

Disabled Electors: Analysis of Statutes and Rules

Prepared for the
State Administration and Veterans' Affairs Interim Committee

May 16, 2018
****Revised June 14, 2018***

by Sheri Scurr, Research Analyst
Montana Legislative Services Division

Statute Catchline and Summary	Year statute last amended	Rule	Year rule last amended	Comments
CONCERNING DISABLED ELECTORS				
<p>13-1-116. Fingerprint, mark, or agent for disabled electors — rulemaking. Disabled elector may designate an agent to provide signature or identifying mark whenever a signature is needed in voter registration and election process (i.e., registering to vote, requesting an absentee ballot, signing a poll book or signing the signature envelop when voting absentee or by mail)</p>	2017	44.3.115	2006	See comments under 13-13-119, MCA.
<p>13-2-221. Agency-based registration. An agency that provides services to persons with disabilities must give qualified individuals the opportunity to register to vote the person applies for services. Includes state agencies, cities, counties, consolidated city-county governments, or towns.</p>	2009	None.		
<p>13-3-201. Purpose. Statement of purpose for part 2, which is about accessibility of polling places.</p>	2009	None.		Should this part could be expanded to include statutes not only about physical accessibility of polling places but also about making special ballot marking machines available for disabled electors at each polling place or at certain locations during all mail ballot elections?
<p>13-3-202. Definitions. Terms are defined for part 2, which is about accessibility of polling places.</p>	2015	None.		See comments above.

Statute Catchline and Summary	Year statute last amended	Rule	Year rule last amended	Comments
<p>13-3-205. Adoption of standards for polling place accessibility — rulemaking authority. Secretary of State must adopt rules about accessibility standards for polling places that are in compliance with federal ADA.</p>	2009	44.3.101	2012	(1) Rule refers to federal Voting Accessibility for the Elderly and Handicapped Act, but statute does not. Should the statute cite the act?
		44.3.104	2010	(2) Other federal laws in addition to the ADA contain requirements on voting accessibility e.g., HAVA, Voting Rights Act, and others. Should the other federal laws be cited, too?
		44.3.102	2008	(3) ARM 44.3.102 is "advisory only" and describes role of Sec. of State, references assistance provided under section 208 of Voting Rights Act of 1965, does not mention other applicable federal laws. Should the statute include additional language so this rule would not just be "advisory"?
		44.3.113	2008	(4) ARM 44.3.113 is "advisory only" and states the Sec. of State shall install a toll-free telecommunication devise for hearing impaired. Should the statute include additional language so this rule would not just be "advisory"? Is this statute outdated because of technological advances?
		44.3.114	2008	(5) ARM 44.3.114 is "advisory only" and relates only to physical accessibility of polling place and how a complaint is handled. Should the statute include additional language so this rule would not just be "advisory"?
		44.3.109	2008	(6) ARM 44.3.109 is "advisory only" and authorizes county election administrators to establish one or more voting accessibility advisory committees. Should the statute include additional language so this rule would not just be "advisory"?

Statute Catchline and Summary	Year statute last amended	Rule	Year rule last amended	Comments
13-3-206. Survey of polling places to determine accessibility — procedures. County election administrators must conduct survey of polling place accessibility	2006	44.3.105	2010	
13-3-207. Polling place classifications. County election administrator must classify each polling place as accessible or inaccessible	2007	44.3.108	2008	
13-3-211. Emergency exemption. Polling place does not have to be accessible if there is an emergency/disaster within 10 days prior to election.	2009	44.3.107	2008	The rule is "advisory only". Should the statute include additional language so this rule would not just be "advisory"?
13-3-212. Exemption if no accessible polling place is reasonably available. County election administrator may apply to Sec. of State for an exemption to ADA if accessible polling place not available and it cannot be reasonably or safely made accessible, or if in rural area would cause excessive travel or hardship for majority of electors	2007	44.3.106	2010	
13-3-213. Alternative means for casting ballot. Election administrator must provide disabled and elderly individuals with alternative means for casting ballot if they are assigned an inaccessible polling place. Alternative methods and procedures outlined in section.	2017	44.3.110	2015	(1) Statute applies only if the disabled or elderly person is assigned to an inaccessible polling place. Should the statute be updated to apply in any case? (2) Alternative means does not list a ballot marking machine such as an AutoMark. Should the statute refer to a ballot marking machine that is accessible for disabled electors?
13-13-114. Voter identification and marking precinct register book before elector votes — provisional voting. Provides that if an elector is disabled and fails to provide a fingerprint, identifying mark, or a signature of an authorized agent, then the elector may cast a provisional ballot.	2017	44.3.2102 44.3.2110 44.3.2111 44.3.2113 44.3.2304	2010 2013 2013 2012 2013	
13-13-118. Taking ballot to disabled elector. Allows appointment of two elections judges of different political parties to take a ballot to an elector who comes to premises but unable to enter the polling place because of a disability.	2013	44.3.110	2015	Commonly referred to as "curbside voting".

Statute Catchline and Summary	Year statute last amended	Rule	Year rule last amended	Comments
<p>13-13-119. Aid to disabled elector. When disabled elector enters polling place, election judge must ask if person wants assistance. Disabled person may designate their own assistant. Disabled elector must take oath of disability. If election judge assistance is desired, must be assisted by two judges of different political parties.</p>	2011			<p>(1) Nothing in the statute refers to offering use of a voting system or ballot marking devise/machine (e.g., AutoMark or other system). Should the statute refer to a ballot marking machine that is accessible for disabled electors?</p> <p>(2) No rule regarding this statute specifically. ARM 44.3.102 on role of Sec. of State might cover because it refers to assistance to be provided under Voting Rights Act. Is a rule desirable?</p> <p>(3) The designation or an agent under 13-3-116 is for a mark or signature, but 13-13-119(5) allows an individual designated at the polling place to sign the precinct register. How do they work together? Should this coordination between these statutes be clarified, and if so, how ?</p>
<p>13-13-246. Electronic ballots for disabled persons — procedures — definition — rulemaking. Allows a disabled elector to request and receive an electronic ballot, which the elector may vote on the elector's own devise, print, and return by mail. The returned voted ballot is separated from the affirmation page so it remains a secret ballot. The ballot is then transcribed by three election judges onto a regular ballot before the votes are actually tabulated.</p>	Enacted 2015	44.3.110 44.3.116	2015 2015	<p>The statute and ARM 44.3.116 states that a "secrecy envelope" is sent electronically. However, an actual envelope can't be sent electronically. The packet sent to the elector also used the term "secrecy envelope". What is sent electronically is really a secrecy cover page that is to be placed or folded over the ballot. Should this language be changed to clarify that it is a secrecy cover page?</p>
<p>13-19-301. Voting mail ballots. This statute relates to all mail ballot elections and provides that an elector with a disability may receive the ballot electronically as provided in 13-13-246.</p>	2015	None.		

Statute Catchline and Summary	Year statute last amended	Rule	Year rule last amended	Comments
<p>NOTE: The following statutes do not specifically mention disabled or elderly electors, but a rule that applies to elderly or disabled electors references the statute:</p> <p>13-1-202. Forms and rules prescribed by secretary of state.</p> <p>13-13-111. Provision and use of voting stations.</p> <p>13-13-112. Display of instructions for electors. This section mentions that instructions need to be posted on "how to prepare their ballots or use a voting system"</p>	<p>2007</p> <p>2011</p> <p>2013</p>	<p>44.3.111</p> <p>44.3.112</p>	<p>1986</p> <p>1986</p>	<p>Should the language of these rules be updated?</p> <p>Should language be added to any of these statutes so that the rules are not "advisory only"?</p> <p><u>44.3.111 ARM</u> (1) is "advisory only". Regarding elderly electors. Refers to "voting devise ballots" and "easily graspable" stylus and oversize pen or pencil.</p> <p>(2) does not refer to disabled electors or use of a "voting system"</p> <p><u>44.3.112 ARM</u> (3) is "advisory only". Regarding visually impaired electors.</p> <p>(4) does not mention use of "voting system" or ballot marking devise/machine.</p>

Statute Catchline and Summary	Year statute last amended	Rule	Year rule last amended	Comments
CONCERNING BALLOT UNIFORMITY				
<p>13-12-202. Ballot form and uniformity. (1) The secretary of state shall adopt statewide uniform rules that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the provisions of this title unless the voting system used clearly requires otherwise.</p> <p>But subsection (5) states "it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue."</p>	2011	44.3.2408	2013	<p>(1) In section 13-12-202, subsection (2) seems to have an intent that there can be an exception to uniformity, but subsection (5) states the ballots must be "impossible to distinguish".</p> <p>(2) Rule simply adopts statute "by reference" and points to Sec. of State's web page with forms.</p> <p>Should the legislature consider changes that would allow counties to use an ExpressVote or other ballot marking devise that would print a nonuniform ballot for disabled electors (and include language for procedures that would still ensure the secrecy of the ballot, such as having some nondisabled electors cast ballots using the machine, or transcribing the ballot as is done when an electronic ballot is returned)?</p>