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As of: January 3, 2020 (3:04PM)

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\*\*\*\* Bill No. \*\*\*\*  
Introduced By \*\*\*\*\*  
By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act generally revising election laws related to voting by physically disabled electors; revising definitions; clarifying provisions related to designated agents; revising references to applicable federal laws; revising responsibility for costs of providing voter interface devices; revising provisions related to polling places; requiring voter interface devices be made available for all elections; providing exceptions; revising provisions related to alternatives for disabled electors to cast ballots; revising the penalty provision related to deceiving a disabled elector; amending sections 13-1-101, 13-1-116, 13-1-203, 13-1-302, 13-3-105, 13-3-201, 13-3-202, 13-3-206, 13-3-208, 13-3-211, 13-3-212, 13-3-213, 13-13-118, 13-13-119, 13-13-229, 13-13-246, 13-35-202, and 13-35-208, MCA; and providing an effective date."

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 whose name has not been

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placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

(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, is submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means a paper ballot 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.

(6) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment, recall question, school levy question, bond issue question, or ballot question.

(b) 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 on the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of

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state of the form of the petition or referral to the person who submitted the proposed issue.

(7) "Ballot issue committee" means a political committee specifically organized to support or oppose a ballot issue.

(8) "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; or

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

(9) (a) "Contribution" means:

(i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;

(ii) an expenditure, including an in-kind expenditure, that is

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made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) 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) The term does not mean 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.

(c) This definition does not apply to Title 13, chapter 37, part 6.

(10) "Coordinated", including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.

(11) "De minimis act" means an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.

(12) "Disabled" means a temporary or permanent physical impairment or limitation caused by injury, age, or disease.

**Commented [SS1]:** Removing and revising the definition of "disabled" from 13-3-201 is so the definition will apply to all of Title 13.

Is this definition acceptable to SAVA?

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~~(12)~~(13) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

~~(13)~~(14) (a) "Election administrator" means, except as provided in subsection ~~(13)(b)~~ (14) (b), 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 not administered by the county, the term means the school district clerk.

(b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties even if the school election is administered by the school district clerk.

~~(14)~~(15) (a) "Election communication" means the following forms of communication to support or oppose a candidate or ballot issue:

(i) a paid advertisement broadcast over radio, television, cable, or satellite;

(ii) paid placement of content on the internet or other electronic communication network;

(iii) a paid advertisement published in a newspaper or periodical or on a billboard;

(iv) a mailing; or

(v) printed materials.

(b) The term does not mean:

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(i) an activity or communication for the purpose of encouraging individuals to register to vote or to vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

(ii) a communication that does not support or oppose a candidate or ballot issue;

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

(iv) a communication by any membership organization or corporation to its members, stockholders, or employees; or

(v) a communication that the commissioner determines by rule is not an election communication.

~~(15)~~(16) "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to perform duties as specified by law.

~~(16)~~(17) (a) "Electioneering communication" means a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:

(i) refers to one or more clearly identified candidates in that

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election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or

(iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

(b) The term does not mean:

(i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;

(ii) a communication by any membership organization or corporation to its members, stockholders, or employees;

(iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

(iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(v) a communication that the commissioner determines by rule is not an electioneering communication.

~~(17)~~ (18) "Elector" means an individual qualified to vote under state law.

~~(18)~~ (19) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or

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anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or

(ii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) The term does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) payments by a candidate 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, blog, 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.

(c) This definition does not apply to Title 13, chapter 37, part 6.

~~(19)~~ (20) "Federal election" means an election in even-numbered years in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

~~(20)~~ (21) "General election" means an election that is held for offices that first appear on a primary election ballot, unless the primary is canceled as authorized by law, and that is held on a date

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specified in 13-1-104.

~~(21)~~(22) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

~~(22)~~(23) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

~~(23)~~(24) (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

(b) For the purpose of this subsection ~~(23)~~(24), the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee.

~~(24)~~(25) "Independent committee" means a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant to the limits set forth in 13-37-216(1).

~~(25)~~(26) "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.

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~~(26)~~ (27) "Individual" means a human being.

~~(27)~~ (28) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

~~(28)~~ (29) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

~~(29)~~ (30) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8).

~~(30)~~ (31) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

~~(31)~~ (32) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

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

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

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

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(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

~~(32)~~(33) "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

~~(33)~~(34) "Political party organization" means a political organization that:

(a) was represented on the official ballot in either of the two most recent statewide general elections; or

(b) has met the petition requirements provided in Title 13, chapter 10, part 5.

~~(34)~~(35) "Political subdivision" means a county, consolidated municipal-county government, municipality, special purpose district, or any other unit of government, except school districts, having authority to hold an election.

~~(35)~~(36) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

~~(36)~~(37) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to nominate candidates for offices filled at a general election.

~~(37)~~(38) "Provisional ballot" means a ballot cast by an elector

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whose identity or eligibility to vote has not been verified as provided by law.

~~(38)~~(39) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

~~(39)~~(40) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

~~(40)~~(41) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503.

~~(41)~~(42) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

~~(42)~~(43) "Regular school election" means the school trustee election provided for in 20-20-105(1).

~~(43)~~(44) "School election" has the meaning provided in 20-1-101.

~~(44)~~(45) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

~~(45)~~(46) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

~~(46)~~(47) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

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(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

~~(47)~~(48) "Special election" means an election held on a day other than the day specified for a primary election, general election, or regular school election.

~~(48)~~(49) "Special purpose district" means an area with special boundaries created as authorized by law for a specialized and limited purpose.

~~(49)~~(50) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

~~(50)~~(51) "Support or oppose", including any variations of the term, means:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate

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in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

~~(51)~~ (52) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

~~(52)~~ (53) "Voted ballot" means a ballot that is:

- (a) deposited in the ballot box at a polling place;
- (b) received at the election administrator's office; or
- (c) returned to a place of deposit.

~~(53)~~ (54) "Voter interface device" means a voting system that:

- (a) is accessible to electors with disabilities;
- (b) communicates voting instructions and ballot information to a voter;
- (c) allows the voter to select and vote for candidates and issues and to verify and change selections; and
- (d) produces a paper ballot that displays electors' choices so the elector can confirm the ballot's accuracy and that may be manually counted.

~~(54)~~ (55) "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 ballot."

{Internal References to 13-1-101:

2-2-121 3-15-402 7-1-205 7-1-205  
7-33-2106 13-27-111 13-37-101 13-37-201  
13-37-219 13-37-226 13-37-228 13-37-250  
20-20-421 70-1-522}

**Section 2.** Section 13-1-116 , MCA, is amended to read:

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**"13-1-116. Fingerprint, mark, or agent for disabled electors**

-- rulemaking. (1) Except as otherwise specified by law, the provisions of this section apply.

(2) Whenever a signature is required by an elector under a provision of this title and the elector is unable because of a disability to provide a signature, the elector may provide a fingerprint, subject to subsection (6), or an identifying mark or may request that an agent, election administrator, or election judge sign for the elector as provided in this section.

(3) If an elector is unable to provide a fingerprint or an identifying mark and the elector has not established an agent pursuant to subsection (4), the election administrator or an election judge may sign for the elector after reviewing and verifying the elector's identification.

(4) (a) An elector who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required pursuant to this title and for providing any other assistance to the elector throughout the registration and voting process. The individual designated as an elector's agent may not be the elector's employer, an agent of the elector's employer, or an officer or agent of the elector's union. The use of an agent is a reasonable accommodation under the provisions of 49-2-101(19)(b).

(b) An application for designation of an agent by an elector under this section must be made on a form prescribed by the secretary of state. The secretary of state shall by rule establish the criteria

**Commented [SS2]:** The inserted language is taken from 13-13-119 regarding aid to a disabled elector at a polling place. The language is more appropriate in this general section and so is stricken from 13-13-119. Are these restrictions still desirable and is this cleanup acceptable to SAVA?

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that must be met and the process that must be followed in order for a person to become a designated agent for a disabled elector pursuant to this subsection (4).

(5) If an election administrator or election judge signs or marks a document for an elector pursuant to this section, the election administrator or election judge shall initial the signature or mark.

(6) A disabled elector may not be required to provide a fingerprint."

{Internal References to 13-1-116:

x13-13-114 x13-13-213 x13-13-214 a13-13-246

x13-15-107 x13-19-304}

**Section 3.** Section 13-1-203 , MCA, is amended to read:

**"13-1-203. Secretary of state to advise, assist, and train.** (1)

The secretary of state shall advise and assist election administrators, including administrators of school elections under Title 20, chapter 20, with regard to:

(a) the application, operation, and interpretation of Title 13, except for chapter 35, 36, or 37;

(b) the implementation and operation of the National Voter Registration Act of 1993, Public Law 103-31, the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq, the Voting Rights Act of 1965, 52 U.S.C 10101, et seq., the Voting Accessibility for the Elderly and Handicapped Act of 1984, 52 U.S.C. 20101, et seq., and the Help America Vote Act of 2002, Public Law 107-252; and

(c) the procedures adopted pursuant to 13-17-211.

(2) The secretary of state shall prepare and distribute

**Commented [SS3]:** The inserted references to federal laws are to additional laws applicable to accessibility for disabled electors. There is some discussion about whether federal citations are necessary or too cumbersome.

Are these additions acceptable to SAVVA?

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training materials for election judges to be trained pursuant to 13-4-203. Sufficient copies of the materials to supply all election judges in the county and to provide a small extra supply must be sent to each election administrator.

(3) (a) The secretary of state shall hold at least one training session every 2 years to instruct election administrators and their staffs on how to conduct and administer primary and general elections. The training must also include instruction on the use of the statewide voter registration system. The training may be held in various locations around the state. The training must also be offered online and through teleconferencing.

(b) Costs of the biennial training, including the materials, must be paid by the secretary of state.

(4) In addition to completing the biennial training under subsection (3), each election administrator shall complete 6 hours of election-related continuing education each year that is approved by the secretary of state. Costs for the continuing education must be paid by the counties.

(5) The secretary of state shall:

(a) certify for election administration purposes each election administrator who attends the biennial training and completes the required continuing education; and

(b) provide a certificate of completion to election staff who attend the biennial election training described in subsection (3).

(6) An election administrator may require that election staff complete the continuing education described in subsection (4) and

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provide a certificate of completion to staff who complete it."

{Internal References to 13-1-203:

x13-4-203}

**Section 4.** Section 13-1-302 , MCA, is amended to read:

**"13-1-302. Election costs.** (1) Unless specifically provided otherwise, all costs of the regularly scheduled primary and general elections shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

(2) A political subdivision holding an annual election with a regularly scheduled school election shall bear its proportionate share of the costs as determined by the county election administrator and the school district election administrator.

(3) The political subdivision for which a special election is held shall bear all costs of the election, or its proportionate share as determined by the county governing body if held in conjunction with any other election.

(4) Costs of elections may not include the services of the election administrator or capital expenditures.

(5) The county governing body shall set a schedule of fees for services provided to school districts by the election administrator.

(6) Election costs shall be paid from county funds, and any shares paid by other political subdivisions shall be credited to the fund from which the costs were paid.

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(7) The proportionate costs referred to in subsection (1) of this section shall be only those additional costs incurred as a result of the political subdivision holding its election in conjunction with the primary or general election.

(8) For special purpose district elections, the cost of providing a voter interface device for disabled electors pursuant to 13-3-208 or [section 17] shall be paid by [redacted]."

{Internal References to 13-1-302:

x13-1-305 x20-20-417}

**Commented [SS4]:** How does SAVA want to address costs for special purpose district elections?

Options include requiring the special district to pay the cost (current law), requiring the county or state pay the cost, or providing for shared costs.

**Section 5.** Section 13-3-105 , MCA, is amended to read:

"13-3-105. **Designation of polling place.** (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place must be used for both the primary and general election if at all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) ~~Not more less than 10 days or less than 2 days~~ before an election, the election administrator shall publish in a newspaper of general circulation in the county a statement of the locations of the precinct polling places. The election administrator shall include in the published notice the accessibility designation for each polling place according to the classification in 13-3-207. Notice may also be given as provided in 2-3-105 through 2-3-107.

**Commented [SS5]:** This change accommodates the timeline in 13-3-213 that requires a disabled elector to request an alternative accessible polling place at least 7 days before the election.

Does SAVA agree with this change or would SAVA like to consider different or additional changes?

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(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice must be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) (a) Any building may be used as a polling place. The building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

(b) If the building regularly used as a designated polling place is not available for an election because of an unforeseen or temporary circumstance and no other suitable building is available free of charge, the county may pay for use of a building as a temporary polling place for that election provided that the building meets the polling place standards under this chapter. If a county pays for the use of a building as a temporary polling place because of an unforeseen or temporary circumstance, the county shall provide with its regular report on election costs to the secretary of state any costs incurred for use of a building pursuant to this subsection (4) (b).

(5) The exterior of the voting systems, or of the booths in which they are placed, and every part of the polling place must be in plain view of the election judges."

{Internal References to 13-3-105:

a13-3-211}

**Section 6.** Section 13-3-201 , MCA, is amended to read:

"**13-3-201. Purpose.** The purpose of this part is to promote the fundamental right to vote by improving access to polling places and

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providing that voter interface devices are made reasonably available for individuals with disabilities and elderly individuals. The provisions of this part acknowledge that, in certain cases, it may not be possible to locate a polling place that meets the standards for accessibility, either because an accessible polling place does not exist or, if it does, its location in the precinct would require undue travel for a majority of the electors. In those cases when an accessible polling place is not available, this part provides voters with disabilities and elderly voters an alternative means for casting a ballot on election day."

{Internal References to 13-3-201: None.}

**Section 7.** Section 13-3-202 , MCA, is amended to read:

**"13-3-202. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Accessible" means accessible to individuals with disabilities and elderly individuals for purposes of voting as determined in accordance with standards established by the secretary of state under 13-3-205.

~~(2) "Disability" means a temporary or permanent physical impairment such as:~~

~~(a) impaired vision;~~

~~(b) impaired hearing; or~~

~~(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired because of age, disability,~~

**Commented [SS6]:** This expands the scope of this part 2 from physical accessibility to also encompass access to VIDs at polling places. Section 13-13-208, enacted in 2019, adds to this part 2 a section on VIDs but the bill did not change the purpose provision.

Is this change acceptable to SAVA?

**Commented [SS7]:** As noted earlier, this definition was revised and moved to 13-1-101 so it applies to the entire Title 13.

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~~or disease.~~

~~(3)~~(2) "Elderly" means 65 years of age or older.

~~(4)~~(3) "Election" means a regular or special general, special,  
~~or primary, local government, school district, or special purpose~~  
district election held in an even-numbered year.

~~(5)~~(4) "Inaccessible" means not accessible under standards  
adopted pursuant to 13-3-205.

~~(6)~~(5) "Rural polling place" means a location that is expected  
to serve less than 200 registered electors."

{Internal References to 13-3-202:

a13-13-246}

**Commented [SS8]:** This change results in applying the part 2 provisions on accessibility of polling places and providing VIDs at polling places in school, special purpose district, and local government elections.

Is this consistent with the policy change SAVA wants?

**Section 8.** Section 13-3-206 , MCA, is amended to read:

**"13-3-206. Survey of polling places to determine accessibility -- procedures.** (1) The election administrator ~~in each county~~ shall conduct an onsite survey of each polling place used in an election to determine whether it meets the standards for accessibility established under 13-3-205.

(2) Each election administrator shall conduct the survey in a manner that represents the path of travel that an elector would reasonably be expected to take in order to reach the polling place on election day.

(3) A polling place that has been surveyed pursuant to this section need not be surveyed again unless:

(a) the conditions of accessibility change; or

(b) the initial survey results are inaccurate."

{Internal References to 13-3-206:

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x13-3-207 a13-3-211 a13-3-211}

**Section 9.** Section 13-3-208 , MCA, is amended to read:

**"13-3-208. Accessible voting technology.** (1) The intent of this section is to:

(a) ensure that disabled electors have access to voting technology that allows the electors to cast ballots independently, privately, and securely;

(b) provide that votes cast using accessible voting technology are collected and counted in a manner that preserves secrecy; and

(c) comply with applicable federal and state law concerning accessibility for disabled electors.

(2) (a) ~~County~~ The election administrators administrator shall ensure that at least one voter interface device is available at each polling place, ~~except as provided in subsection (2) (c)].~~

**Commented [SS9]:** If this part 2 is to be applied to all elections, this change is needed to also cover school clerks administering school elections. See definition of "election administrator" in 13-1-101.

(b) Each voter interface device must be set up and located within the polling place in a manner that allows any elector using the device to cast a ballot independently and privately, including the provision of accommodations to provide a physical barrier or other method a location to ensure that the screen of the device is blocked from the view of other voters in the polling place.

**Commented [SS10]:** See comment in (2) (c) below

(c) (i) A voter interface device is not required at a rural polling place.

**Commented [SS11]:** The inserted language of (2) (c) lists exceptions. Note that "rural polling place" is defined as serving 200 or fewer registered electors.

(ii) A voter interface device is not required at an inaccessible polling place granted an exemption under 13-3-212.

Does SAVA want exceptions? If so, what exceptions or thresholds?

(3) Subject to subsection (4):

Does SAVA want to require that at least one VID be made available at an alternative accessible location if the polling place is rural or the polling place is inaccessible?

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(a) votes on a ballot produced by a voter interface device may be counted manually or using an automatic tabulating system;

(b) ballots counted manually must be counted in accordance with 13-15-206; and

(c) if ballots produced by a voter interface device cannot be processed through an automatic tabulator used in the county and the election administrator does not provide for the ballots to be counted manually, the election administrator may provide for the votes on each ballot produced by the device to be transcribed to the standard ballot form used in the precinct so that the ballots may be processed through an automatic tabulator used in the county.

(4) (a) If the voter interface device produces a ballot form that is distinguishable from the standard ballot form used in the precinct, the county election administrator shall take measures to protect the secrecy of the votes cast by an elector using the device.

(b) Measures to ensure secrecy may provide that votes on a ballot produced by the voter interface device are transcribed to the standard ballot form used in the precinct so that the ballots are indistinguishable from and counted with the other ballots.

(c) Measures must also include encouraging a portion of the nondisabled electors to use the device to cast their ballot.

(5) Any transcription of votes conducted pursuant to this section must be conducted in secret by at least three election officials in substantially the same manner as provided for in 13-13-246."

{Internal References to 13-3-208:

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x13-12-202}

**Section 10.** Section 13-3-211 , MCA, is amended to read:

"13-3-211. **Emergency exemption.** (1) The secretary of state shall exempt a polling place from the requirements of this part if an emergency occurs within 10 days prior to an election. An emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster.

(2) If an emergency occurs, the election administrator in the county shall designate a new polling place in accordance with the procedure provided in 13-3-105. The new polling place is considered temporary and is exempt from the survey procedures established under 13-3-206. However, reasonable accommodations or alternatives must be made for disabled electors to the extent feasible and the polling place may not be used in a subsequent election unless it is surveyed as required in 13-3-206."

{Internal References to 13-3-211: None.}

**Commented [SS12]:** Because the emergency exemption allows an inaccessible polling place to be used, this language would require some reasonable accommodations to still be made.

Does SAVA want to address what accommodations should still be made for disabled electors? If so, how?

**Section 11.** Section 13-3-212 , MCA, is amended to read:

"13-3-212. **Exemption if no accessible polling place is reasonably available.** (1) If an election administrator desires to designate as a polling place a location that is inaccessible, the election administrator shall make a request in writing to the secretary of state asking that an inaccessible polling place be exempt from the standards for accessibility.

(2) The secretary of state may grant an exemption pursuant to

**Commented [SS13]:** Is there any interest in requiring all polling places be accessible or are exemptions still needed?

rules adopted under 13-3-205 if all potential polling places have been surveyed and it is determined that:

(a) an accessible polling place is not available and the county or school district cannot safely or reasonably make a polling place temporarily accessible in the area involved; or

**Commented [SS14]:** This change is required if the definition of "election" in this part 2 is expanded to include school elections.

(b) the location is a rural polling place and designation of an accessible facility as a polling place will require excessive travel or impose other hardships for the majority of qualified electors in the precinct."

{Internal References to 13-3-212:

a13-3-205}

**Section 12.** Section 13-3-213 , MCA, is amended to read:

"13-3-213. **Alternative means for casting ballot.** (1) The election administrator shall provide individuals with disabilities and elderly individuals an alternative means for casting a ballot on election day if they are assigned to an inaccessible polling place or to a rural polling place where a voter interface device is not available.

**Commented [SS15]:** If SAVA provides an exception for VIDs at rural polling places, does SAVA want to require a VID at an alternative location? If so, what alternatives?

(2) ~~These~~ The alternative means for casting a ballot include:

(a) delivery of a ballot to the elector as provided in 13-13-118;

(b) voting by absentee ballot in person at a designated voting station at ~~the county election administrator's office~~ an accessible location where a voter interface device must be made available; ~~and~~ or

**Commented [SS16]:** The current law "and" requires that all three alternatives be provided.

Is that how this law is being interpreted by stakeholders? If it is being interpreted as an "or" does SAVA want to keep "and" or change this to an "or"?

See also subsection (1) in this section, which states "an" alternative.

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(c) prearranged assignment to an accessible polling place within the county that has a voter interface devise.

~~(2)~~(3) An elector with a disability or an elderly elector assigned to an inaccessible polling place who desires to vote at an accessible polling place:

(a) shall request assignment to an accessible polling place by notifying the election administrator in writing at least 7 days preceding the election;

(b) must be assigned to the nearest accessible polling place for the purpose of voting in the election;

(c) shall sign the elector's name on a special addendum to the official precinct register as required in subsection (4); and

(d) must receive the same ballot to which the elector is otherwise entitled.

~~(3)~~(4) For the purpose of subsection ~~(2)~~(3) , the ballot cast at an alternative polling place or location must be processed and counted in the same manner as an absentee ballot.

Commented [SS17]: This inserted language accounts for the fact that alternatives include places other than a polling place.

~~(4)~~(5) The name of an elector who has been assigned to vote in a precinct other than the precinct in which the person is registered, as provided in subsection ~~(2)~~(3), must be printed on a special addendum to the precinct register in a form prescribed by the secretary of state."

{Internal References to 13-3-213: None.}

**Section 13.** Section 13-13-118 , MCA, is amended to read:

**"13-13-118. Taking ballot to disabled elector.** (1) The chief

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election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector. The elector may request assistance in marking the ballot as provided in 13-13-119.

**Commented [SS18]:** There has been some discussion about how an elector would alert election judges that he or she needs to have a ballot delivered for "curbside" voting. Does SAVA want to language inserted in this section that would address this? If so, what language conceptually?

(2) The judges shall have the elector sign an oath form stating that the elector is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. Any challenge to the elector's right to vote must be resolved as provided in Title 13, chapter 13, part 3." {Internal References to 13-13-118:

**Commented [SS19]:** Should this language in (3) be updated, if so, how? One option would be to simply state the ballot is to be handled as an absentee ballot and placed in a secrecy envelope.

x13-3-213 x13-35-202 x13-35-208}

**Section 14.** Section 13-13-119 , MCA, is amended to read:

**"13-13-119. Aid to disabled elector.** (1) ~~When a disabled elector enters a polling place, an election judge shall ask the elector if the elector wants assistance.~~

**Commented [SS20]:** This is being stricken because of comments made last interim indicated concern that election judges should not be profiling or asked to guess who is disabled or who is not. Does SAVA agree with this language being stricken?

~~(2) An election judge or an individual chosen by the a disabled elector as specified in subsection (5) (4) may aid an elector who, because of physical disability or inability to read or write, needs~~

**Commented [SS21]:** "inability to read or write" also appears in 13-13-229. See related comment in that section. Is there a desire or need to keep "inability to read or write"?

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A disabled elector may request assistance in marking the elector's ballot.

~~(3)~~ (2) The If the elector has not designated an agent as provided for in 13-1-116:

(a) the election judges shall require a declaration of disability by the elector. The declaration must be made under oath, which must be administered by an election judge-; and

~~(4)~~ (b) The the elector may be assisted by two judges who represent different parties. If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector. The judges shall certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

~~(5)~~ (3) Instead of assistance as provided in subsection (4), the elector may request the assistance of any individual the elector designates to the judges as provided in 13-1-116 to aid the elector in the marking of the elector's ballot. An individual designated to assist the elector shall sign the individual's name on the precinct register beside the name of the elector assisted. The individual chosen may not be the elector's employer, an agent of the elector's employer, or an officer or agent of the elector's union.

~~(6)~~ (4) No elector other than the elector who requires assistance may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote or may ask or receive the assistance of any individual within the polling place in

**Commented [SS22]:** This is cleanup to clarify the intent of this section.

Does SAVA agree with this cleanup?

**Commented [SS23]:** This is a technical change to provide the appropriate internal reference to the section providing for a designated agent.

Is this consistent with how election administrators are interpreting this subsection?

**Commented [SS24]:** This language was moved to 13-1-116 where it is more appropriate because that section has broader application to all of Title 13.

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the preparation of the elector's ballot."

{ Internal References to 13-13-119:

a13-13-118 a13-13-229 a13-35-202 a13-35-208}

**Section 15.** Section 13-13-229 , MCA, is amended to read:

**"13-13-229. Voting performed before absentee election board or authorized election official.** (1) Pursuant to 13-13-212(2), the elector may request that an absentee election board or an authorized election official 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 13-13-201, except that the elector shall hand the marked ballot in the sealed signature envelope to the absentee election board or authorized election official, and the board or official shall deliver the sealed signature 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 or an authorized election official 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~~ a disability or inability to read or write may receive assistance from the elector's agent provided for in 13-1-116. If an elector does not have a designated agent, the elector may be assisted by the absentee election board or authorized election official appointed to personally deliver the ballot. Any

**Commented [SS25]:** Should "inability to read or write" be retained?

If so, should it be incorporated into the definition of "disability" or into other sections of law that relate to providing a signature or requesting assistance in marking a ballot?

**Commented [SS26]:** This is technical cleanup because the designation of an agent is provided for in 13-1-116 and this subsection should have an internal reference to that section.

Is this consistent with the way election administrators currently interpret this subsection?

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assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119."

{Internal References to 13-13-229:

x13-13-201 x13-13-225 x13-13-233}

**Section 16.** Section 13-13-246 , MCA, is amended to read:

**"13-13-246. Electronic ballots for disabled persons -- procedures -- ~~definition~~ -- rulemaking.** (1) (a) Upon a written or an in-person request from a legally registered or provisionally registered elector with a disability, an election administrator shall provide the elector with an electronic ballot.

(b) The request may be made by electronic mail.

(2) (a) After receiving a request and verifying that the elector is legally registered or provisionally registered, the election administrator shall provide to the elector an electronic ballot, instructions for completing the ballot, a secrecy envelope or page, and a transmittal envelope or cover sheet that includes an elector affirmation. If the elector is provisionally registered, the election administrator shall include instructions about what information the elector shall include with the voted ballot pursuant to 13-13-201(4).

(b) The election administrator shall maintain an official log of all ballots provided pursuant to this section.

(c) After voting the ballot, the elector shall print the ballot, place it in the secrecy envelope or under the secrecy page, sign the affirmation, including by fingerprint, mark, or agent

**Commented [SS27]:** These changes reflect my current understanding of current process. Sometimes election administrators are mailing the absentee materials other than the ballot to the elector, in which case "envelope" is appropriate. Other times, all material is provided electronically.

The use of the "envelope" and "page" or "cover sheet" terminology should be carefully reviewed by election administrators so these technical changes can be made correctly.

**Commented [SS28]:** See above comment.

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pursuant to 13-1-116, or provide a driver's license number or the last four digits of the elector's social security number. If the elector is provisionally registered, the elector shall also return sufficient voter identification and eligibility information to allow the election administrator to determine pursuant to rules adopted under 13-2-109 that the elector is legally registered. The elector shall return the voted ballot and affirmation in a manner that ensures both are received by 8 p.m. on election day.

(d) An elector may return the voted ballot and affirmation in the regular mail provided they are received at the office of the election administrator by 8 p.m. on election day. A valid ballot must be counted if it is received at the office of the election administrator by 8 p.m. on election day.

(3) After receiving a ballot and secretary envelope or page and if the validity of the ballot is confirmed pursuant to 13-13-241, the election administrator shall log the receipt of the ballot and process it as required in Title 13, chapter 13. If the ballot is rejected, the election administrator shall notify the elector pursuant to 13-13-245.

Commented [SS29]: See first comment on this section above.

(4) (a) When performing the procedures prescribed in 13-13-241(7) to open secretary envelopes or remove the secretary page, an election official shall place in a secure absentee ballot envelope any ballot returned pursuant to this section that requires transcription. No sooner than the time provided in 13-13-241(7), the election administrator shall transcribe the returned ballots using the procedure prescribed below and in accordance with any rules

Commented [SS30]: See first comment above for this section.

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established by the secretary of state to ensure the security of the ballots and the secrecy of the votes.

(b) No fewer than three election officials shall participate in the transcription process to transfer the elector's vote from the received ballot to the standard ballot used in the precinct.

(c) A number must be written on the ~~secrecy envelope or page~~ that contains the original voted electronic ballot, and the same number must be placed on the transcribed ballot and in the official log.

**Commented [SS31]:** See first comment above for this section.

(d) The election officials who transcribed the original voted electronic ballot shall sign the log next to the number.

(e) No one participating in the ballot transmission process may reveal any information about the ballot.

(5) The secretary of state shall adopt rules to implement and administer this section, including rules to ensure the security of the ballots and the secrecy of the votes.

~~(6) For the purposes of this section, "disability" has the meaning provided in 13-3-202.~~"

{Internal References to 13-13-246:

a13-3-208 x13-19-301}

**Commented [SS32]:** This is no longer needed because "disability" is defined in 13-1-101 for the entire Title 13.

**NEW SECTION. Section 17. Availability of voter interface devices.** (1) Except as provided in subsection (2), in any mail ballot election conducted under the provisions of this chapter, the election administrator shall ensure that at least one voter interface device is available on election day for in-person voting by disabled electors

**Commented [SS33]:** This new section 17 would be codified in Title 13, Chapter 19, which is the chapter relating to the conduct of mail ballot elections.

How does SAVA want to address the availability of VIDs for mail ballot elections? This section provides a "shell" for further discussion.

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as follows:

(a) for school elections, one voter interface device within each school district.

(b) for special purpose district elections and local government elections, one voter interface device within \_\_\_\_\_.

(c) for statewide elections, one voter interface device within \_\_\_\_\_.

(2) A voter interface device is not required for an election in which there are less than 200 registered electors eligible to participate in the election.

(3) A voter interface device must be set up in a manner that allows the elector using the device to cast a ballot independently and privately, including setting up a physical barrier or providing for it to be set up in a location that ensure the screen of the device is blocked from the view of others in the area.

**Section 18.** Section 13-35-202 , MCA, is amended to read:

**"13-35-202. Conduct of election officials and election judges.**

An election officer or judge of an election may not:

(1) deposit in a ballot box a paper ballot that is not marked as official;

(2) examine an elector's ballot before putting the ballot in the ballot box;

(3) look at any mark made by the elector upon the ballot;

(4) make or place any mark or device on any ballot with the intent to ascertain how the elector has voted;

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(5) allow any individual other than the elector to be present at the marking of the ballot except as provided in 13-1-116, 13-13-118, and 13-13-119, and 13-13-229 ; or

(6) make a false statement in a certificate regarding affirmation."

{Internal References to 13-35-202:

x13-13-113}

**Section 19.** Section 13-35-208 , MCA, is amended to read:

"13-35-208. **Deceiving an elector.** A person who assists an elector as a designated agent pursuant to 13-1-116, or under the provisions of 13-13-118, 13-13-119, or 13-13-229, and who deceives an the elector voting under 13-13-118 or 13-13-119 is guilty of a misdemeanor."

{Internal References to 13-35-208: None.}

**NEW SECTION. Section 20. {standard} Codification**

**instruction.** [Section 17] is intended to be codified as an integral part of Title 13, chapter 19, part 1, and the provisions of Title 13, chapter 19, part 1, apply to [section 17].

**NEW SECTION. Section 21. {standard} Effective date.** [This act] is effective [redacted].

- END -

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**Commented [SS34]:** Technical changes to incorporate appropriate internal references.  
13-1-116 is the designation of an agent.  
13-13-118 is the "curbside voting".  
13-13-119 is the aid to a disabled elector inside the polling place.  
13-13-229 is voting in front of an absentee ballot board or official when a ballot is delivered to an elector on election day.

**Commented [SS35]:** See comments immediately above.

**Commented [SS36]:**  
What effective date does SAVA want for this bill?