

SENATE BILL NO. 757

January 28, 2020, Introduced by Senators JOHNSON, WOJNO, BULLOCK, LUCIDO, NESBITT, RUNESTAD, MACDONALD, MACGREGOR and 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, and by adding sections 14b and 24k.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 14b. As used in this act, "absent voter ballot secrecy**
2 **envelope container" means a container described in section 24k that**

1 is used for storing and securing absent voter ballot secrecy
2 envelopes that are removed from the absent voter ballot return
3 envelopes on the day before election day as provided in section
4 765.

5 Sec. 24k. (1) An absent voter ballot secrecy envelope
6 container includes a ballot bag, box, transfer case, or other
7 container used to store and secure absent voter ballot secrecy
8 envelopes.

9 (2) A manufacturer or distributor of an absent voter ballot
10 secrecy envelope container shall submit an absent voter ballot
11 secrecy envelope container to the secretary of state for approval
12 under the requirements of subsection (3) before the container is
13 sold to a city or township for use at an election.

14 (3) The secretary of state shall not approve an absent voter
15 ballot secrecy envelope container unless the container meets both
16 of the following requirements:

17 (a) The container is made of metal, plastic, fiberglass, or
18 other material, that provides resistance to tampering.

19 (b) The container is capable of being sealed.

20 (4) Before June 1, 2020, and before June 1 of every fourth
21 year after 2020, each board of county canvassers shall examine the
22 absent voter ballot secrecy envelope containers to be used in any
23 election conducted under this act. The board of county canvassers
24 shall designate on the absent voter ballot secrecy envelope
25 container that the absent voter ballot secrecy envelope container
26 does or does not meet the requirements under subsection (3). An
27 absent voter ballot secrecy envelope container that is not approved
28 by a board of county canvassers must not be used to store and
29 secure any absent voter ballot secrecy envelopes.

1 (5) A city or township clerk may procure, at the expense of
2 the respective city or township, absent voter ballot secrecy
3 envelope containers that are approved under this section.

4 (6) A city or township clerk who uses or permits the use of an
5 absent voter ballot secrecy envelope container that is not approved
6 under this section is guilty of a misdemeanor.

7 Sec. 765. (1) A—**Except as otherwise provided in subsection**
8 **(6)**, a clerk who receives an absent voter ballot return envelope
9 containing the marked ballots of an absent voter shall not open
10 that envelope before delivering the envelope to the board of
11 election inspectors as provided in this section. ~~The~~**Except as**
12 **otherwise provided in subsection (6)**, the city or township clerk
13 shall safely keep in his or her office until election day any
14 absent voter ballot return envelopes received by the clerk before
15 election day containing the marked ballots of an absent voter.

16 (2) Before the opening of the polls on election day or as soon
17 after the opening of the polls as possible, the clerk shall deliver
18 the absent voter ballot return envelopes to the chairperson or
19 other member of the board of election inspectors in the absent
20 voter's precinct, together with the signed absent voter ballot
21 applications received by the clerk from any voters of that precinct
22 and the clerk's list or record kept relative to those absent
23 voters. However, if higher numbered ballots are used under section
24 717, the clerk shall retain the applications and lists in his or
25 her office and shall keep the applications and lists open to public
26 inspection at all reasonable hours. Absent voter ballots must not
27 be tabulated before the opening of the polls on election day.

28 (3) The city or township clerk, or authorized designee of the
29 clerk, shall call for and receive absent voter ballots from the

1 post office at which the city or township clerk regularly receives
2 mail addressed to the city or township clerk on election day. Any
3 envelopes containing absent voter ballots that are received from
4 the post office or from voters who voted by absentee ballot in
5 person in the clerk's office on election day must be delivered to
6 the board of election inspectors or the absent voter counting
7 boards to be tabulated.

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

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

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

8 (6) If the clerk of a city or township with a population of
9 40,000 or more provides written notice in compliance with this
10 subsection to the secretary of state 40 days or more before
11 election day, that city or township clerk, or his or her authorized
12 designee, may between the hours of 9 a.m. and 5 p.m. on the day
13 before election day perform certain absent voter ballot pre-
14 processing activities as described in this subsection. The written
15 notice provided to the secretary of state must include the location
16 and hours that the absent voter ballot return envelopes will be
17 opened in that city or township. The secretary of state shall post
18 any written notice received from the clerk of a city or township
19 under this subsection on the department of state website. After
20 providing written notice to the secretary of state in compliance
21 with this subsection, a city or township clerk, or his or her
22 authorized designee, is only authorized to open absent voter ballot
23 return envelopes on the day before election day and is not
24 authorized to remove absent voter ballots from the absent voter
25 ballot secrecy envelopes. The opening of absent voter ballot return
26 envelopes must be done at a location designated by the city or
27 township clerk, and the location and opening of absent voter ballot
28 return envelopes must be accessible to challengers as described in
29 section 730. Once the absent voter ballot return envelopes have

1 been opened as provided in this subsection, the absent voter ballot
2 secrecy envelopes containing the absent voter ballots to be counted
3 must be stored and secured in an absent voter ballot secrecy
4 envelope container, as described in section 24k, and sealed. The
5 city or township clerk shall record the seal number and follow all
6 other policies and procedures adopted by the secretary of state
7 regarding absent voter ballots. The city or township clerk shall
8 store the absent voter ballot secrecy envelope container containing
9 the absent voter ballot secrecy envelopes in a secure location
10 until election day.

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

22 (a) The election day precinct returns.

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

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

26 (2) The board of election commissioners shall establish the
27 absent voter counting boards. The board of election commissioners
28 shall appoint the election inspectors to those absent voter
29 counting boards not less than 21 days or more than 40 days before

1 the election at which they are to be used. Sections 673a and 674
2 apply to the appointment of election inspectors to absent voter
3 counting boards under this section. The board of election
4 commissioners shall determine the number of ballots that may be
5 expeditiously counted by an absent voter counting board in a
6 reasonable period of time, taking into consideration the size and
7 complexity of the ballot to be counted pursuant to the guidelines
8 of the secretary of state. Combined ballots must be regarded as the
9 number of ballots as there are sections to the ballot.

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

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

1 election inspectors, apply to absent voter counting places. The
2 provisions of this section relating to placing of absent voter
3 ballots on electronic voting systems apply. More than 1 absent
4 voter counting board may be located in 1 building.

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

11 (6) Absent voter ballots received by the clerk before election
12 day must be delivered to the absent voter counting board by the
13 clerk or the clerk's authorized assistant at the time the election
14 inspectors of the absent voter counting boards report for duty,
15 which time must be established by the board of election
16 commissioners. Absent voter ballots received by the clerk before
17 the time set for the closing of the polls on election day must be
18 delivered to the absent voter counting boards. ~~Absent~~ **Except as**
19 **otherwise provided in section 765(6), absent** voter ballots must be
20 delivered to the absent voter counting boards in the sealed absent
21 voter ballot return envelopes in which they were returned to the
22 clerk. Written or stamped on each of the return envelopes must be
23 the time and the date that the envelope was received by the clerk
24 and a statement by the clerk that the signatures of the absent
25 voters on the envelopes have been checked and found to agree with
26 the signatures of the voters on the registration cards or the
27 digitized signatures of voters contained in the qualified voter
28 file as provided under section 766. If a signature on the
29 registration card or a digitized signature contained in the

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

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

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

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

1 absent voter counting board:

2 "I (name of person taking oath) do solemnly swear (or affirm)
3 that I shall not communicate in any way any information relative to
4 the processing or tallying of votes that may come to me while in
5 this counting place until after the polls are closed.".

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

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

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

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

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

26 Sec. 765b. (1) Not later than 2 p.m. on the Saturday
27 immediately before an election, an elector may submit a signed,
28 written statement to his or her city or township clerk requesting
29 that the clerk do both of the following:

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

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

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

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

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

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

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

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

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

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

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

8 (7) An elector who has lost his or her absent voter ballot or
9 not yet received his or her absent voter ballot in the mail may,
10 before 4 p.m. on the day before an election except Sunday or a
11 legal holiday, appear in person at his or her city or township
12 clerk's office to 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 (8) Upon receipt of the signed, written statement from an
19 elector described in subsection (7)(a), the city or township clerk
20 shall indicate in the qualified voter file that the original ballot
21 is spoiled. In addition, the city or township clerk shall issue the
22 elector a new absent voter ballot that must be voted by the elector
23 in the clerk's office.

24 **(9) If the clerk of a city or township provides written notice**
25 **to the secretary of state as provided in section 765(6) to allow**
26 **the city or township clerk, or his or her authorized designee, to**
27 **open absent voter ballot return envelopes between the hours of 9**
28 **a.m. and 5 p.m. on the day before election day, an elector who has**
29 **voted and returned his or her absent voter ballot to the city or**

1 township clerk is not permitted to spoil his or her absent voter
2 ballot after 9 a.m. on the day before election day.