

Absentee & Mail Ballot Processing: Statutory References

EXTRACTS FROM MONTANA CODE ANNOTATED – 2016*

** No substantive changes enacted in 2017*

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For the State Administration and Veterans' Affairs Interim Committee

September 14, 2017



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MONTANA CODE ANNOTATED

TITLE 13

CHAPTER 13

Part 2 – Voting By Absentee Ballot

13-13-201. Voting by absentee ballot -- procedures. (1) A legally registered elector or provisionally registered elector is entitled to vote by absentee ballot as provided for in this part.

- (2) The elector may vote absentee by:
- (a) marking the ballot in the manner specified;
 - (b) placing the marked ballot in the secrecy envelope, free of any identifying marks;
 - (c) placing the secrecy envelope containing one ballot for each election being held in the signature envelope;
 - (d) executing the affirmation printed on the signature envelope; and
 - (e) returning the signature envelope with all appropriate enclosures by regular mail, postage paid, or by delivering it to:
 - (i) the election office;
 - (ii) a polling place within the elector's county;
 - (iii) pursuant to [13-13-229](#), the absentee election board or an authorized election official; or
 - (iv) in a mail ballot election held pursuant to Title 13, chapter 19, a designated place of deposit within the elector's county.
- (3) Except as provided in [13-21-206](#) and [13-21-226](#), in order for the ballot to be counted, each elector shall return it in a manner that ensures the ballot is received prior to 8 p.m. on election day.
- (4) A provisionally registered elector may also enclose in the outer signature envelope a copy of the elector's photo identification showing the elector's name. The photo identification may be but is not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to [13-2-207](#), government check, or other government document that shows the elector's name and current address.

13-13-232. Delivery of ballots and secrecy envelopes to election judges -- ballots to be rejected. (1) If an absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall process it according to [13-13-241](#) and then deliver the unopened secrecy envelope to the judges at the same time that the ballots are delivered.

(2) If an absentee ballot is received after the official ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall process it according to [13-13-241](#) and shall then immediately deliver the unopened secrecy envelope to the judges.

(3) If the election administrator receives an absentee ballot for which an application or request was not made or received as required by this part, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots endorsed in this manner must be handled in the same manner as provided in [13-15-108](#)(1).

13-13-233. Issuing and recording absentee ballots -- certificate to election judges. (1)

Absentee ballots must be official numbered paper ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots issued.

(3) When the election administrator delivers the voted absentee ballots pursuant to [13-13-232](#)(1), the election administrator shall also provide a certificate stating:

(a) the ballot numbers of the absentee ballots mailed or transmitted pursuant to [13-13-214](#), [13-21-106](#)(3)(a), and [13-21-224](#), delivered pursuant to [13-13-229](#), or marked in person pursuant to [13-13-222](#);

(b) the number of ballots to be reserved for late absentee voting pursuant to [13-13-211](#)(2);
and

(c) the names of the electors within the precinct to whom the ballots were provided.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3).

13-13-234. Duty of election judges -- pollbook. (1) The election judges, at the opening of the polls, shall:

(a) note on the pollbook opposite the appropriate ballot numbers the fact that the ballots were issued as absentee ballots; and

(b) reserve the numbers for electors who may vote late under [13-13-211](#)(2).

(2) The election judges shall insert only the name of the elector entitled to each particular number according to the certificate provided by the election administrator pursuant to [13-13-233](#)(3) and the number of the elector's ballot.

13-13-241. Examination of absentee ballot signature envelopes -- deposit of absentee and unvoted ballots -- rulemaking. (1) (a) Upon receipt of each absentee ballot signature envelope, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request or on the elector's voter registration card with the signature on the signature envelope.

(b) If the elector is legally registered and the signature on the signature envelope matches the signature on the absentee ballot application or on the elector's voter registration card, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the signature envelope matches the signature on the absentee ballot application or on the elector's voter registration card, the election administrator or an election judge shall open the outer signature envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to [13-13-201](#), is sufficient pursuant to rules adopted under [13-2-109](#) to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under [13-15-107](#).

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes. If an unvoted party ballot is not

received, the election administrator shall process the voted party ballot as if the unvoted party ballot had been received.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector as provided in [13-13-245](#).

(5) If the signature on the absentee ballot signature envelope does not match the signature on the absentee ballot request form or on the elector's voter registration card or if there is no signature on the absentee ballot signature envelope, the election administrator shall notify the elector as provided in [13-13-245](#).

(6) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in [13-13-245](#).

(7) After receiving an absentee ballot secrecy envelope and if the validity of the ballot is confirmed pursuant to [13-13-245](#), then no sooner than 1 business day before election day, the election official may, in the presence of a poll watcher, open the secrecy envelope and place the ballot in the proper, secured ballot box until tabulation occurs on election day.

(8) The election administrator shall safely and securely keep the absentee ballots in the election administrator's office until delivered by the election administrator to the election judges.

(9) The secretary of state shall develop administrative rules to establish the process and procedures to be used during the early preparation of ballots to ensure the security of the ballots and the secrecy of the votes during the early preparation period. The rules must include but are not limited to:

- (a) the allowable distance from the observers to the judges and ballots;
- (b) the security in the observation area;
- (c) secrecy of votes during the preparation of the ballots; and
- (d) security of the secured ballot boxes in storage until tabulation procedures begin on election day.

13-13-244. Opening of signature envelopes after deposit. If a signature envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the signature envelope must be processed as provided in [13-13-241](#).

13-13-245. Notice to elector -- opportunity to resolve questions. (1) As soon as possible after receipt of an elector's absentee ballot application or signature envelope, the election administrator shall give notice to the elector by the most expedient method available if the election administrator determines that:

- (a) the elector's ballot is to be handled as a provisional ballot;
- (b) the validity of the ballot is in question; or
- (c) the election administrator has not received or is unable to verify the elector's or agent's signature under [13-13-213](#) or [13-13-241](#).

(2) The election administrator shall inform the elector that, prior to 8 p.m. on election day, the elector may:

- (a) by mail, facsimile, electronic means, or in person, resolve the issue that resulted in the ballot being handled as a provisional ballot, confirm the validity of the ballot, or verify the elector's or agent's signature or provide a signature, after proof of identification, by affirming that the signature is in fact the elector's, by completing a new registration card containing the elector's current signature, or by providing a new agent designation form; or

- (b) if necessary, request and receive a replacement ballot pursuant to [13-13-204](#).

(3) The ballot of an elector who fails to provide information pursuant to subsection (2) must be handled as a provisional ballot pursuant to [13-15-107](#).

(4) (a) If a ballot is returned as undeliverable, the election administrator shall investigate the reason for the return.

(b) An elector must be provided with:

(i) the elector's undeliverable ballot upon notification by the elector of the elector's correct mailing address; or

(ii) a replacement ballot if a request has been made pursuant to [13-13-204](#).

Part 3. Challenges

13-13-301. Challenges. (1) An elector's right to vote may be challenged at any time by any registered elector by the challenger filling out and signing an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

(2) A challenge may be made on the grounds that the elector:

(a) is of unsound mind, as determined by a court;

(b) has voted before in that election;

(c) has been convicted of a felony and is serving a sentence in a penal institution;

(d) is not registered as required by law;

(e) is not 18 years of age or older;

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote, except as provided in [13-2-514](#);

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter; or

(h) does not meet another requirement provided in the constitution or by law.

(3) When a challenge has been made under this section, unless the election administrator determines without the need for further information that the challenge is insufficient:

(a) prior to the close of registration under [13-2-301](#), the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under [13-2-402](#); or

(b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in [13-15-107](#).

(4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(b) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The notification must be made:

(i) within 5 days of the filing of the challenge if the election is more than 5 days away; or

(ii) on or before election day if the election is less than 5 days away.

(c) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided.

(5) The secretary of state shall adopt rules to implement the provisions of this section and shall provide standardized affidavit forms for challengers and challenged electors.

Part 6. Fail-Safe and Provisional Voting By Mail

13-13-602. Fail-safe and provisional voting by mail. (1) To ensure the election administrator has information sufficient to determine the elector's eligibility to vote, an elector voting by mail may enclose in the outer signature envelope, together with the voted ballot in the secrecy envelope, a copy of a current and valid photo identification with the elector's name or a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to [13-2-207](#), government check, or other government document that shows the elector's name and current address or other information necessary to determine the elector's eligibility to vote.

- (2) The elector's ballot must be handled as a provisional ballot under [13-15-107](#) if:
- (a) a provisionally registered elector voting by mail does not enclose with the ballot the information described in subsection (1);
 - (b) the information provided under subsection (1) is invalid or insufficient to verify the elector's eligibility; or
 - (c) the elector's name does not appear on the precinct register.

13-13-603. Rulemaking on provisional voting, absentee ballots, and challenged ballots. (1) The secretary of state shall adopt rules to:

- (a) implement the provisions of [13-13-114](#) and this part concerning verification of voter identification and eligibility;
 - (b) establish standards for determining the sufficiency of information provided on absentee ballot signature envelopes pursuant to [13-13-241](#);
 - (c) implement the provisions of [13-15-107](#) on the handling and counting of provisional and challenged ballots, including the establishment of procedures for verifying voter registration and eligibility information with respect to the ballots.
- (2) The rules may not conflict with rules established under [13-2-109](#).

CHAPTER 15 CANVASSING, RETURNS, AND CERTIFICATES

13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, a provisionally registered individual who casts a provisional ballot has until 5 p.m. on the day after the election to provide valid identification or eligibility information either in person, by facsimile, by electronic means, or by mail postmarked no later than the day after the election.

(2) (a) If a legally registered individual casts a provisional ballot because the individual failed to provide sufficient identification as required pursuant to [13-13-114](#)(1)(a), the election administrator shall compare the signature of the individual or the individual's agent designated pursuant to [13-1-116](#) on the affirmation required under [13-13-601](#) to the signature on the individual's voter registration card or the agent's designation form.

(b) If the signatures match, the election administrator shall handle the ballot as provided in subsection (5).

(c) If the signatures do not match and the individual or the individual's agent fails to provide valid identification information by the deadline, the ballot must be rejected and handled as provided in [13-15-108](#).

(3) A provisional ballot must be counted if the election administrator verifies the individual's identity or eligibility pursuant to rules adopted under [13-13-603](#). However, if the election administrator

cannot verify the individual's identity or eligibility under the rules, the individual's provisional ballot must be rejected and handled as provided in [13-15-108](#). If the ballot is provisional because of a challenge and the challenge was made on the grounds that the individual is of unsound mind or serving a felony sentence in a penal institution, the individual's provisional ballot must be counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the individual is of unsound mind or that the individual has been convicted and sentenced and is still serving a felony sentence in a penal institution.

(4) The election administrator shall provide an individual who cast a provisional ballot but whose ballot was or was not counted with the reasons why the ballot was or was not counted.

(5) A provisional ballot must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other provisional ballot if the individual's voter information is:

(a) verified before 5 p.m. on the day after the election; or

(b) postmarked by 5 p.m. on the day after election day and received and verified by 3 p.m. on the sixth day after the election.

(6) Provisional ballots that are not resolved by the end of election day may not be counted until after 3 p.m. on the sixth day after the election.

13-15-201. Preparation for count -- absentee ballot count procedures. (1) Subject to [13-10-311](#), to prepare for a count of ballots, the counting board or, if appointed, the absentee counting board shall take ballots out of the box to determine whether each ballot is single.

(2) The board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

(3) If the board cannot reconcile the total number of ballots with the pollbook, the board shall submit to the election administrator a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. Each judge on the board shall sign the report.

(4) A ballot that is not marked as official is void and may not be counted unless all judges on the board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked "unmarked by error" on the back and must be initialed by all judges.

(5) If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were marked by one elector, the ballots must be rejected and handled as provided in [13-15-108](#), otherwise they must be counted.

(6) Only valid absentee ballots may be counted in an election conducted under this chapter.

(7) For the purpose of this chapter, a marked absentee ballot is valid only if:

(a) the elector's signature on the affirmation on the signature envelope is verified pursuant to [13-13-241](#); and

(b) it is received before 8 p.m. on election day, except as provided in [13-21-206](#) and [13-21-226](#).

(8) (a) A ballot is invalid if:

(i) problems with the ballot have not been resolved pursuant to [13-13-245](#);

(ii) any identifying marks are placed on the ballot by the elector, which must result in the immediate rejection of the ballot without notice to the elector; or

(iii) except as provided in subsection (8)(b), more than one ballot is enclosed in a single signature or secrecy envelope.

(b) The provisions of subsection (8)(a)(iii) do not apply if:

(i) there are multiple elections being held at the same time and the envelope contains only one ballot for each election; or

(ii) the signature envelope contains ballots from the same household, each ballot is in its own secrecy envelope, and the signature envelope contains a valid signature for each elector who has returned a ballot.

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