

HOUSE BILL NO. 201
INTRODUCED BY JENT
BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING VOTER REGISTRATION AND ABSENTEE BALLOT PROVISIONS FOR ELECTORS ABSENT FROM THE POLLING PLACE ON ELECTION DAY; ESTABLISHING THE MONTANA ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTOR VOTING ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE FEDERAL UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT AND THE FEDERAL HELP AMERICA VOTE ACT OF 2002; PROVIDING DEFINITIONS; DESIGNATING THE SECRETARY OF STATE AS THE SINGLE POINT OF CONTACT FOR INFORMATION ABOUT ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTORS AND REQUIRING A REPORT ON ABSENTEE BALLOTS FOR THOSE ELECTORS; AUTHORIZING ABSENT UNIFORMED SERVICES ELECTORS NOT OVERSEAS TO USE THE FEDERAL WRITE-IN ABSENTEE BALLOT FOR REGISTRATION AND APPLICATION FOR ABSENTEE BALLOTS; PROVIDING THAT THE ABSENTEE BALLOT APPLICATION OF CERTAIN ELECTORS MUST APPLY TO CERTAIN FUTURE ELECTIONS; REVISING THE TIME PERIOD DURING WHICH ANY ELECTOR MAY APPLY FOR AN ABSENTEE BALLOT; REQUIRING THAT ANY APPLICATION FOR AN ABSENTEE BALLOT INCLUDE THE ELECTOR'S BIRTH DATE; PROVIDING THAT IF AN APPLICATION BY CERTAIN ELECTORS IS REJECTED, THE ELECTORS MUST BE NOTIFIED OF THE REASON; CLARIFYING THE PROCEDURE FOR CASTING AND COUNTING THE FEDERAL WRITE-IN ABSENTEE BALLOT; AMENDING SECTIONS 13-2-212, 13-2-214, 13-2-215, 13-13-211, 13-13-212, 13-13-213, 13-13-214, 13-13-229, 13-13-271, 13-13-272, 13-13-273, 13-13-277, AND 13-13-278, MCA; AND REPEALING SECTIONS 13-2-211 AND 13-13-276, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Absent Uniformed Services and Overseas Elector Voting Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], the following definitions apply:

- (1) "Absent uniformed services elector" means an absent uniformed services voter pursuant to 42 U.S.C.

1973ff-6 who is:

(a) a member of the uniformed services on active duty who, by reason of the active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(b) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(c) a spouse or dependent of a member referred to in subsection (1)(a) or (1)(b) who, by reason of the member's active duty, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(2) "Federal post card application" means the federal post card application prescribed pursuant to 42 U.S.C. 1973ff.

(3) "Federal write-in absentee ballot" means the federal write-in absentee ballot prescribed pursuant to 42 U.S.C. 1973ff-2.

(4) "Member of the merchant marine" means, pursuant to 42 U.S.C. 1973ff-6, a person, other than a member of the uniformed services or an individual employed, enrolled, or maintained on the Great Lakes of the inland waterways, who is:

(a) employed as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States, or a vessel of a foreign-flag registry under charter to or control of the United States; or

(b) enrolled as an officer or crew member with the United States for employment or for training for employment or who is maintained by the United States for emergency relief service on a vessel described in subsection (4)(a).

(5) "Overseas elector" means an overseas voter pursuant to 42 U.S.C. 1973ff-6 who is:

(a) an absent uniformed services elector who by reason of active duty or service is absent from the United States on the date of the election involved;

(b) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(c) a person who resides outside the United States and would otherwise be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) "Regular absentee ballot" means the absentee ballot prepared by the election administrator for any election.

(7) "Uniformed services" means, pursuant to 42 U.S.C. 1973ff-6, the U.S. army, navy, air force, marine

corps, and coast guard, the commissioned corps of the U.S. public health service, and the commissioned corps of the U.S. national oceanic and atmospheric administration.

(8) "United States", as used in the context of describing a geographical area, means, pursuant to 42 U.S.C. 1973ff-6, the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

(9) "United States elector" means an absent uniformed services elector or an overseas elector.

(10) "Voter registration form" means the form approved by the secretary of state that an elector may use to register to vote in Montana.

NEW SECTION. Section 3. Secretary of state designated as single point of contact. (1) The office of the secretary of state is the state's single point of contact responsible for providing information regarding voter registration and absentee ballot procedures to be used by a United States elector.

(2) The secretary of state shall, with the assistance of local election administrators, compile, make available to the general public, or forward to appropriate federal authorities any reports or information required to be compiled, made available, or forwarded pursuant to federal law.

NEW SECTION. Section 4. Application for absentee ballots. (1) A United States elector may apply for regular absentee ballots as follows:

(a) by making a written request, which must include the elector's birth date and signature;

(b) by properly completing, signing, and returning to the election administrator the federal post card application; or

(c) by properly completing, signing, and returning to the appropriate county election administrator the federal write-in absentee ballot transmission envelope.

(2) An application ~~under this section~~ FOR A FEDERAL WRITE-IN ABSENTEE BALLOT must be received by the appropriate county election administrator not less than 30 days before the date of an election. An application received less than 30 days before the date of an election must be processed for the next election.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections. The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in this subsection as soon as the ballots become available.

NEW SECTION. Section 5. Replacement absentee ballots. A United States elector who has made a request for an absentee ballot pursuant to [section 4] may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made to the election administrator by telephone, letter, facsimile transmission, or electronic mail.

NEW SECTION. Section 6. Mailing ballots to United States elector. Ballots mailed to a United States elector must be handled as prescribed in 13-13-214, except that both the envelope in which a ballot is mailed to the elector and the return envelope for the ballot must have printed across its face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.

NEW SECTION. Section 7. Report on absentee ballots. (1) Within 60 days after the date of each regularly scheduled federal general election, each county election administrator shall report to the secretary of state:

(a) the number of regular absentee ballots transmitted by the election administrator to United States electors for the election; and

(b) the number of regular absentee ballots cast and returned to the election administrator for the election from United States electors.

(2) The secretary of state may prescribe a standardized format for the report.

(3) Within 90 days after the date of each regularly scheduled federal general election, the secretary of state shall report to the federal election assistance commission, established pursuant to the Help America Vote Act of 2002, Public Law 107-252, or its successor a statewide report containing the information provided under subsection (1). The report must be made in the format prescribed by the federal election assistance commission.

NEW SECTION. Section 8. Registration provisions for United States electors supersede. A provision of this chapter may not be interpreted to conflict with [sections 1 through 7].

NEW SECTION. Section 9. Absentee voting provisions for United States electors supersede. A provision of this chapter may not be interpreted to conflict with [sections 1 through 7].

Section 10. Section 13-2-212, MCA, is amended to read:

"13-2-212. Registration of electors in United States service electors -- simultaneous application for absentee ballot. (1) ~~An elector in the A United States service elector who is absent from the state and the county of which the elector is a resident~~ may register with the election administrator in the elector's county of residence ~~as follows~~ by properly completing, signing, and returning:

~~(a) by the close of registration provided for in 13-2-301, by using:~~

~~——(i)(a) the voter registration form;~~

~~(ii)(b) the federal post card application; or~~

~~(iii)(c) if eligible, the federal write-in absentee ballot as provided in 13-13-271(3) transmission envelope;~~

~~(b)(2) after the close of registration, only by federal post card application, which A registration application under this section must be received by the election administrator by noon on the day not less than 30 days before the election for the registration to be valid for the election. If the registration application is received less than 30 days before the election, the registration application must be processed for the next election.~~

~~(2) The form of the federal post card application must be prescribed by the secretary of state.~~

~~(3) A registration application using a federal post card application or the federal write-in absentee ballot transmission envelope must be considered a simultaneous application for absentee ballots under [section 4]."~~

Section 11. Section 13-2-214, MCA, is amended to read:

"13-2-214. Classification of federal post card application applications -- notification of elector.

~~(1) Unless the elector is already registered, a federal post card application received from an elector in the United States service shall be treated as a simultaneous application for registration and for ballot for each primary and general election in which he is entitled to vote during the year of its receipt.~~

~~(2)(1) Upon receipt by the election administrator of a federal post card an application pursuant to 13-13-212 or [section 4], properly filled out and signed, the election administrator shall:~~

~~(a) classify the application according to the precinct in which the elector resides or, if the information is insufficient to determine precinct of residence, assign an appropriate precinct;~~

~~(b) immediately enter all information in the registration records of the office and either file the federal post card application with regular registration forms or file a photocopy attached to a regular registration form on which the information has been entered; THIS INFORMATION IS SUFFICIENT TO MEET ANY IDENTIFICATION REQUIREMENTS PROVIDED BY LAW FOR AN ELECTOR.~~

~~(c) send to the applicant by the fastest mail service available, which may include facsimile transmission~~

or electronic mail, a notice that ~~he~~ the elector has been registered and informing ~~him~~ the elector that a ballot is enclosed or that ~~he~~ the elector will be mailed an absentee ballot for THAT ELECTION OR FOR the next election in which ~~he~~ the elector is entitled to vote under subsection (1) or, if the application is rejected, a notice that the application has been rejected and the reasons for the rejection.

(3)(2) The election administrator may use photocopies of the federal post card application to complete all necessary records."

Section 12. Section 13-2-215, MCA, is amended to read:

"13-2-215. Registration of United States electors whose United States service or employment has terminated after return. Electors in the A United States service elector who ~~have been honorably discharged from the armed forces of the United States or who have terminated their service or employment outside the territorial limits of the United States~~ has returned to the elector's residence too late to register at the time when and place where registration is required shall be is entitled to register for the purpose of voting at the next ~~ensuing~~ election after ~~such discharge or termination of employment~~ the date of the elector's return up to noon on the day before the election. ~~Said~~ The elector shall execute a sworn affidavit qualifying ~~him~~ the elector under this section to be filed in the office of ~~his~~ the elector's registration. The county registrar shall provide to the person registering under the provisions of this section a certificate stating the precinct in which ~~he~~ the elector is entitled to vote. This certificate ~~shall~~ must be presented to the election judges of that precinct at the time of voting."

Section 13. Section 13-13-211, MCA, is amended to read:

"13-13-211. Time period for application. An EXCEPT AS PROVIDED IN [SECTION 4]. AN application for an absentee ballot must be made during a period beginning 75 days before the day of election and ending ~~at noon on the day before~~ 30 days before AT NOON ON THE DAY BEFORE the election. However, a qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot."

Section 14. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot -- special provisions. (1) An elector may apply for an absentee ballot by making a written request, ~~signed by the applicant~~ which must include the elector's birth date and signature, to the election administrator of the ~~applicant's~~ elector's county of residence within the time period specified in 13-13-211.

~~_____ (2) An elector in the United States service absent from the state and county in which the elector is registered may apply for an absentee ballot as follows:~~

~~_____ (a) as provided in subsection (1);~~

~~_____ (b) by using the federal postcard application signed by the applicant and made within the time period specified in 13-13-211; or~~

~~_____ (c) if eligible, by using the federal write-in ballot as provided in 13-13-271(3).~~

~~(3)(2)~~ (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection ~~(3)~~ (2) must be received by the election administrator by noon on election day.

~~(4)(3)~~ An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator."

Section 15. Section 13-13-213, MCA, is amended to read:

"13-13-213. Transmission of application to election administrator -- delivery of ballot. (1) Except as provided in subsection (2), the elector shall forward the application by mail or deliver it in person to the election administrator. The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214.

(2) In lieu of the requirement provided in subsection (1), an elector who requests an absentee ballot pursuant to 13-13-212~~(3)~~(2) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the

special absentee election board shall provide a ballot to the elector."

Section 16. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing ballot to elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, as soon as the official ballots are printed, the election administrator shall send by mail, postage prepaid, to each elector from whom the election administrator has received a valid application whatever official ballots are necessary. Ballots must be sent immediately to electors submitting valid requests after the official ballots are printed.

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall stamp the ballots provided to an absentee elector as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

~~(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope must have printed across the face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.~~

~~(5)~~(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

~~(6)~~(5) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type

or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return and verification envelope. The election administrator shall include a voter information pamphlet with the instructions if:

- (a) a statewide ballot issue appears on the ballot mailed to the elector;
 - (b) the elector is out of the state or will be out of the state at the time of the election; and
 - (c) the elector requests a voter information pamphlet.
- ~~(7)~~(6) The return envelope must be self-addressed to the election administrator."

Section 17. Section 13-13-229, MCA, is amended to read:

"13-13-229. Voting performed before special absentee election board. (1) Pursuant to 13-13-212~~(3)~~(2), the elector may request that a special absentee election board personally deliver a ballot to the elector.

(2) The manner and procedure of voting by use of an absentee ballot under this section must be the same as provided in 13-13-221, except that the elector shall hand the marked ballot in the sealed return envelope to the special absentee election board, and the board shall deliver the sealed return envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking the elector's ballot because of physical incapacity or inability to read or write may receive assistance from the special absentee election board appointed to personally deliver the ballot. Any assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119."

Section 18. Section 13-13-271, MCA, is amended to read:

"13-13-271. Federal write-in absentee ballot -- qualifications. ~~(1) An elector in the A United States service elector, as defined in 13-2-211, who is overseas, has applied for a regular absentee ballot as provided in 13-13-212 or subsection (3) of this section, and fears that the elector might not receive a regular ballot in time to vote and return it to the election administrator pursuant to [section 4] for a federal general election but who has not yet received the regular absentee ballot for the federal general election~~ may vote a federal write-in absentee ballot as provided in 13-13-272.

~~(2) The federal write-in absentee ballot is available to military personnel and civilians overseas through the same source that provides federal post card application forms and is only valid for federal elections.~~

~~(3) An overseas elector in the United States service may use a federal write-in absentee ballot transmission envelope to register to vote and to apply for a regular absentee ballot if the envelope is received by the election administrator not less than 30 days before the election and the envelope has been properly completed and signed.~~

~~(4) As used in this section, "overseas" means outside the territorial limits of the United States and does not mean any location within the continental United States, Alaska, Hawaii, or Guam."~~

Section 19. Section 13-13-272, MCA, is amended to read:

"13-13-272. Procedure for voting federal write-in absentee ballot. (1) ~~An~~ A United States elector voting a federal write-in absentee ballot for a federal general election may designate a candidate by writing in the name of the candidate or by writing in the name of the political party. A written designation of the political party must be counted as a vote for the candidate of that party. A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

(2) ~~If an~~ the elector receives ~~his~~ the regular absentee ballot for the federal general election after ~~he~~ the elector has voted and mailed a federal write-in absentee ballot, ~~he~~ the elector may vote and return the regular absentee ballot."

Section 20. Section 13-13-273, MCA, is amended to read:

"13-13-273. Counting of federal write-in absentee ballots. (1) A federal write-in absentee ballot received by an election administrator ~~must~~ may be counted only if:

(a) ~~the election administrator received the elector's application for a regular absentee ballot not less than 30 days before the election~~ a valid application was received pursuant to [section 4];

(b) the election administrator has not received a regular absentee ballot from the elector by 8 p.m. on election day;

~~(c) it has not been submitted from any location within the continental United States, Alaska, Hawaii, or Guam; and~~

~~(d)~~(c) it is received by 8 p.m. on election day.

(2) Federal write-in absentee ballots received before the close of the polls on election day ~~will~~ may not be counted until the polls have closed.

(3) A regular absentee ballot received from a United States elector after the polls close may not be counted."

Section 21. Section 13-13-277, MCA, is amended to read:

"13-13-277. Registration and voting by facsimile and internet authorized. Notwithstanding other provisions of this title, each election administrator may, in any primary election, general election, and special election, take the following acts by facsimile transmission, if facsimile facilities are available, or electronically through the internet for ~~overseas electors in the~~ a United States ~~service~~ elector, if internet facilities that provide for secrecy are available, in place of the public mails:

- (1) register an individual to vote;
- (2) give notice of registration;
- (3) receive requests for an absentee ballot;
- (4) transmit absentee ballots to electors; and
- (5) receive absentee ballots from electors."

Section 22. Section 13-13-278, MCA, is amended to read:

"13-13-278. Adoption of rules -- acceptance of funds. (1) The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement 13-13-277. The rules are binding upon election administrators. The rules must require compliance with the same time requirements or deadlines as for registration and voting by absentee ballot by use of the public mails. The rules must maintain the accuracy, integrity, and secrecy of the ballot process and must allow registration and voting by facsimile through use of a private corporation or other private entity for transmission of facsimile messages only if the secretary of state finds that the use is essential to the purposes of ~~13-13-276 through 13-13-278~~ [sections 1 through 7].

(2) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing ~~13-13-276 through 13-13-278~~ [sections 1 through 7]."

NEW SECTION. **Section 23. Repealer.** Sections 13-2-211 and 13-13-276, MCA, are repealed.

NEW SECTION. **Section 24. Codification instruction.** (1) [Sections 1 through 7] are intended to be

codified as an integral part of Title 13, and the provisions of Title 13 apply to [sections 1 through 7].

(2) The code commissioner is instructed to renumber 13-2-212, 13-2-214, 13-2-215, 13-13-271, 13-13-272, 13-13-273, 13-13-277, and 13-13-278 as an integral part of [sections 1 through 7], and the provisions of [sections 1 through 7] apply to 13-2-212, 13-2-214, 13-2-215, 13-13-271, 13-13-272, 13-13-273, 13-13-277, and 13-13-278.

(3) [Section 8] is intended to be codified as an integral part of Title 13, chapter 2, and the provisions of Title 13, chapter 2, apply to [section 8].

(4) [Section 9] is intended to be codified as an integral part of Title 13, chapter 13, and the provisions of Title 13, chapter 13, apply to [section 9].

NEW SECTION. SECTION 25. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 190 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN [SECTION 28 OF HOUSE BILL NO. 190] AMENDING 13-13-212, IS VOID AND [SECTION 14 OF THIS ACT], AMENDING 13-13-212, MUST READ:

"Section 14. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot -- special provisions.(1) An elector may apply for an absentee ballot, using only a standardized form provided by rule by the secretary of state, by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

~~———— (2) An elector in the United States service absent from the state and county in which the elector is registered may apply for an absentee ballot as follows:~~

~~———— (a) as provided in subsection (1);~~

~~———— (b) by using the federal postcard application signed by the applicant and made within the time period specified in 13-13-211; or~~

~~———— (c) if eligible, by using the federal write-in ballot as provided in 13-13-271(3).~~

~~(3)~~(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection ~~(3)~~ (2) must be received by the election administrator by noon on election day.

~~(4)~~(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.'''

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