

**SUBSTITUTE FOR
SENATE BILL NO. 757**

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), sections 765 and 765a as amended by 2020 PA 95, 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**
3 **is used for storing and securing absent voter ballot secrecy**
4 **envelopes that are removed from the absent voter ballot return**
5 **envelopes on the day before election day as provided in section**
6 **765.**

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

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

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

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

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

16 (4) Before October 1, 2020, each board of county canvassers
17 shall examine the absent voter ballot secrecy envelope containers
18 to be used at the November 3, 2020 general election conducted under
19 this act. The board of county canvassers shall designate on the
20 absent voter ballot secrecy envelope container that the absent
21 voter ballot secrecy envelope container does or does not meet the
22 requirements under subsection (3). An absent voter ballot secrecy
23 envelope container that is not approved by a board of county
24 canvassers must not be used to store and secure any absent voter
25 ballot secrecy envelopes.

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

29 (6) A city or township clerk who uses or permits the use of an

1 absent voter ballot secrecy envelope container that is not approved
2 under this section is guilty of a misdemeanor.

3 (7) This section does not apply after December 31, 2020.

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

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

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

1 the post office or from voters who voted by absentee ballot in
2 person in the clerk's office on election day must be delivered to
3 the board of election inspectors or, except as otherwise provided
4 in section 764d, the absent voter counting boards to be tabulated.

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

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

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

5 (6) For the November 3, 2020 general election only, if the
6 clerk of a city or township with a population of at least 25,000
7 provides written notice in compliance with this subsection to the
8 secretary of state 20 days or more before election day, that city
9 or township clerk, or his or her authorized designee, may between
10 the hours of 10 a.m. and 8 p.m. on the day before election day
11 perform certain absent voter ballot pre-processing activities as
12 described in this subsection. The written notice provided to the
13 secretary of state must include the location and hours that the
14 absent voter ballot return envelopes will be opened in that city or
15 township. The secretary of state shall post any written notice
16 received from the clerk of a city or township under this subsection
17 on the department of state website. In addition, the clerk of the
18 city or township shall post the written notice provided to the
19 secretary of state on the city or township website. The board of
20 election commissioners shall appoint election inspectors to the
21 location where absent voter ballot return envelopes will be opened
22 in that city or township not less than 21 days or more than 40 days
23 before the day at which they are to be used. Election inspectors
24 may be appointed by the board of election commissioners under this
25 subsection before written notice, that includes the location and
26 hours that the absent voter ballot return envelopes will be opened
27 in that city or township, is provided to the secretary of state.
28 Sections 673a and 674 apply to the appointment of election
29 inspectors under this subsection. All requirements for election

1 inspectors appointed to an absent voter counting board under
2 section 765a apply to election inspectors appointed under this
3 subsection. At all times, at least 1 election inspector from each
4 major political party must be present at the location and the
5 policies and procedures adopted by the secretary of state regarding
6 the handling of absent voter ballot return envelopes and absent
7 voter ballot secrecy envelopes must be followed. After providing
8 written notice to the secretary of state in compliance with this
9 subsection, a city or township clerk, or his or her authorized
10 designee, is only authorized to open absent voter ballot return
11 envelopes on the day before election day and is not authorized to
12 remove absent voter ballots from the absent voter ballot secrecy
13 envelopes. If an opened absent voter ballot return envelope
14 contains an absent voter ballot that is not contained in an absent
15 voter ballot secrecy envelope, the city or township clerk, or his
16 or her designee, shall immediately insert that absent voter ballot
17 into an absent voter ballot secrecy envelope. The opening of absent
18 voter ballot return envelopes must be done at a location designated
19 by the city or township clerk, and the location and opening of
20 absent voter ballot return envelopes must be accessible to
21 challengers as described in section 730. The election inspectors
22 appointed to the location where absent voter ballot return
23 envelopes will be opened in that city or township must never leave
24 the absent voter ballot secrecy envelopes unattended. Once the
25 absent voter ballot return envelopes have been opened as provided
26 in this subsection, the absent voter ballot secrecy envelopes
27 containing the absent voter ballots to be counted must be stored
28 and secured in an absent voter ballot secrecy envelope container,
29 as described in section 24k, and sealed. The city or township clerk

1 shall record the seal number in the poll book, or an addendum to
2 the poll book, and follow all other policies and procedures adopted
3 by the secretary of state regarding absent voter ballots. The poll
4 book, or an addendum to the poll book, must be signed and dated by
5 1 election inspector from each major political party who is present
6 at the location on the day before election day. The city or
7 township clerk shall store the absent voter ballot secrecy envelope
8 container containing the absent voter ballot secrecy envelopes in a
9 secure location until election day.

10 (7) The election inspectors who are appointed under subsection
11 (6) shall record in the poll book, or an addendum to the poll book,
12 all of the following:

13 (a) The number of absent voter ballot return envelopes that
14 were opened on the day before election day.

15 (b) The number of absent voter ballot return envelopes
16 delivered to the election inspectors that did not contain an
17 elector's signature and that were returned to the city or township
18 clerk.

19 (c) The number of absent voter ballot return envelopes that
20 were challenged, not opened by the election inspectors, and set
21 aside to be processed by the election inspectors on election day.

22 (8) The election inspectors who are appointed to an absent
23 voter counting board on election day as provided in section 765a
24 shall do all of the following:

25 (a) Verify the seal number recorded in the poll book, or an
26 addendum to the poll book, for any absent voter ballot secrecy
27 envelope container delivered to the absent voter counting board.

28 (b) Count and record in the poll book, or an addendum to the
29 poll book, both of the following:

1 (i) The number of absent voter ballot return envelopes opened
2 by the election inspectors on the day before election day as
3 provided under subsection (6) and the number of absent voter ballot
4 secrecy envelopes delivered to the absent voter counting board on
5 election day.

6 (ii) The number of absent voter ballot return envelopes that
7 were challenged, not opened by the election inspectors on the day
8 before election day, and set aside to be processed by the election
9 inspectors on election day.

10 (9) Not later than March 1, 2021, the secretary of state shall
11 provide a written report to the house and senate committees dealing
12 with elections that contains all of the following information:

13 (a) The number of cities and townships that performed absent
14 voter ballot pre-processing activities as described in subsection
15 (6).

16 (b) The names of the cities and townships that performed
17 absent voter ballot pre-processing activities as described in
18 subsection (6), and all of the following information for each of
19 those cities and townships:

20 (i) The number of registered electors in each city or township.

21 (ii) The number of active registered electors in each city or
22 township.

23 (iii) The number of electors who voted by absent voter ballot in
24 each city or township.

25 (iv) The number of electors who voted in person on election day
26 in each city or township.

27 (v) The number of absent voter ballots that were not returned
28 in each city or township.

29 (vi) The number of electors on a permanent absent voter list in

1 each city or township, if applicable.

2 (vii) The number of ballots that had to be duplicated in each
3 city or township.

4 (c) The total number of absent voter ballot return envelopes
5 that were opened on the day before election day.

6 (d) The total number of absent voter ballot return envelopes
7 delivered to the election inspectors that did not contain an
8 elector's signature and that were returned to the city or township
9 clerk.

10 (e) The total number of absent voter ballot return envelopes
11 that were challenged, not opened by the election inspectors, and
12 set aside to be processed by the election inspectors on election
13 day.

14 (f) The total number of absent voter ballot secrecy envelopes
15 that were stored in an absent voter ballot secrecy envelope
16 container.

17 (g) For each city or township that performed absent voter
18 ballot pre-processing activities as described in subsection (6),
19 whether the number of absent voter ballot return envelopes opened
20 on the day before election day matched the number of absent voter
21 ballot secrecy envelopes delivered to the absent voter counting
22 board on election day.

23 Sec. 765a. (1) Subject to section 764d, if a city or township
24 decides to use absent voter counting boards, the board of election
25 commissioners of that city or township shall establish an absent
26 voter counting board for each election day precinct in that city or
27 township. The ballot form of an absent voter counting board must
28 correspond to the ballot form of the election day precinct for
29 which it is established. After the polls close on election day, the

1 county, city, or township clerk responsible for producing the
2 accumulation report of the election results submitted by the boards
3 of precinct election inspectors shall format the accumulation
4 report to clearly indicate all of the following:

5 (a) The election day precinct returns.

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

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

9 (2) Subject to section 764d, the board of election
10 commissioners shall establish the absent voter counting boards.
11 Subject to section 764d, the board of election commissioners shall
12 appoint the election inspectors to those absent voter counting
13 boards not less than 21 days or more than 40 days before the
14 election at which they are to be used. Sections 673a and 674 apply
15 to the appointment of election inspectors to absent voter counting
16 boards under this section. The board of election commissioners
17 shall determine the number of ballots that may be expeditiously
18 counted by an absent voter counting board in a reasonable period of
19 time, taking into consideration the size and complexity of the
20 ballot to be counted pursuant to the guidelines of the secretary of
21 state. Combined ballots must be regarded as the number of ballots
22 as there are sections to the ballot.

23 (3) If more than 1 absent voter counting board is to be used,
24 the city or township clerk shall determine the number of electronic
25 voting systems or the number of ballot boxes and the number of
26 election inspectors to be used in each of the absent voter counting
27 boards and to which absent voter counting board the absent voter
28 ballots for each precinct are assigned for counting.

29 (4) In a city or township that uses absent voter counting

1 boards under this section, absent voter ballots must be counted in
2 the manner provided in this section and, except as otherwise
3 provided in section 764d, absent voter ballots must not be
4 delivered to the polling places. Subject to section 764d, the board
5 of election commissioners shall provide a place for each absent
6 voter counting board to count the absent voter ballots. Section 662
7 applies to the designation and prescribing of the absent voter
8 counting place or places in which the absent voter counting board
9 performs its duties under this section, except the location may be
10 in a different jurisdiction if the county provides a tabulator for
11 use at a central absent voter counting board location in that
12 county. The places must be designated as absent voter counting
13 places. Except as otherwise provided in this section, laws relating
14 to paper ballot precincts, including laws relating to the
15 appointment of election inspectors, apply to absent voter counting
16 places. The provisions of this section relating to placing of
17 absent voter ballots on electronic voting systems apply. More than
18 1 absent voter counting board may be located in 1 building.

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

25 (6) Subject to section 764d, absent voter ballots received by
26 the clerk before election day must be delivered to the absent voter
27 counting board by the clerk or the clerk's authorized assistant at
28 the time the election inspectors of the absent voter counting
29 boards report for duty, which time must be established by the board

1 of election commissioners. Except as otherwise provided in section
2 764d, absent voter ballots received by the clerk before the time
3 set for the closing of the polls on election day must be delivered
4 to the absent voter counting boards. ~~Absent~~ **Except as otherwise**
5 **provided in section 765(6), absent** voter ballots must be delivered
6 to the absent voter counting boards or combined absent voter
7 counting boards in the sealed absent voter ballot return envelopes
8 in which they were returned to the clerk. Written or stamped on
9 each of the return envelopes must be the time and the date that the
10 envelope was received by the clerk and a statement by the clerk
11 that the signatures of the absent voters on the envelopes have been
12 checked and found to agree with the signatures of the voters on the
13 registration cards or the digitized signatures of voters contained
14 in the qualified voter file as provided under section 766. If a
15 signature on the registration card or a digitized signature
16 contained in the qualified voter file and on the absent voter
17 ballot return envelope does not agree as provided under section
18 766, if the absent voter failed to sign the envelope, or if the
19 statement of the absent voter is not properly executed, the clerk
20 shall mark the envelope "rejected" and the reason for the rejection
21 and shall place his or her name under the notation. An envelope
22 marked "rejected" must not be delivered to the absent voter
23 counting board or combined absent voter counting board but must be
24 preserved by the clerk until other ballots are destroyed in the
25 manner provided in this act. The clerk shall also comply with
26 section 765(5).

27 (7) This chapter does not prohibit an absent voter from voting
28 in person within the voter's precinct at an election,
29 notwithstanding that the voter may have applied for an absent voter

1 ballot and the ballot may have been mailed or otherwise delivered
2 to the voter. The voter, the election inspectors, and other
3 election officials shall proceed in the manner prescribed in
4 section 769. The clerk shall preserve the canceled ballots for 2
5 years.

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

14 (9) An election inspector, challenger, or any other person in
15 attendance at an absent voter counting place or combined absent
16 voter counting place at any time after the processing of ballots
17 has begun shall take and sign the following oath that may be
18 administered by the chairperson or a member of the absent voter
19 counting board or combined absent voter counting board:

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

24 (10) The oaths administered under subsection (9) must be
25 placed in an envelope provided for the purpose and sealed with the
26 red state seal. Following the election, the oaths must be delivered
27 to the city or township clerk. Except as otherwise provided in
28 subsection (12), a person in attendance at the absent voter
29 counting place or combined absent voter counting place shall not

1 leave the counting place after the tallying has begun until the
2 polls close. A person who causes the polls to be closed or who
3 discloses an election result or in any manner characterizes how any
4 ballot being counted has been voted in a voting precinct before the
5 time the polls can be legally closed on election day is guilty of a
6 felony.

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

12 (12) Subject to this subsection, a local election official who
13 has established an absent voter counting board or combined absent
14 voter counting board, the deputy or employee of that local election
15 official, an employee of the state bureau of elections, a county
16 clerk, an employee of a county clerk, or a representative of a
17 voting equipment company may enter and leave an absent voter
18 counting board or combined absent voter counting board after the
19 tally has begun but before the polls close. A person described in
20 this subsection may enter an absent voter counting board or
21 combined absent voter counting board only for the purpose of
22 responding to an inquiry from an election inspector or a challenger
23 or providing instructions on the operation of the counting board.
24 Before entering an absent voter counting board or combined absent
25 voter counting board, a person described in this subsection must
26 take and sign the oath prescribed in subsection (9). The
27 chairperson of the absent voter counting board or combined absent
28 voter counting board shall record in the poll book the name of a
29 person described in this subsection who enters the absent voter

1 counting board or combined absent voter counting board. A person
2 described in this subsection who enters an absent voter counting
3 board or combined absent voter counting board and who discloses an
4 election result or in any manner characterizes how any ballot being
5 counted has been voted in a precinct before the time the polls can
6 be legally closed on election day is guilty of a felony. As used in
7 this subsection, "local election official" means a county, city, or
8 township clerk.

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

24 Sec. 765b. (1) Not later than ~~2-5~~ p.m. on the ~~Saturday-Friday~~
25 immediately before an election, an elector may submit a signed,
26 written statement to his or her city or township clerk requesting
27 that the clerk do both of the following:

- 28 (a) Spoil the elector's absent voter ballot.
29 (b) Provide or mail a new absent voter ballot to the elector.

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

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

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

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

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

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

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

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

29 (6) Upon receipt of a signed, written statement from an

1 elector as described in subsection (5), 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 provide
4 or mail a new absent voter ballot to that elector.

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

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

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

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