

The State of Texas



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John Steen
Secretary of State

MEMORANDUM

To: All County Clerks and Election Administrators

From: Keith Ingram, Director

Date: December 17, 2013

RE: Annual Application for Ballot by Mail – Notice and FAQs

The 83rd Legislature enacted legislation that provides an option for by mail voters that are voting by mail because they are 65 years of age or older or are disabled to make a single application for ballot by mail for a calendar year. [Tex. H.B. 666, 83rd Leg., R.S. (2013)] The Office of the Secretary of State is referring to this type of application as an “Annual ABBM,” and we will use this language in our calendars and other advisories. Beginning January 1, 2014, voters in the categories noted above will be able to apply for all calendar year elections in which the county clerk is the early voting clerk using a single annual application for a ballot by mail.

The Office of the Secretary of State has edited our application for ballot by mail to reflect these legislative changes, and this application is available on our website. Also, counties may submit requests for copies through our office by sending an email to elections@sos.texas.gov or ordering copies online at <http://www.sos.state.tx.us/elections/voter/reqabbbm.shtml>.

We have compiled the following list of FAQs and answers to assist in implementation of the new law and procedures. Please note this form is for voters seeking to submit a regular ballot by mail and an annual application for ballot by mail (Annual ABBM). Outside of the new deadline under S.B. 910, procedures for processing a regular ballot by mail did not change. We only address procedures for submitting and processing an Annual ABBM in these FAQs:

Forms

Q: May election officials use their current stock of ABBMs?

A: Yes, but we strongly recommend using the new form as there are many changes from the old form. The 83rd Legislature enacted S.B. 910, in addition to H.B. 666, which changed the deadline for the application for ballots by mail. If you use old stock, **at a minimum you will need to manually edit the instructions to reflect the new deadline of the 9th day before the election per S.B. 910.**

Voter Qualifications for Annual ABBM

Q: Who may apply for an Annual ABBM?

A: Only voters that are voting by mail on the grounds of **age or disability** may submit an Annual ABBM. If a voter is voting by mail due to confinement in jail or an absence from the county during the election period, the voter may only submit an ABBM for a single election. [§ 86.0015(a)(1)]

Q: May a voter under 65 years of age submit an Annual ABBM **if** the voter will turn 65 before the first election in which they will vote by mail?

A: Yes. Under the Texas Election Code, a voter must be “65 years of age or older on election day” to vote early by mail. [§ 82.003]

Submittal Period for Annual ABBM and Length of Validity

Q: When may a voter that qualifies for an Annual ABBM submit their application?

A: H.B. 666 is effective January 1, 2014, and voters may begin to submit Annual ABBMs on or after this date. [§ 86.0015]

Q: How long is the Annual ABBM valid?

A: The Annual ABBM is valid from the time the Early Voting Clerk receives it until the end of the calendar year or until the voter submits a change in registration information. [§ 86.0015(b)]

Q: Is the Annual ABBM sufficient for all elections in which the voter is eligible to vote?

A: No. An Annual ABBM may only be submitted to the county early voting clerk, and it entitles a voter to receive ballots only for those elections where the county clerk or elections administrator (“EA”) serves as the early voting clerk, either because the county clerk/EA is designated as the early voting clerk by law or through a joint election agreement or contract for election services. [§ 86.0015(b), 83.001, et seq.]

Q: May voters submit an Annual ABBM anytime throughout the calendar year?

A: Yes. Similar to an FPCA, voters may submit an Annual ABBM anytime during the calendar year. [§ 86.0015(b)] However, an Annual ABBM **must be received at least 9 days before the first election** in which the voter seeks to request a ballot by mail. [§84.007(c)]. Note that for elections held on a Tuesday, the 9th day falls on a weekend, and the deadline to submit the application would be moved to the 11th day before election day.

Delivery of Annual ABBMs to Early Voting Clerk

Q: How can a voter submit an Annual ABBM?

A: There is no change in the law on how a voter will submit their Annual ABBM vs. a regular application for ballot by mail:

In Person: Only the applicant may submit their application in person to the Early Voting Clerk until the early voting period begins. However, after the early voting period begins

for an election, the applicant may only submit their application via mail, fax or common contract carrier.

By Mail: An application may be mailed via the U.S. Postal Service.

By Fax: An application may be faxed to the Early Voting Clerk.

By Common Contract Carrier: An application may be submitted via a common or contract carrier which is a bona fide, for profit carrier. [§84.007, § 84.008]

Witnessing/Assistance of Annual ABBMs

Q: How many Annual ABBMs may a person witness in a calendar year?

A: Unless a close relative, a person may witness one regular ABBM per election in a calendar year, or **one Annual ABBM for the entire calendar year.** [§ 84.004]

Q: May an assistant fax a voters' Annual ABBM?

A: Yes, if the assistant completes the Assistant portion of the application. [§ 84.003, § 84.007]

Q: May Annual ABBMs be faxed from a political campaign building/headquarters?

A: Yes. While there are legal prohibitions on mailing a ballot carrier envelope, there are no legal prohibitions on faxing applications from campaigns. However, a campaign worker faxing the applications on behalf of the applicants must complete the assistance portion of the ABBM. [§ 84.003, § 84.007]

Processing an Annual ABBM by Early Voting Clerks

Q: What if a voter does not check any boxes in Box 6a?

A: It depends on the elections within that calendar year. If it is a primary election year, e.g. 2014, and the voter did not select which party's ballot they would like to receive, the application should be rejected. However, if it's an odd-numbered year, e.g. 2015, and the voter did not select any elections, the application would be considered an Annual ABBM. [§ 86.0015(a)]

Q: If a voter "requests" all ballots for the year by failing to mark any election in odd-numbered years, or only marking a primary in even-numbered years, does the Early Voting Clerk need to send the voter any notice letting them know that their application will be treated as an Annual ABBM?

A: No. However, if the Early Voting Clerk would like to send the voter such a notice, they may do so. [§ 86.0015]

Q: What if a voter checks all of the boxes in Box 6a?

A: It depends on if the voter declared one political party or checked the boxes for both the Democratic and Republican primaries. If the voter checks all the boxes, and correctly declares only one party for receipt of a primary ballot, this should be considered an Annual ABBM. If the voter checks all boxes and both political parties, the Early Voting Clerk should reject the application. In addition, the Early Voting Clerk should notify the voter of the reason of the rejection and provide guidance on how to properly re-apply. [§ 86.0015, § 86.001]

Q: What happens when the county receives multiple applications from an individual?

A: Please see below for various possible scenarios:

Scenario 1: A voter who is eligible for an Annual ABBM sends in multiple applications for a ballot by mail. The first one reflected a single choice for an election, and the second application selects “Annual Application.”

Answer: In this case, the first application would be valid for one election. Once the second application was received for an Annual ABBM, the voter should receive all ballots for the remainder of the calendar year. NOTE: If the second application would be considered an Annual ABBM because the voter marked all boxes or no boxes as described in the other Q&As in this section, the second application would still be an Annual ABBM and the voter would be entitled to receive ballots for the remainder of the calendar year.

Scenario 2: A voter who is eligible for an Annual ABBM sends in multiple applications for a ballot by mail. The first one did not reflect any choice for any elections, and the second application reflects a choice for a single election.

Answer: In this case, if the voter first submitted an Annual ABBM they are entitled to receive all ballots in the calendar year. As long as all of the remaining information on the second application (such as the voter’s reason for voting, residence address, etc.) are the same, the second application should be treated as a duplicate. The Early Voting Clerk may send a note that the voter is already set to receive the ballot due to their Annual ABBM.

Scenario 3: A voter who is eligible for an Annual ABBM sends in multiple applications for a ballot by mail. The first one has only one boxed checked for “Republican Primary,” and the second application has only one boxed check for “Democratic Primary” (or vice versa).

Answer: In the case where the voter provides two applications with different primaries checked, the second application for ballot by mail will cancel the first application. A letter may be sent to the voter informing them of this action.

Processing an Annual ABBM by Voter Registrars

Q: How should Voter Registrars notify Early Voting Clerks of changes in registration that may cancel an Annual ABBM?

A: Before **every election**, the Voter Registrar should provide an updated List of Registered Voters to the Early Voting Clerk. The Early Voting Clerk should compare the list of Annual ABBM voters to the List of Registered Voters, and work with the Voter Registrar to resolve any discrepancies.

Q: What if the Early Voting Clerk receives information that a voter may have been convicted of a felony, deemed mentally incompetent, or has registered in a new county?

A: As stated above, prior to every election the Voter Registrar should provide an updated List of Registered Voters to the Early Voting Clerk. The Early Voting Clerk should compare the list of Annual ABBM voters to the List of Registered Voters, and work with the Voter Registrar to resolve any discrepancies. It is possible that a voter may no longer

be a qualified voter under § 11.002. If, after the investigation, the voter is not entitled to vote by mail, the Early Voting Clerk should reject the application under § 86.001.

Q: What if the Early Voting Clerk receives information that a voter may be ineligible due to death, but the Voter Registrar has not yet officially received an abstract of death?

A: As stated above, prior to every election the Voter Registrar should provide an updated List of Registered Voters to the Early Voting Clerk. If the voter is still on the List of Registered Voters, but the Early Voting Clerk believes this is incorrect, they should notify the Voter Registrar and initiate an investigation. If, after the investigation, the voter is not entitled to vote by mail, the Early Voting Clerk should reject the application under § 86.001.

Cancellation of Annual ABBMs

Q: When a voter submits new registration information, will they need to re-submit their Annual ABBM?

A: Yes. When a voter changes their registration information under Section 15.021 of the Texas Election Code, their Annual ABBM will no longer be valid. This would include a change in the voter's address or name. [§ 86.0015]

Q: What if a voter submitted an Annual ABBM, but then brings his or her ballot to the polling place and cancels the mail ballot? Does that cancel the Annual ABBM for the rest of the calendar year or just for that election?

A: The Annual ABBM will be cancelled for the rest of the year. [§ 84.032(d)]

Public Information Requests and Annual ABBMs

Q: When would an Annual ABBM become a public record?

A: A copy of an Annual ABBM is not made public information until the first business day after the election day of the last election for which the application is valid. In other words, the last election in the calendar year. The originals of applications are not available until those materials are delivered to the general custodian of records after the election. [§ 86.014]