ~~have applied for absentee ballots to vote.~~ This section applies only to ~~a general~~ a primary
22 or general election.

23 If a person in charge of an election conducts absentee voting at a nursing facility,
24 assisted living center, or hospital, ~~as defined in § 34-12-1.1,~~ the voter shall complete a
25 combined absentee ballot application ~~form and~~ return envelope, and the identification
26 and affidavit requirements provided in § 12-19-2.1 are waived. The State Board of
27 Elections shall promulgate rules, pursuant to chapter 1-26, prescribing the procedures by
28 which the county auditor will conduct absentee voting, collect completed ballots, and
29 secure completed ballots at a nursing facility, assisted living center, or hospital, as defined
30 in § 34-12-1.1.

31 **Section 11. That § 12-19-9.2 be AMENDED:**

1 **12-19-9.2.** ~~Whenever~~If, prior to the casting of absentee ballots, it is made to
 2 appear by due proof to the county auditor or election board that any voter who has marked
 3 and forwarded an absentee ballot ~~has died~~ is no longer eligible to vote due to death, felony
 4 conviction, or mental incompetence prior to the opening of the polls on the date of the
 5 election, the ballot of the voter ~~shall~~ must be returned in the ~~unsealed~~ sealed return
 6 envelope with the evidence of ~~death~~ the disqualifying factor listed in this section attached
 7 and the envelope marked accordingly with one of the following statements:

- 8 (1) "Unopened by reason of death of voter";
 9 (2) Unopened by reason of felony conviction of voter; or
 10 (3) Unopened by reason of mental incompetence of voter.

11 The marked envelope must be returned to the officer in charge of the conduct of
 12 the election. A returned absentee ballot deemed ineligible may not be opened or counted.
 13 The casting of any such ballot shall not invalidate the election.

14 **Section 12. That § 12-19-10 be AMENDED:**

15 **12-19-10.** Upon receipt of the sealed return envelope containing the voted ballots,
 16 the person in charge of the election or their designee shall mark the date of receipt on the
 17 envelope. The person in charge of the election shall keep it the absentee ballot in a safe
 18 place without opening the envelope or breaking the seal thereof and shall, except as
 19 provided by § 12-19-42, deliver it to the precinct superintendent of election of the voter's
 20 home precinct. The person in charge of the election shall have the absentee ballots
 21 delivered with the election supplies, or if received later, then prior to the close of the polls.
 22 If the election board is not otherwise engaged in official duties, or if there are absentee
 23 ballots not processed when the polls close, immediately thereafter, the board ~~shall~~ must
 24 carefully compare the statement on the reverse side of the official return envelope with
 25 the written application received from the officer in charge of the election without opening
 26 or breaking the seal of the return envelope. If the ballot is contained in a combined
 27 absentee ballot application/return envelope, the comparison of the statement and the
 28 application ~~shall~~ must be omitted. The board shall enter the voter's name on the election
 29 pollbook and mark the registration list if:

- 30 (1) ~~The ballots~~ ballot received ~~were~~ was voted by the voter whose name appears on
 31 the statement;
 32 (2) The voter is registered in ~~such~~ the precinct and has not previously voted in that
 33 precinct at the election; and
 34 (3) The written application and statement were both signed by the voter.

1 The board shall then open the envelope without opening, unfolding or examining
 2 the ballots the envelope may contain, stamp the ballots with the official stamp, and deposit
 3 the ballots with the other ballots cast at the election. If the board determines that an
 4 absentee ballot envelope cannot be opened because the envelope does not meet the
 5 requirements for opening, the reason ~~shall~~ must be written on the envelope, signed by a
 6 member of the board, and the envelope placed in a larger envelope for unopened absentee
 7 ballots.

8 ~~No person may,~~ It is a Class 2 misdemeanor for a person, prior to the counting of
 9 the votes, to open, unfold, or examine any ballot, or make any communication to any
 10 person concerning the markings or contents of the ballot, or to create any record
 11 associating an individual voter with a ballot. ~~A violation of the preceding sentence is a Class~~
 12 ~~2 misdemeanor.~~

13 **Section 13. That § 12-19-10.1 be AMENDED:**

14 **12-19-10.1.** If a county uses an absentee ballot precinct at the building where the
 15 county auditor is located to process absentee ballots on election day for a federal, state,
 16 or county election, the county has the option to validate the absentee ballot signatures in
 17 the county auditor's office. The county auditor shall follow the provisions of § 12-19-10
 18 except for the following:

- 19 (1) The county auditor, at anytime during the absentee voting timeframe, shall
 20 carefully compare the statement on the reverse side of the official return envelope
 21 with the written application without opening or breaking the seal of the return
 22 envelope; and
 23 (2) If the county auditor determines that both signatures match:
 24 (a) The application for absentee ballot does not need to be sent to the absentee
 25 precinct board; and
 26 (b) The county auditor shall initial the envelope after the determination that
 27 signatures do match.

28 A violation of this section is a Class 2 misdemeanor.

29 **Section 14. That § 12-19-12 be AMENDED:**

30 **12-19-12.** If an absentee ballot is delivered to a polling place, absentee counting
 31 board, or the office of the person in charge of the election after the polls are closed in the
 32 county or local jurisdiction, the absentee ballot may not be counted or opened.

1 **Section 15. That § 12-19-14 be AMENDED:**

2 **12-19-14.** Any voter who, having procured an official ballot ~~or ballots~~ or a
3 Uniformed and Overseas Citizens Absentee Voting Act ~~(UOCAVA)~~ ballot link as provided in
4 §§ 12-19-1 to 12-19-12, inclusive, intentionally disposes of a ballot in any manner other
5 than as provided in ~~such those~~ sections or provides the ~~UOCAVA~~ ballot link to any other
6 person is guilty of a Class 2 misdemeanor. The UOCAVA Uniformed and Overseas Citizens
7 Absentee Voting Act ballot link is the internet URL for accessing an electronically provided
8 absentee ballot.

9 **Section 16. That § 12-19-44 be AMENDED:**

10 **12-19-44.** ~~The room occupied by the absentee ballot counting board shall be open~~
11 ~~to any person for the purpose of observing the counting process~~ The process of sorting,
12 validating, and counting absentee ballots must be open to poll watchers for the purpose
13 of observing the process. Poll watcher shall keep a reasonable distance from ballots and
14 identification information to protect the privacy of absentee voters. No record associating
15 an individual voter with a ballot may be created. A violation of this section is a Class 2
16 misdemeanor.

17 **Section 17. That § 12-19-49 be REPEALED:**

18 ~~If, prior to the casting of absentee ballots, the person in charge of the election or~~
19 ~~absentee ballot counting board shall have sufficient cause to believe that any voter who~~
20 ~~has marked and forwarded an absentee ballot has died prior to the opening of the polls~~
21 ~~on the date of the election, the ballot of the voter shall be returned in the sealed return~~
22 ~~envelope with the evidence of death attached and the envelope marked "Unopened by~~
23 ~~reason of death of voter" to the person in charge of the election. The casting of any such~~
24 ~~ballot, however, shall not invalidate the election.~~

25 **Section 18. That § 12-19-54 be AMENDED:**

26 **12-19-54.** No person may employ, reward, or compensate any person to assist
27 voters based on the number of voters assisted. Nothing in this section prohibits any person
28 from hiring a person paid on an hourly or salaried basis to assist voters. Any violation of
29 this section is a Class ~~2~~ 1 misdemeanor.

30 **Section 19. That § 12-19-55 be AMENDED:**

1 **12-19-55.** No person may receive any wages, reward, or compensation for
2 assisting voters based on the number of voters assisted. Nothing in this section prohibits
3 any person from being employed on an hourly or salaried basis to assist voters. Any
4 violation of this section is a Class ~~2~~1 misdemeanor.

5 **Section 20. That chapter 12-19 be amended with a NEW SECTION:**

6 No person may distribute an absentee ballot application to a voter that is prefilled
7 with the voter's name and registration address. This provision does not apply to a person
8 who is authorized to request an absentee ballot for a voter or a person assisting a voter
9 who requires assistance for reason of an inability to read or write, blindness, or other
10 physical disability.

11 The person in charge of the election or their appointed designee may prefill an
12 absentee ballot application for a voter who requests an application.

13 **Section 21. That chapter 12-19 be amended with a NEW SECTION:**

14 The person in charge of the election may not establish or place, or allow any
15 individual to establish or place, an absentee ballot drop box within the official's jurisdiction.
16 A completed absentee ballot may only be returned to an office of the individual in charge
17 of the election pursuant to § 12-19-7.

18 For the purposes of this section, the term, absentee ballot drop box, means a
19 receptacle or container into which an individual may deposit a completed absentee ballot.
20 This term excludes a county auditor's means for physically securing a completed absentee
21 ballot as required by § 12-19-10 or 12-19-42, including a secured and monitored
22 receptacle or container at the office of the individual in charge of the election. The State
23 Board of Elections shall promulgate rules, pursuant to chapter 1-26, prescribing the
24 requirements to ensure the security of the receptacle or container located at the office of
25 the individual in charge of the election.

26 A violation of this section is a Class 2 misdemeanor.

27 **Section 22. That § 12-19-48 be REPEALED:**

28 ~~If an absentee ballot is delivered to an absentee ballot counting board after the~~
29 ~~polls are closed the absentee ballot may not be counted or opened.~~