

MICHIGAN ELECTION LAW (EXCERPT)
Act 116 of 1954

***** 168.765a.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT
OF THE 2023 REGULAR SESSION SINE DIE *****

168.765a.amended Absent voter counting board; processing and tabulating of ballots before election; written notice; instructions and procedures; prohibition of photography or recording within counting place; violations; penalties.

Sec. 765a. (1) Subject to section 764d, if a city or township decides to use absent voter counting boards, the board of election commissioners of that city or township shall establish an absent voter counting board for each election day precinct in that city or township. The ballot form of an absent voter counting board must correspond to the ballot form of the election day precinct for which it is established. A city or township with 250 or more precincts may establish at least 1 absent voter counting board for each ballot form containing identical offices and candidate names, and that is considered a separate precinct for purposes of this section. After the polls close on election day, the county, city, or township clerk responsible for producing the accumulation report of the election results shall format the accumulation report as required under section 798b.

(2) Subject to section 764d, the board of election commissioners shall appoint the election inspectors to absent voter counting boards not less than 21 days before the election at which the absent voter counting boards are to be used. Sections 673a and 674 apply to the appointment of election inspectors to absent voter counting boards under this section.

(3) If more than 1 absent voter counting board is to be used, the city or township clerk shall determine the number of electronic tabulators and the number of election inspectors to be used in each of the absent voter counting boards and to which absent voter counting board the absent voter ballots for each precinct are assigned for counting.

(4) In a city or township that uses absent voter counting boards under this section, the absent voter ballots must be counted in the manner provided in this section and, except as otherwise provided in section 764d, absent voter ballots must not be delivered to the polling places. Subject to section 764d, the board of election commissioners shall provide a place for each absent voter counting board to count the absent voter ballots. Section 662 applies to the designation of the absent voter counting place or places in which the absent voter ballots will be processed and tabulated by election inspectors assigned to the absent voter counting boards under this section, except the location may be in a different jurisdiction if the county provides a tabulator for use at a central absent voter counting board location in that county. The places must be designated as absent voter counting places. Except as otherwise provided in this section, laws relating to election day precincts, including laws relating to the appointment of election inspectors, apply to absent voter counting places. The provisions of this section relating to tabulating absent voter ballots by electronic voting systems apply. High-speed tabulators and software to support those high-speed tabulators, as a component of an electronic voting system approved by the board of state canvassers for use in this state, may be used to tabulate absent voter ballots in an absent voter counting board. There is no limit on the number of absent voter counting boards that may be assigned to 1 building.

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

(6) Except as otherwise provided in this section, the absent voter counting boards and combined absent voter counting boards shall process the ballots and returns in as nearly as possible the same manner as ballots are processed in election day precincts. The poll book may be combined with the absent voter list or record required by section 760, and the applications for absent voter ballots may be used as the poll list. Subject to subsection (11), the processing and tabulating of absent voter ballots must commence at the time set by the board of election commissioners, but no earlier than 7 a.m. on the day of the election.

(7) An election inspector, challenger, or any other individual in attendance at an absent voter counting place or combined absent voter counting place at any time after the processing of ballots has begun shall take and sign the following oath that may be administered by the clerk, a member of the clerk's staff, or the chairperson or a member of the absent voter counting board or combined absent voter counting board:

"I (name of individual taking oath) do solemnly swear (or affirm) that I shall not communicate in any way information relative to any ballots or the tabulation of votes that may come to me while in this counting place until after the polls are closed. Further, I shall not photograph, or audio or video record, within the counting

place, except for posted election results."

(8) The oaths administered under subsection (7) must be placed in an envelope provided for the purpose and sealed with the red state seal. Following the election, the oaths must be delivered to the city or township clerk. Subject to this subsection, the clerk of a city or township may allow the election inspectors appointed to an absent voter counting board in that city or township to work in shifts. A second or subsequent shift of election inspectors appointed for an absent voter counting board may begin that shift at the time provided by the city or township clerk. If the election inspectors appointed to an absent voter counting board are authorized to work in shifts, at no time shall the absent voter ballots be left unattended during the transition from one shift to the next shift, or at any other time during the day after ballots are removed from the absent voter ballot return envelopes and before the absent voter ballots are sealed in the ballot container. At all times while absent voter ballots are being processed and tabulated, at least 1 election inspector from each major political party must be present at the absent voter counting place and the policies and procedures adopted by the secretary of state regarding the counting of absent voter ballots must be followed.

(9) An individual who causes the polls to be closed or who discloses an election result before the polls can be legally closed on election day or in any manner characterizes how any ballot being counted has been marked is guilty of a felony.

(10) Tabulated absent voter ballots must be placed in an approved ballot container, and the ballot container must be sealed after all the ballots are tabulated in the manner provided by this act for election day precincts. The seal numbers must be recorded on the statement sheet, on the ballot container certificate, and in the poll book or addendum to the poll book.

(11) The board of election commissioners of a city or township with a population of at least 5,000, or a board of county election commissioners as provided under section 764d, may authorize that absent voter counting boards be established under subsection (1) to process and tabulate absent voter ballots between the hours of 7 a.m. and 8 p.m. on any of the 8 days before election day, beginning on the second Monday before election day and ending on the Monday immediately before election day. The board of election commissioners of any city or township, regardless of population size, may authorize and establish an absent voter counting board to process and tabulate absent voter ballots between the hours of 7 a.m. and 8 p.m. on the Monday immediately before election day.

(12) In order to participate in the processing and tabulation of absent voter ballots before election day under subsection (11), the clerk of a county, city, or township shall submit a written notice to the secretary of state no later than 28 days before election day stating the clerk's intent to participate in the processing and tabulation of absent voter ballots before election day. No later than 20 days before an election, the secretary of state shall publish on the department of state's website a list of those cities and townships that have notified the secretary of state of an intent to process and tabulate absent voter ballots before election day. No later than 18 days before an election, a clerk who notified the secretary of state of the clerk's intent to process and tabulate absent voter ballots before election day must post on the website of the city or township, if available, and in the clerk's office, a notice providing the location of the absent voter counting place, the dates and hours of operation of the absent voter counting place, and the number of election inspectors who will process and tabulate absent voter ballots at the absent voter counting place. If the location, dates, hours, or number of election inspectors changes, the clerk must publicly post a revised notice as soon as possible, but no later than the eleventh day before an election, on the website of the city or township, if available, and in the clerk's office. A revised notice must include the updated location, dates, hours, and number of election inspectors. If the clerk changes the number of election inspectors on subsequent days after processing and tabulating begins, the clerk shall post the updated number of election inspectors on the website of the city or township, if available, and in the clerk's office, no later than 10 a.m. on the day before the changes occur. If a city or township clerk fails to post a notice by 10 a.m. on the day before a change reducing the number election inspectors occurs, the clerk shall allow the number of challengers to remain at the same level even though the reduction in the number of election inspectors may have reduced the number of allowed challengers.

(13) For each day of processing and tabulation of absent voter ballots before election day, a participating city or township clerk shall deliver the absent voter ballots approved for tabulation to an absent voter counting board. The instructions and procedures adopted by the secretary of state regarding the processing and tabulating of absent voter ballots before election day must be followed. Absent voter ballots must be processed and tabulated in the same manner and under the same requirements as absent voter ballots are processed and tabulated on election day. Election results must not be generated, printed, or reported before 8 p.m. on election day.

(14) During the processing and tabulation of absent voter ballots before election day, each political party, and each incorporated organization or organized committee of interested citizens as described under sections 730 and 731, may designate 1 challenger for every 8 election inspectors serving at the absent voter counting

place. If there are 7 or fewer election inspectors serving at an absent voter counting place, each political party, and each incorporated organization or organized committee of interested citizens as designated under sections 730 and 731, may designate 1 challenger.

(15) During the processing and tabulation of absent voter ballots before election day, the election inspectors shall secure tabulated ballots in a sealed ballot container consistent with subsection (10) at the end of each day. Tabulated ballots may be added to a ballot container used on a previous day or may be placed in an unused ballot container. The election inspectors shall complete the poll book ballot summary at the conclusion of each day to account for absent voter ballot return envelopes and absent voter ballots processed and tabulated on that day. The poll book, or an addendum to the poll book, must be signed and dated by 1 election inspector from each major political party who is present at the location after tabulation is completed each day. The city or township clerk shall post the number of absent voter ballots tabulated each day on the website of that city or township, if available, and in the clerk's office.

(16) A clerk shall not deliver any absent voter ballots received on a day early voting is being conducted to an absent voter counting board to be processed or tabulated until the following day. An absent voter ballot may be processed and tabulated only after receipt of the absent voter ballot appears on the registration list or an addendum to the registration list in an early voting site and the voter history of electors casting an early voting ballot on the previous day is recorded in the qualified voter file. An absent voter ballot must be canceled if the absent voter cast a ballot at an early voting site.

(17) The secretary of state shall develop instructions consistent with this act for the conduct of absent voter counting boards or combined absent voter counting boards. The secretary of state shall distribute the instructions developed under this subsection to county, city, and township clerks 40 days or more before a general election in which absent voter counting boards or combined absent voter counting boards will be used. A county, city, or township clerk shall make the instructions developed under this subsection available to the public and shall make the instructions available for inspection by challengers in attendance at an absent voter counting board or combined absent voter counting board. The instructions developed under this subsection are binding on the operation of an absent voter counting board or combined absent voter counting board used in an election conducted by a county, city, or township.

(18) Except as otherwise provided in this subsection, an individual shall not photograph, or audio or video record, within an absent voter counting place. A county, city, or township clerk, or an assistant of that clerk, shall expel an individual from the absent voter counting place if that individual violates this subsection. This subsection does not apply to any of the following:

(a) An individual who photographs, or audio or video records, posted election results within an absent voter counting place.

(b) A county, city, or township clerk, or an employee, assistant, or consultant of that clerk, if the photographing, or audio or video recording, is done in the performance of that individual's official duties.

(c) If authorized by an individual in charge of an absent voter counting place, the news media that take wide-angled photographs or video from a distance that does not disclose the face of any marked ballot.

(19) An individual shall not photograph or video record a ballot or any other election records, other than posted election results, in an absent voter counting place. An individual who violates this subsection is guilty of a misdemeanor.

History: Add. 2018, Act 123, Eff. Dec. 31, 2018;—Am. 2020, Act 95, Imd. Eff. June 23, 2020;—Am. 2020, Act 177, Imd. Eff. Oct. 6, 2020;—Am. 2023, Act 81, Eff. (sine die).

Popular name: Election Code