

HOUSE BILL NO. 520
INTRODUCED BY E. ARNTZEN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ELECTION LAWS; REVISING TERMINOLOGY; AMENDING PROVISIONS RELATED TO PUBLIC NOTICE, OFFICE HOURS, WRITE-IN CANDIDATES, CANDIDATE VACANCIES, FILING PROCEDURES, BALLOTS, PRECINCT REGISTERS, THE ELIGIBILITY OF POLITICAL PARTIES TO HOLD PRIMARY ELECTIONS, AND VOTE-COUNTING SYSTEMS; AMENDING TIMELINES FOR NOMINATION OF PRESIDENTIAL AND VICE PRESIDENTIAL ELECTORS; REVISING THE INFORMATION INCLUDED IN THE VOTER INFORMATION PAMPHLET; AMENDING SECTIONS 13-1-101, 13-1-108, 13-1-111, 13-1-202, 13-2-304, 13-10-204, 13-10-209, 13-10-211, 13-10-301, 13-10-311, 13-10-326, 13-10-503, 13-10-601, 13-12-205, 13-12-207, 13-13-117, 13-13-201, 13-13-241, 13-15-107, 13-15-201, 13-15-206, 13-15-209, 13-15-301, 13-17-103, 13-17-211, 13-17-212, 13-25-101, AND 13-27-401, MCA; AND REPEALING SECTIONS 13-13-203, 13-16-414, 13-17-206, AND 13-17-305, MCA."

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

Section 1. Section 13-1-101, MCA, is amended to read:

"13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector who voted in the previous federal general election and whose name is on the active list.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means:

~~_____ (a) a paper ballot used with a paper-based system counted manually or a paper ballot counted by a~~
machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots; ~~or~~

~~(b) a nonpaper ballot, such as a ballot used with a nonpaper-based system, such as a lever machine, a direct recording electronic machine, or other technology.~~

(6) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

(7) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(10) "Elector" means an individual qualified to vote under state law.

(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(14) "Inactive elector" means an individual who failed to vote in the preceding federal general election and whose name was placed on an inactive list pursuant to 13-2-220.

(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220.

(16) "Individual" means a human being.

(17) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35 and

37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon approval by the secretary of state of the form of the petition or referral.

(18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(19) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

(20) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(21) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(22) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(23) "Provisional ballot" means a ballot cast by an elector whose identity and eligibility to vote have not been verified as provided by law.

(24) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose eligibility has not yet been verified as provided by law.

(25) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(26) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(27) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(28) "Statewide voter registration list" means the voter registration list established and maintained

pursuant to 13-2-107 and 13-2-108.

(29) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

(30) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(31) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ~~or nonpaper~~ ballot."

Section 2. Section 13-1-108, MCA, is amended to read:

"13-1-108. Notice of special elections. Notice of any special election ~~shall~~ must be published at least ~~once a week for the 3 successive weeks before the election~~ three times in the 4 weeks immediately preceding the close of registration on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held. The provisions of this section are fulfilled upon the third publication."

Section 3. Section 13-1-111, MCA, is amended to read:

"13-1-111. Qualifications of voter. (1) ~~No~~ A person may ~~be entitled to~~ not vote at elections unless he ~~has the following qualifications~~ the person is:

- (a) ~~He must be~~ registered as required by law;
- (b) ~~He must be~~ 18 years of age or older;
- (c) ~~He must be~~ a resident of the state of Montana and of the county in which he ~~he~~ the person offers to vote for at least 30 days; except as provided in 13-2-514; and

(d) ~~He must be~~ a citizen of the United States.

(2) ~~No~~ A person convicted of a felony ~~has~~ does not have the right to vote while he ~~he~~ the person is serving a sentence in a penal institution.

(3) ~~No~~ A person adjudicated to be of unsound mind ~~has~~ does not have the right to vote; unless he ~~he~~ the person has been restored to capacity as provided by law."

Section 4. Section 13-1-202, MCA, is amended to read:

"13-1-202. Forms and rules prescribed by secretary of state -- consultation. (1) In carrying out the responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

- (a) written directives and instructions relating to and based on the election laws;
 - (b) sample copies of prescribed and suggested forms; and
 - (c) advisory opinions on the effect of election laws other than those laws in chapter 35, 36, or 37 of this title.
- (2) The secretary of state may prescribe the design of any election form required by law. The secretary of state shall seek the advice of election administrators and printers in designing the required forms.
- (3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.
- (4) Each election administrator shall provide data to the secretary of state that the secretary of state determines is necessary to:
- (a) evaluate voting system performance against the benchmark standard adopted pursuant to 13-17-103~~(2)~~;
 - (b) evaluate the security, accuracy, and accessibility of elections; and
 - (c) assist the secretary of state in making recommendations to improve voter confidence in the integrity of the election process.
- (5) The secretary of state shall regularly consult with and seek the advice of local election administrators in implementing the provisions of this section."

Section 5. Section 13-2-304, MCA, is amended to read:

"13-2-304. Late registration -- late changes -- nonapplicability for school elections. (1) Except as provided in subsections (2) and (3), the following provisions apply:

(a) An elector may register or change the elector's voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information prior to the close of the polls on election day.

(b) Late registration is closed from noon to 5 p.m. on the day before the election.

(c) Except as provided in 13-2-514(2)(a), an elector who registers or changes the elector's voter information pursuant to this section may vote in the election only if the elector votes at the county election administrator's office.

(2) If an elector has already been sent an absentee ballot for the election, the elector may change the elector's voter registration information only with respect to the next election.

(3) The provisions of subsection (1) do not apply with respect to an elector's registration to vote in a school election held pursuant to Title 20."

Section 6. Section 13-10-204, MCA, is amended to read:

"13-10-204. Write-in nominations. (1) An individual nominated by having the individual's name written in and counted as provided in 13-15-206(5) or otherwise placed on the primary ballot and desiring to accept the nomination may not have the individual's name appear on the general election ballot unless the individual:

~~(1) files with the secretary of state or election administrator, no later than 10 days after the official canvass, a written declaration indicating acceptance of the nomination;~~

~~(2) pays the required filing fee or, if indigent, complies with 13-10-203;~~

~~——(3)(a) received at least 5% of the total votes cast for the successful candidate for the same office at the last general election;~~

(b) files with the secretary of state or election administrator, no later than 10 days after the official canvass, a written declaration indicating acceptance of the nomination; and

~~(4)(c) complies with the provisions of 13-37-126.~~

(2) A write-in candidate who was exempt from filing a declaration of intent under 13-10-211 shall, at the time of filing the declaration of acceptance, pay the filing fee specified in 13-10-202 or, if indigent, file the appropriate documents described in 13-10-203."

Section 7. Section 13-10-209, MCA, is amended to read:

"13-10-209. Arrangement and preparing of primary ballots. (1) (a) Ballots for a primary election must be arranged and prepared in the same manner and number as provided in chapter 12 for general election ballots, except that there must be separate ballots for each political party entitled to participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate;

(ii) the nonpartisan offices and ballot issues appear on each party's ballot; and

(iii) with respect to ballot issues, written approval is obtained as provided in 13-27-502.

(2) An election administrator does not need to prepare a primary ballot for a political party if:

(a) the party does not have candidates for more than half of the offices to appear on the ballot; or
 (b) no more than one candidate files for nomination by that party for any of the offices to appear on the ballot.

(3) If, pursuant to subsection (2), a primary ballot for a political party is not prepared, the secretary of state shall certify that a primary election is unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(4) The separate ballots for each party must have the same appearance. Each set of party ballots must bear the same number. If prepared as a separate ballot, the nonpartisan ballot ~~must~~ may have a different appearance than the party ballots but must be numbered in the same order as the party ballots.

(5) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may have a different appearance than the other ballots in the election but must be numbered in the same order.

(6) Each elector must receive a set of ballots that includes the party, nonpartisan, and ballot issue choices."

Section 8. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 15th day before the election and must contain:

- (a) (i) the candidate's first and last names;
- (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;
- (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and
- (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;
- (b) the candidate's mailing address;
- (c) a statement declaring the candidate's intention to be a write-in candidate;
- (d) the title of the office sought;
- (e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking:

~~_____ (a) dies;~~

~~_____ (b) withdraws from the election; or~~

~~(c) is charged with a felony offense.~~

(3) A person seeking to become a write-in candidate for a trustee position on a school board shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A declaration of intent may be sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) The requirements in subsection (1) do not apply if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

Section 9. Section 13-10-301, MCA, is amended to read:

"13-10-301. Casting of ballot. (1) Unless otherwise provided by law, the conduct of the primary election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies, the canvass of votes, the certification and notification of nominees, recounts, procedures upon tie votes, and any other necessary election procedures must be at the same times and in the same manner as provided for in the

laws for the general election.

(2) At a primary election, the elector shall cast votes on only one of the party ballots, preparing the ballot as provided in 13-13-117. After casting votes on any other ballots received other than the party ballots, the elector shall ensure the proper disposition of the ballots in accordance with instructions provided pursuant to 13-13-112.

(3) ~~The election judge shall handle the~~ elector's ballot must be handled as prescribed in 13-13-117."

Section 10. Section 13-10-311, MCA, is amended to read:

"13-10-311. Election judges' duties when preparing for count. (1) Except as otherwise provided in this section, election judges at the primary election shall prepare for a count of votes ~~cast on paper ballots~~ in the manner prescribed in 13-15-201.

(2) In preparing for a count of ~~paper ballots~~, the election judges shall:

(a) separate the ballots for each political party and count each party's ballots separately;

(b) reconcile the total number of party ballots and the separate total number of other ballots used at the election with the number of electors voting. Any discrepancies in the reconciliations must be handled as provided in 13-15-201.

(c) list each party's candidates separately in the tally books; and

(d) bundle the voted ballots for each party separately for return to the election administrator. The unvoted ballots must be bundled in accordance with rules established pursuant to 13-12-202.

~~(3) At a primary election, the election judges shall prepare for the counting of nonpaper ballots in the manner prescribed under rules adopted pursuant to 13-17-211."~~

Section 11. Section 13-10-326, MCA, is amended to read:

"13-10-326. Vacancy prior to primary election. (1) If a candidate for nomination for a partisan office dies or withdraws 75 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327.

(2) If ~~the death or withdrawal occurs~~ a candidate for nomination for a partisan office dies less than 75 days before the primary, the affected political party shall appoint a candidate after the primary as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election.

(3) This section does not allow a political party to appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election."

Section 12. Section 13-10-503, MCA, is amended to read:

"13-10-503. Filing deadlines. (1) A petition for nomination and the affidavits of circulation required by 13-27-302, ~~accompanied by the required filing fee, must be filed with the same officer with whom other nominations for the office sought are filed.~~ Petitions must be submitted, at least 1 week before the deadline for filing provided in subsection (2)(b), to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. In the event there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing.

(2) (a) If sufficient signatures are verified and certified pursuant to 13-10-502, the county election administrator shall file the petition for nomination with the same officer with whom other nominations for the office sought are filed.

(b) Except as provided in 13-10-504, each petition for nomination, accompanied by the required filing fee, must be filed by 5 p.m. on the day before the scheduled primary election or by 5 p.m. on the day of the filing deadline for the special or general election if a primary election is not scheduled."

Section 13. Section 13-10-601, MCA, is amended to read:

"13-10-601. Parties eligible for primary election -- petitions by minor parties. (1) Each political party that had a candidate for a statewide office in either of the last two general elections who received a total vote that was 5% or more of the total votes cast for the most recent successful candidate for governor ~~in either of the last two general elections~~ shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) (a) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election ~~and~~.

(b) The petition must be signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election or 5,000 electors, whichever is less, which number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts or 150 electors in those districts, whichever is less.

(c) The At least 1 week before the filing deadline provided in subsection (2)(d), the petition and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306.

~~(d) The election administrator shall forward the verified petition to the secretary of state at least 75 days before the date of the primary. The petition must be submitted to the election administrator at least 1 week before the deadline for submitting the verified petition to the secretary of state."~~

Section 14. Section 13-12-205, MCA, is amended to read:

"13-12-205. Arrangement of names -- rotation on ballot. (1) The candidates' names must be arranged alphabetically on the ballot according to surnames under the title of the respective offices and rotated as provided in this section.

~~(2) (a) Except as provided in subsection (3), if~~ if two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party must be considered separately in determining the number of sets necessary for a primary election.

(b) The election administrator shall begin with a form arranged alphabetically and rotate the names of the candidates so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names must be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.

(c) If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.

(d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor must be considered as a group.

(e) No more than one of the sets may be used in preparing the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.

~~(3) In a precinct where a nonpaper-based voting system is used, the election administrator need not rotate candidates' names as provided in subsection (2) on the paper ballots required under 13-17-305 unless more than 5% of the electors voting in the precinct in the last preceding general election voted using paper ballots. If the candidates' names are not rotated, the election administrator shall determine by lot the arrangement of the names on the paper ballot required under 13-17-305."~~

Section 15. Section 13-12-207, MCA, is amended to read:

"13-12-207. Order of placement. (1) The order on the ballot for state and ~~national~~ federal offices must be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line must be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party must be grouped together.

- (b) United States senator;
- (c) United States representative;
- (d) governor and lieutenant governor;
- (e) secretary of state;
- (f) attorney general;
- (g) state auditor;
- (h) ~~public service commissioners~~ state superintendent of public instruction;
- (i) ~~state superintendent of public instruction~~ public service commissioners;
- (j) clerk of the supreme court;
- (k) chief justice of the supreme court;
- (l) justices of the supreme court;
- (m) district court judges;
- (n) state senators;
- (o) members of the house of representatives.

(2) The following order of placement must be observed for county offices:

- (a) clerk of the district court;
- (b) county commissioner;
- (c) county clerk and recorder;
- (d) sheriff;
- (e) coroner;
- (f) county attorney;
- (g) county superintendent of schools;
- (h) county auditor;
- (i) public administrator;
- (j) county assessor;

- (k) county treasurer;
- (l) surveyor;
- (m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, or consolidated local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments must be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision must follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they may not be listed, but the order of the offices to be filled must be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office must precede the short-term."

Section 16. Section 13-13-117, MCA, is amended to read:

"13-13-117. Method of voting. (1) ~~Upon receipt of a paper ballot or, if a nonpaper ballot is used,~~ After marking the precinct register pursuant to 13-13-115 and receiving a ballot, an elector shall immediately retire to a voting station and prepare the elector's ballot in the manner prescribed in the instructions provided pursuant to 13-13-112.

(b) An elector who spoils the elector's ballot must be provided with another ballot in place of the spoiled ballot.

(2) (a) After the elector has completed voting, the elector shall ensure the proper disposition of the elector's ballot in accordance with instructions provided pursuant to 13-13-112.

~~(b) If a paper ballot was cast, an~~ An election judge or voting system shall place the ballot in the ballot box immediately without ~~opening or examining~~ allowing anyone to examine the ballot. ~~Only an election judge may put a ballot in a ballot box, and nothing~~ Nothing other than a ballot may be put in a ballot box."

Section 17. Section 13-13-201, MCA, is amended to read:

"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 ~~only by paper ballot and 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 return envelope;
- (d) executing the affidavit printed on the return envelope; and
- (e) returning the return envelope with all appropriate enclosures by regular mail, postage ~~prepaid~~ paid, or by delivering it to the election administrator ~~of or, pursuant to 13-13-229, to the special absentee election board established pursuant to 13-13-225.~~

(3) ~~(a)~~ A provisionally registered elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name, ~~including~~. 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.

~~(b) An elector's absentee ballot must be handled as provided in 13-13-241."~~

Section 18. Section 13-13-241, MCA, is amended to read:

"13-13-241. Examination of absentee ballot return envelopes -- deposit of absentee and unvoted ballots. (1) (a) ~~As soon as~~ After an absentee ballot is received, an election administrator shall compare the signature of the elector on the absentee ballot request with the signature on the absentee ballot return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, 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 return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification 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 information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification 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.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot.

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form, the absentee ballot must be rejected. The election administrator, without opening the absentee ballot return envelope, shall mark across it the reason for rejection. Unopened rejected absentee ballot return envelopes must be handled in the same manner as provided for rejected ballots in 13-15-108(1).

(6) After receiving an absentee ballot secrecy envelope, without opening the secrecy envelope, the election judges shall on election day place the secrecy envelope in the proper ballot box."

Section 19. Section 13-15-107, MCA, is amended to read:

"13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, a provisionally registered elector who casts a provisional ballot ~~in person shall provide information to the election administrator as listed below:~~

~~—— (a) present in person at the office of the election administrator by 5 p.m. on the day after the election a photo identification or other identifying document as described in 13-13-114(1)(a);~~

~~—— (b) send by facsimile or electronic mail by 5 p.m. on the day after the election a copy or scanned document that meets the identification requirements of 13-13-114(1)(a);~~

~~—— (c) mail a nonreturnable copy or nonreturnable original document described in 13-13-114(1)(a) in a self-addressed return envelope provided by the election administrator. If the elector mails a document, the postmark on the envelope must be for the day of the election or the day following the election.~~

~~—— (d) if applicable, the information to respond to a challenge under 13-13-304 has until 5 p.m. on the day~~

after the election to provide valid identification information either in person, by facsimile, by electronic mail, or by mail postmarked no later than the day after the election.

(2) (a) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), the election administrator shall compare the elector's signature on the affirmation required under 13-13-601 to the elector's signature on the elector's voter registration card.

(b) If the signatures match, the election administrator shall handle the ballot as provided in subsection (6).

(c) If the signatures do not match, the ballot must be rejected and handled as provided in 13-15-108.

~~(3) The election administrator shall determine prior to an election whether an absentee voter has provided sufficient identification to allow a ballot to be counted. If the information is insufficient, the election administrator shall follow procedures described in 13-13-241 to allow an absentee elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote. An absentee elector whose ballot is determined to be provisional has until 5 p.m. on the day after the election to provide valid identification information either in person, by facsimile, by electronic mail, or by mail postmarked on the day of the election or the day after the election.~~

~~(4)(3)~~ A provisional ballot must be counted if the election administrator verifies the elector's eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the elector's eligibility under the rules, the elector'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 elector is of unsound mind or serving a felony sentence in a penal institution, the elector'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 elector is of unsound mind or that the elector has been convicted and sentenced and is still serving a felony sentence in a penal institution.

~~(5)(4)~~ The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.

~~(6)(5)~~ A provisional ballot cast by an elector whose voter information is verified before 5 p.m. on the day after the election 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 ballot."

Section 20. Section 13-15-201, MCA, is amended to read:

"13-15-201. Preparation for count. (1) ~~(a)~~ Subject to 13-10-311, to prepare for a manual or automatic count of paper ballots before or after the close of the polls, the counting board of election judges designated under 13-15-112 or, if appointed, the absentee counting board shall take ballots out of the box unopened to determine whether each ballot is single.

~~(b)~~ If an absentee ballot counting board has been appointed pursuant to 13-15-112, the absentee ballots must be delivered to the absentee ballot counting board and counted as provided in 13-15-104. If an absentee ballot counting board has not been appointed, the regular counting board shall, subject to 13-13-244, remove each absentee ballot secrecy envelope and open it to determine whether the ballot for each election is single.

(2) An absentee ballot must be rejected and handled as provided in 13-15-108 if in the envelope there is more than one voted ballot for each election.

~~(e)~~(3) The counting board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

~~(d)~~(4) If the counting 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.

~~(e)~~(5) A ballot that is not marked as official is void and may not be counted unless all judges on the counting 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.

~~(f)~~(6) 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 voted by one elector, the ballots must be rejected and handled as provided in 13-15-108, otherwise they must be counted.

~~(2)~~ For nonpaper ballots, the counting board shall prepare for the official count in a manner prescribed by the secretary of state pursuant to 13-17-211."

Section 21. Section 13-15-206, MCA, is amended to read:

"13-15-206. Counting votes -- uniformity -- rulemaking -- definitions. (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count or recount of votes cast on a paper ballot must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall

each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the pollbook:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) When a voting system is ~~tabulating a vote cast on a nonpaper ballot~~ counting votes:

(i) if a vote is recognized and counted by the system, it is a valid vote;

(ii) if a vote is not recognized and counted by the system, it is not a valid vote;

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

~~(b) When a voting system is tabulating a vote cast on a paper ballot:~~

~~———— (i) if the voting system recognizes and counts the vote, it is a valid vote;~~

~~———— (ii) if~~

(b) If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an unvoted ballot or an overvote or undervote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

(c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

(d) After all valid votes have been counted and totaled ~~pursuant to subsection (4) and this subsection (3)~~, the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).

(4) (a) (i) Before being counted, each questionable vote on a ~~paper~~ ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly

determined, the vote is valid and must be counted according to the voter's intent.

(iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.

(5) A write-in vote may be counted if:

(a) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or

(b) pursuant to 13-10-211(7), a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office.

(6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

(a) the security of the counting process against fraud;

(b) the place and time and public notice of each count or recount;

(c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;

(d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and

(e) the keeping of a public record of count or recount proceedings.

(9) For purposes of this section,:

~~(a) "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue; and~~

~~(b) "undervote" means an elector's vote that has been interpreted by the voting system as a nonvote."~~

Section 22. Section 13-15-209, MCA, is amended to read:

"13-15-209. Handling voting system error during count. (1) During a count of paper or nonpaper

~~ballots~~ in which votes are being ~~automatically tabulated~~ counted by a voting system, if the election administrator or counting board has reason to believe that the voting system is not operating correctly, the count must be halted and the system must be tested in accordance with rules adopted by the secretary of state pursuant to 13-17-211.

(2) If the test does not show any errors, the count must proceed using the voting system.

(3) If the test shows errors and the errors cannot be corrected or if a majority of the counting board agrees that the system may not be functioning correctly,:

~~_____ (a) votes cast on paper ballots must be counted manually in accordance with 13-15-206(2);~~

~~_____ (b) votes cast on a nonpaper ballot must be counted as provided in rules adopted under 13-17-211."~~

Section 23. Section 13-15-301, MCA, is amended to read:

"13-15-301. Disposition of items by election administrator. (1) The election administrator shall file the envelopes or packages containing the precinct registers, pollbooks, tally sheets, certificates of registration, and oaths of election officers. ~~He~~ Except as provided in subsection (2), the election administrator shall keep them unopened until the county board of canvassers meets to canvass the returns. The board shall open the envelopes or packages.

(2) The election administrator may open a package containing a precinct register to resolve questions concerning provisional ballots.

~~(2)(3)~~ Immediately after the returns are canvassed, the election administrator shall file the pollbooks, election records, and ~~the~~ papers delivered to the board of canvassers with the unopened packages of ballots and ballot stubs."

Section 24. Section 13-17-103, MCA, is amended to read:

"13-17-103. Required specifications for voting systems. (1) A voting system may not be approved under 13-17-101 unless the voting system:

(a) allows an elector to vote in secrecy;

(b) prevents an elector from voting for any candidate or on any ballot issue more than once;

(c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;

(d) allows an elector to vote only for the candidates of the party selected by the elector in the primary election;

(e) allows an elector to vote a split ticket in a general election if the elector desires;

(f) allows each valid vote cast to be registered and recorded within the performance standards adopted

pursuant to subsection ~~(3)~~ (2);

(g) may be protected from tampering for a fraudulent purpose;

(h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;

(i) allows write-in voting;

(j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical assistance will be provided to election officials under the contract for purchase of the voting system;

(k) uses a paper ballot that allows votes to be manually counted, ~~except as provided in subsection (2)~~;

and

(l) allows auditors to access and monitor any software program while it is running on the system to determine whether the software is running properly.

~~(2) A direct recording electronic system that does not mark a paper ballot may be used to facilitate voting by a disabled voter pursuant to the Help America Vote Act of 2002, 42 U.S.C. 15301, et seq., if:~~

~~—— (a) (i) a direct recording electronic system that uses a paper ballot has not yet been certified by the federal election assistance commission; or~~

~~—— (ii) a direct recording electronic system that marks a paper ballot has not yet been approved by the secretary of state pursuant to 13-17-101; and~~

~~—— (b) the system records votes in a manner that will allow the votes to be printed and manually counted or audited if necessary.~~

~~(3)~~(2) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies."

Section 25. Section 13-17-211, MCA, is amended to read:

"13-17-211. Uniform procedures for using voting systems. (1) For each voting system approved under 13-17-101, the secretary of state shall adopt rules specifying the procedures to be uniformly applied in elections conducted with the voting system.

(2) The rules must, at a minimum, specify procedures that address the following:

(a) performance testing and certification under 13-17-212;

(b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2);

~~(e) the process to be used to prepare for a vote count under 13-10-311(3) and 13-15-201(2) for nonpaper ballots so that election judges can determine the total number of electors voting in the election compared to the total number of ballots cast;~~

~~(d)(c) the procedures to be followed if the comparison under 13-15-206(2)(b) reveals discrepancies;~~

~~(e)(d) how to operate and test the system during counts or recounts; and~~

~~(f)(e) the security measures necessary to secure the voting system before, during, and after an election, including security following a recount under 13-16-417; and~~

~~—(g) testing and certification of voting systems pursuant to 13-17-212."~~

Section 26. Section 13-17-212, MCA, is amended to read:

"13-17-212. Performance testing and certification of voting systems prior to election. (1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall publicly test and certify that the system is performing properly.

(2) The secretary of state shall ensure that at least 10% of all voting systems in the state have been randomly tested and certified at least once every calendar year.

(3) If any type of direct recording electronic voting system is approved pursuant to 13-17-101 after meeting the requirements of 13-17-103, provision must be made to ensure that, at a minimum, each system is tested and certified as follows:

(a) upon delivery;

(b) no more than 30 days prior to the election; and

(c) on election day.

(4) The provisions of this section must be implemented according to rules adopted by the secretary of state pursuant to 13-17-211."

Section 27. Section 13-25-101, MCA, is amended to read:

"13-25-101. Nomination of electors -- ballot. (1) Each In the manner and number provided by law, each political party qualified under 13-10-601 shall nominate presidential electors for this state and file with the secretary of state certificates of nomination for these candidates with the secretary of state in a form and by the date prescribed by the secretary of state ~~no later than 76 days before the general election, in the manner and number provided by law.~~ However, in the event of the death of a candidate for president or vice president after a certificate of nomination has been filed, a new candidate for president or vice president, or both, may be

nominated for the affected political party and ~~certificates a new certificate of election nomination~~ may be filed with the secretary of state ~~less than 76 days before a general election~~ by the date prescribed by the secretary of state.

(2) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which must be placed on the ballot by one of the methods provided in 13-12-204. If the name of a new candidate for president or vice president, or both, is certified to the secretary of state in less than 76 days pursuant to subsection (1), the secretary of state shall immediately certify the new name or names to the election administrators and the new name or names must be placed on the ballot by one of the methods provided in 13-12-204.

(3) The names of candidates for electors of president and vice president may not appear on the ballot."

Section 28. Section 13-27-401, MCA, is amended to read:

"13-27-401. Voter information pamphlet. (1) The secretary of state shall prepare for printing a voter information pamphlet containing information relevant to the election, including but not limited to the following information for each ballot issue to be voted on at an election, as applicable:

- (a) ballot title, fiscal statement if applicable, and complete text of the issue;
- (b) the form in which the issue will appear on the ballot;
- (c) arguments advocating approval and rejection of the issue; and
- (d) rebuttal arguments.

(2) The pamphlet must also contain a notice advising the recipient as to where additional copies of the pamphlet may be obtained.

(3) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the ballot issues. The secretary of state may arrange the information in the order ~~which that~~ seems most appropriate, but the information for all issues in the pamphlet must be presented in the same order.

(4) The secretary of state may prescribe by rule the format and manner of submission of the arguments concerning the ballot issue."

NEW SECTION. Section 29. Repealer. Sections 13-13-203, 13-16-414, 13-17-206, and 13-17-305, MCA, are repealed.

- END -