

# EXHIBIT D

R.C. § 3509.02

Baldwin's Ohio Revised Code Annotated [Currentness](#)

Title XXXV. Elections

Chapter 3509. Absent Voter's Ballots (Refs & Annos)

**3509.02 Who may vote absent voter's ballot**

(A) Any qualified elector who meets any of the following qualifications may vote by absent voter's ballots at an election:

- (1) The elector is sixty-two years of age or older.
- (2) The elector's employment as a full-time fire fighter, full-time peace officer as defined in division (B) of [section 2935.01 of the Revised Code](#), or full-time provider of emergency medical services may prevent the elector from voting at the elector's polling place on the day of the election.
- (3) The elector is a member of the organized militia, serving on active duty within this state, and will be unable to vote on election day on account of that active duty.
- (4) The elector will be absent from the elector's polling place on the day of an election because of the elector's entry or the entry of a member of the elector's family into a hospital for medical or surgical treatment.
- (5) The elector is confined in a jail or workhouse under sentence for a misdemeanor or is awaiting trial on a felony or misdemeanor charge.
- (6) The elector will be unable to vote on the day of an election on account of observance of the elector's religious belief.
- (7) The elector will be absent from the county in which the elector's voting residence is located on the day of an election.
- (8) The elector has a physical disability, illness, or infirmity.

(B) Any qualified elector who moves from one precinct to another within a county or changes his or her name and moves from one precinct to another within the county on or prior to the day of a general, primary, or special election and has not filed a notice of change of residence or change of name may vote by absent voter's ballots in that election as specified in division (B) or (G) of [section 3503.16 of the Revised Code](#). Any qualified elector who moves from one county to another county within the state on or prior to the day of the election at which the elector offers to vote and has not filed a notice of change of residence may vote by absent voter's ballots at that election as specified in division (C) of [section 3503.16 of the Revised Code](#).

(C) The secretary of state, an employee of the secretary of state, a member or employee of the board of elections or any person hired by the board to work at the office of the board temporarily for a specific election, or a polling place official, who is a qualified elector may vote by absent voter's ballots. Application shall be made to the board of elections of the county where his voting residence is situated.

(1995 H 99, eff. 8-22-95; 1994 S 300, eff. 1-1-95; 1992 H 438, eff. 9-23-92; 1990 H 237; 1980 H 1062; 1974 S 237, S 429; 1973 H 73; 1970 S 591; 1969 S 51; 132 v S 102; 127 v 741; 1953 H 1; GC 4785-134)

HISTORICAL AND STATUTORY NOTES

**Pre-1953 H 1 Amendments:** 122 v S 3; 118 v 223; 114 v 695; 113 v 307

CROSS REFERENCES

Aiding unqualified voters or inducing officer to accept their votes, penalty, [3599.25](#)  
Armed services absent voter's ballot, Ch 3511  
Ballot tampering, penalty, [3599.26](#)  
Idiots and insane persons not entitled to vote, [O Const Art V §6](#)  
Illegal voting, [3599.12](#)  
Impersonating another or conniving to obtain absent voter's ballot forbidden, [3599.21](#)  
Qualifications of electors, [2961.01](#), [3503.01](#); [O Const Art V §1, 4](#)

#### LIBRARY REFERENCES

[Elections](#)  [216.1](#).  
WESTLAW Topic No. [144](#).  
[C.J.S. Elections § 210](#).  
Am Jur 2d: [26, Elections § 247](#)  
[Validity of absentee voters' laws. 97 ALR2d 218](#)

#### LAW REVIEW AND JOURNAL COMMENTARIES

The Voting Booth with Steel Bars: Prisoners Voting Rights and *O'Brien v. Skinner*, Note. [3 Cap U L Rev 245 \(1974\)](#).

#### NOTES OF DECISIONS

In general [1](#)

1. In general

Electors who were refused absentee ballots at office of board of elections on day before election of local board of education were improperly denied right to vote; elections board's alleged reliance on advisory issued by secretary of state which erroneously indicated that electors could seek absentee ballots on day before election only in case of unforeseen emergency could not support refusals since advisory was clearly erroneous interpretation of relevant statute, which gave electors right to seek ballot on day before election, and electors' failure to tender written applications for ballots was not cited by board as basis for refusals and was due to fact that board informed electors they could not vote. [In re Election of Member of Rock Hill Bd. of Edn. \(Ohio 1996\) 76 Ohio St.3d 601, 669 N.E.2d 1116, 1996 -Ohio- 356. Elections](#)  [216.1](#)

GC 4785-134 (RC 3509.02) et seq., providing for absent voter's ballots, confers a privilege and not an absolute right, and an elector who casts an absent voter's ballot prior to the proper submission of an issue cannot complain that he has been disfranchised as to such issue. [Portmann v. Board of Elections of Stark County \(Stark 1938\) 60 Ohio App. 54, 19 N.E.2d 531, 13 O.O. 420](#).

Under former GC 5078-1 (Repealed), an elector found by the clerk of the board of deputy state supervisors of elections to be properly qualified in all other respects, was entitled to receive an absent voter's ballot upon the applicant's own statement that he found that he would be unavoidably absent from his own precinct on the day of election. 1928 OAG 2766.

Where an applicant who is otherwise qualified, makes application for an absent voter's ballot and states that he will be unavoidably absent from his home precinct on the day of election, the clerk has no authority to refuse the applicant a ballot on the ground that he doubts the applicant's statement as to whether or not he will be unavoidably absent. That is a question that the applicant alone is to determine. It is the duty of a clerk in the first instance when application is made for an absent voter's ballot, to satisfy himself of the qualifications of the voter offering to vote, as to his residence in the precinct and his legal qualifications to vote. Finding these present, it is his duty at once to issue upon proper application the absent voter's ballot. If he is in doubt as to applicant's qualifications, it is his duty to satisfy himself upon that question by proper investigation without unnecessary delay. 1928 OAG 2766.

Current through 2003 of the 125th GA(2003-2004), files 1-52, 54, 55, 58, apv. 12/31/03

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