

Enhancing Election Integrity: Allow for Sharing of Absentee Ballot Applications

Tennessee's election integrity depends on clearly defined election laws that allow voters to understand how the process works and election officials to administer consistent procedures. Currently, state laws related to the distribution of absentee ballot application forms create too much ambiguity.

Updating and clarifying these outdated and confusing laws related to absentee ballot application forms will both improve the understanding of what is permissible and further protect the integrity of our state's elections.

Tennessee Law Prohibits Sharing Absentee Ballot Application Forms

It is currently against the law in Tennessee to give another person an application to request an absentee ballot.

Two Tennessee state laws prohibit non-election commission employees from giving an application for an absentee ballot to another person.

It is a **Class E felony** to give someone the **official application** for an absentee ballot and a **Class A misdemeanor** to give them an **unsolicited request for an application** for an absentee ballot.(i)

Application for an Absentee Ballot

Tenn. Code Ann. §2-6-202(c)(3)

(1979)

"A person who is not an employee of an election commission commits a Class E felony if such person gives an application for an absentee ballot to any person."

Request for an Application

Tenn. Code Ann. §2-6-202(c)(4)

(2002)

"A person who is not an employee of an election commission commits a Class A misdemeanor if such person gives an unsolicited request for an application for absentee ballot to any person."

It is very easy for someone to unknowingly commit a felony.

The felony law hails from a pre-internet era (1979) when applications were only available in paper form at an election office. Now the application is available online, making it very easy to share. Today, sharing this easily accessible document -- whether printing it for an elderly parent or emailing the link to a child away at college -- is a felony.

Additionally, because you may give someone a voter registration application, most people are likely unaware that they are not allowed to similarly share the application to request an absentee ballot.

It is unclear what actions result in a misdemeanor.

The language of the misdemeanor law, adopted in 2002, does not clearly define what a "request for an application" means. Legislative transcripts from that time include discussions related to third parties distributing their own forms to voters to use to request an absentee application.(ii)

These unofficial and unsolicited application forms confused some voters who turned them in and unknowingly requested to vote absentee. Until 2018, if a voter requested to vote absentee, they could only vote absentee and could not vote in person, leaving those voters disenfranchised.(iii)

While the law intended to prevent non-election officials from creating their own form to request an absentee application and distributing it to voters unsolicited, the unclear language leaves many unaware that the definition references a document created by a third party and is separate from the official application form.

Policy Recommendations

Policymakers should consider amending state law to:

- ▶ **Allow Tennesseans to share an absentee application form with someone who requests one.**
 - ▶ Remove the felony provision.
 - ▶ Maintain the prohibition on sharing unsolicited absentee applications.
- ▶ **Clarify the definition of a "request for an application" as something created by a third party.**
 - ▶ Prohibit third parties from creating and distributing their own absentee application forms.

Both Laws Can be Updated and Clarified While Maintaining and Further Enhancing Election Integrity

Allow Tennesseans to share an absentee application form with someone who requests one.

It is too challenging to prevent someone from sharing an application that is easily available online, and it is not an offense that should cost someone their voting rights.(iv) Removing the felony provision would let Tennesseans give an absentee application to someone who wants one.

However, to prevent voters from receiving an application when they do not want one, maintain the prohibition on sharing unsolicited applications. The law could instead make it a misdemeanor to give an application to someone who has not requested it.

Clarify the definition of a "request for an application" as something created by a third party.

The existing law was intended to prevent third parties from sharing their own request forms with voters who did not ask for one. If it becomes legal to share the official application form with someone who wants it, third parties would not need to create their own forms.

Instead, this confusing section of the code could be re-worded to better address the initial intent by prohibiting third parties from creating and distributing their own application request forms.

Updating these laws will not affect the existing eligibility, application, or review processes defined in state law.

Tennessee state law defines which voters are eligible to vote absentee, how they may request an absentee ballot, and how election officials review received requests. Updating these laws will not change any of these procedures.

Tennessee state law defines who is eligible to vote absentee and the process for applying and verifying applications.



Determine Eligibility

In Tennessee, only some voters may vote absentee.(v) Eligible voters are those who are:

- Aged 60 or older
- Hospitalized, ill, or have a disability -- and their caretakers
- Out of town during the voting period
- An overseas citizen
- On the permanent absentee list
- Observing a religious holiday
- An election commission employee
- A candidate on the ballot
- Residents of certain institutions (e.g., nursing homes)
- Serving on jury duty, as an election official, or in the military



Apply to Vote Absentee

Eligible voters -- except for those on the permanent absentee list -- must request an absentee ballot for each election by mail, email, or fax sent to their county election commission.(vi)

Requests must be in writing and include the voter's name, address, social security number, date of birth, address to mail the ballot, the election they wish to vote in, the reason they are requesting to vote absentee, and their signature.(vii)



Verify Absentee Applications

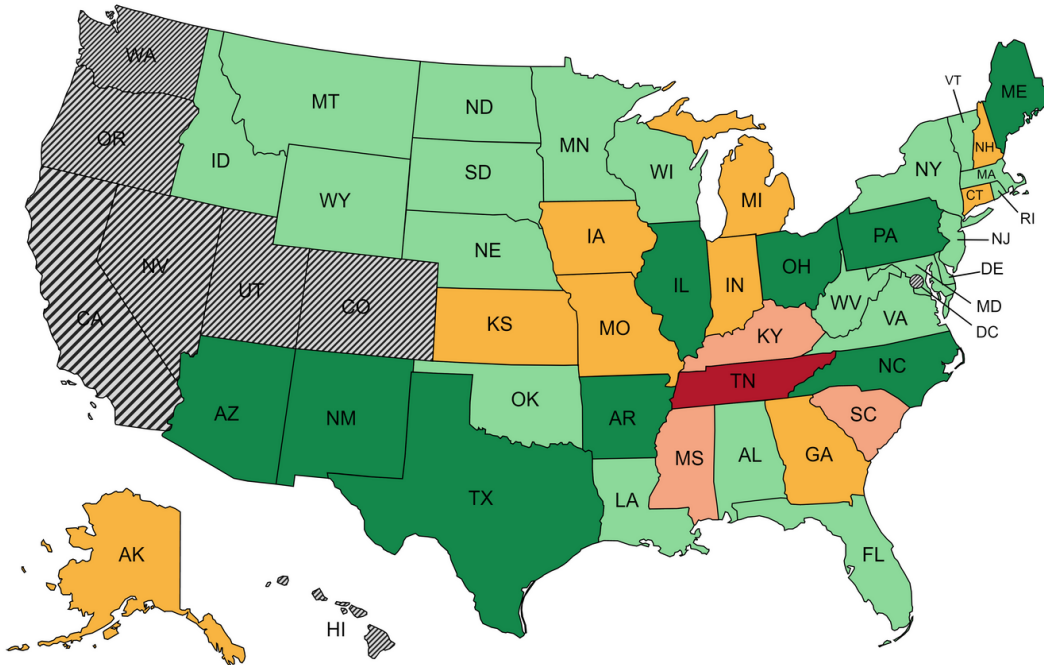
Election officials review received requests to verify that the information -- including the signature -- matches the voter's record.(viii)

Tennessee is the only state to require a voter to obtain an absentee application without assistance.

Every state but three allows third parties to share absentee applications. Those three states -- Kentucky, Mississippi, and South Carolina -- do not provide the application online; requests must be made directly with election offices. However, in all three, an immediate family member or an authorized representative may request an application on a voter's behalf.

Of the remaining states, 38 broadly allow third parties to share applications, and 12 place specific requirements on how applications may be shared. For example, some states specify what parts of an application may be pre-filled before giving it to a voter. Others require third parties to include disclaimers that identify who they are or acknowledge that they are a non-governmental entity.

Voters in all states, except Tennessee, can get an absentee application from someone other than election officials.



- Vote By Mail states: all voters are mailed ballots each election
- Sharing applications is explicitly allowed in state law
- Sharing applications is not prohibited in state law
- Third parties may share applications, with some guidelines
- Application requests are limited, but immediate family members and/or authorized representatives may get an application for a voter
- It is against the law for a non-election commission employee to give anyone an absentee application form

Amending the laws in this way would help maintain and further improve Tennessee's election integrity.

Clarifying the process and updating the legal language to be more appropriate for today's technology allows election officials to administer clearly defined procedures and voters to better understand how the process works. It further strengthens Tennessee's election laws and allows our state to better ensure the integrity of our elections.

(i) Tennessee Code Annotated. §§2-6-202(c)(3) and 2-6-202(c)(4).

(ii) Transcripts of 2002 legislative committee hearings submitted as part of the attorney general's response in opposition to a motion for preliminary injunction in Case No. 3:20-cv-00374 (Document 46). See https://www.courtlistener.com/docket/17125034/memphis-a-phillip-randolph-institute-v-hargett/?filed_after=&filed_before=&entry_gte=46&entry_lte=&order_by=asc.

(iii) Until 2018, with Public Chapter 726, voters who requested an absentee ballot were required to vote absentee. Voters who have requested an absentee ballot may now change their mind and vote with a provisional ballot. Tennessee Code Annotated. §2-7-112(a)(3)(A).

(iv) Tennessee Code Annotated. §40-20-112. In Tennessee, individuals who have been convicted of any felony on or after May 18, 1981, and those convicted of certain felonies and rendered "infamous" prior to January 15, 1973 lose the right to vote. Tennessee Secretary of State. Eligibility to Vote after a Felony Conviction. See <https://sos-prod.tnsosgovfiles.com/s3fs-public/document/Eligibility%20to%20Vote%20after%20Felony%20Conviction.pdf>.

(v) Tennessee Code Annotated. §2-6-201.

(vi) Voters may submit a signed physician's statement stating that they are medically unable to appear at their polling place and unable to go to the election commission office to vote during the early voting period. These voters are placed on a "permanent absentee" voter list and will receive an absentee ballot each election. Tennessee Code Annotated. §2-6-201(3)(A). All other absentee voters -- those meeting the eligible excuses -- must request an absentee ballot not more than 90 days and not later than 7 days before each election. Tennessee Code Annotated. §2-6-202.

(vii) Tennessee Code Annotated. §2-6-202(a)(3).

(viii) Tennessee Code Annotated. §2-6-202(b).