DRAFT
FOR DISCUSSION ONLY

MILITARY SERVICES AND OVERSEAS
CIVILIAN ABSENTEE VOTERS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

February 2009 Draft

WITH PRELIMINARY COMMENTS

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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January 28, 2009
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# MILITARY SERVICES AND OVERSEAS CIVILIAN ABSENTEE VOTERS ACT

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MILITARY SERVICES AND OVERSEAS CIVILIAN ABSENTEE VOTERS ACT

[ARTICLE] 1

SECTION 101. SHORT TITLE. This [act] may be cited as the Military Services and Overseas Civilian Absentee Voters Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) “absent uniformed services voter” means:

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

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

and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

(2) “covered election” means any general, special, primary, or runoff election for federal, state, or local government offices [or ballot measures] conducted according to the procedures of [reference election title or other relevant portions of state code];

(3) “member of the merchant marine” means an individual (other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways):

(A) employed as an officer or crew member of a vessel documented under the laws of the United States, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States; or
(B) enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel;

(4) “overseas voter” means:

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

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

(C) a person who resides outside the United States and but for such residence would be qualified to vote in the last place in which the person was domiciled before leaving the United States; and

(D) for elections of federal officials only (Presidential electors, United States Senators, United States Representatives, and Delegates or Residential Commissioners to the Congress), a United States citizen born outside of the United States who resides outside the United States but is not included in subsections (A), (B), or (C) above, and who would be qualified to vote if domiciled in the last place in the United States in which one of the citizen’s parents was domiciled;

(5) “uniformed services” means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration;

(6) “state” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa; and
(7) “United States”, where used in the territorial sense, means the several states, the
District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and
American Samoa.

Reporter’s Comment

In accordance with the study committee’s preliminary recommendation, this Act defines
the phrase “absent uniformed services voter” exactly as defined in the Uniformed and Overseas
Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. § 1973ff-6(1). In turn, terms (3), (5),
(6), and (7) of the definitional section of this Act are necessary to complete this borrowing of the
UOCAVA definition of “absent uniformed services voter.”

The study committee also concluded that in this Act the UOCAVA definition of
“overseas voter” should be expanded to include United States citizens who had never resided in
the United States, but who would be eligible to vote if they did reside in the United States. This
is the purpose of subsection (D) of the definition of “overseas voter.” However, because this
group of voters has no direct tie to any particular state, some device is needed to align them with
a particular jurisdiction. For this purpose, the definition uses the last United States domicile of a
parent of the voter to establish the state in which a voter would vote. The study committee left
unresolved the question of whether this voter should be able to participate in all elections in this
state, or only federal (or even only Presidential) elections. This draft (in section 201) limits the
participation of these voters to only elections for federal offices, which appears to be the
predominant approach of those states that already enfranchise these voters.

Some states may permit certain special districts or units of local governments to conduct
elections using procedures other than those established in the state election code. Because of the
potential complexity of including these elections in the scope of this Act, the study committee
took no position on whether to recommend that the Act cover all local elections, or only those
local elections conducted at the same time as a state or federal election. As a starting point for
discussion, this draft of the Act covers those elections conducted pursuant to the state’s election
code, which presumably covers all federal and state elections, including the local races on those
same ballots, and may also cover purely local elections conducted pursuant to the same processes
and by the same personnel that govern state and federal elections. In this formulation, the
deinition of “covered election” will need to be completed by each state through reference to the
appropriate portions of the state’s election code. In addition, the bracketed text extending the
deinition of “covered election” to ballot measures is intended for those states that have ballot
measures.

SECTION 103. ROLE OF [STATE’S CHIEF ELECTIONS AUTHORITY].

(a) The [state’s chief elections authority] shall have primary responsibility for
implementing this [act] and for coordinating its implementation with local election officials, but
may delegate all or some of the associated duties, including duties that this [act] specifically
assigns to the [state’s chief elections authority], to the state office designated in compliance with
the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff-1(b)(1), or
to others.

(b) The [state’s chief elections authority] shall be responsible for providing information
regarding voter registration procedures and absentee ballot procedures to be used by absent
uniformed services voters and overseas voters with respect to covered elections to all absent
uniformed services voters and overseas voters who wish to register to vote or vote in any
jurisdiction in the state. The [state’s chief elections authority] may delegate this responsibility
only to the state office designated in compliance with the Uniformed and Overseas Citizens

(c) The [state’s chief elections authority] shall be responsible for developing standard
absentee voting materials, including privacy envelopes, transmission envelopes, authentication
materials, and voting instructions, for use in conjunction with the [absentee ballot] of any
jurisdiction within the state.

(d) The [state’s chief elections authority] shall also serve as the chief state official
responsible for implementing and enforcing the state’s responsibilities under the Uniformed and

**Reporter’s Comment**

Each state will need to supply the appropriate title for its chief elections authority, 
whether it is the Secretary of State, State Board of Elections, or other official or entity. The 
expectation is that this authority in turn will delegate its duties at least in part to the same office 
that the state has designated to fulfill the UOCAVA requirement that the state designate a state 
office to facilitate the state’s compliance with the UOCAVA. Other duties may naturally 
devolve to local election officials, depending on how the state has structured its election 
processes generally.
[SECTION 104. BEST PRACTICES. The [state’s chief elections authority] shall be
the state official responsible for identifying and implementing “best practices” for the
administration of this [act] and the state’s responsibilities under the federal Uniformed and
Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff et seq. To this end, the [state’s
chief elections authority] shall, together with local election officials concerned, adopt and use
such best practices that do not require statutory approval or modifications, and recommend from
time to time for enactment into law by the [state’s General Assembly] those best practices that do
require statutory modifications or approval.]

SECTION 105. EMERGENCY POWERS.

(a) If a national or local emergency or other situation arises that makes substantial
compliance with this act or the Uniformed and Overseas Citizens Absentee Voting Act
impossible or unreasonable, such as a natural disaster or an armed conflict involving United
States Armed Forces, or mobilization of those forces, including state National Guard and
Reserve components of this state, [the state’s chief elections authority] may prescribe, by
emergency orders or rules, such special procedures or requirements as may be necessary to
facilitate absentee voting by those absent uniformed services voters or overseas voters directly
affected who are eligible to vote in this state.

(b) [The state’s chief elections authority] shall adopt rules describing the emergency
powers and the situations in which the powers will be exercised.

Reporter’s Comment

This starting point for the drafting committee’s discussion is language from the Federal
Voting Assistance Program, which recommends providing states with authority to adjust
UOCAVA voting processes in the event of an emergency. As of 2008, eighteen states had
provided some form of emergency authority to their chief elections official.
[ARTICLE] 2

VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION PROVISIONS

SECTION 201. ELIGIBILITY TO VOTE.

(a) Provided that the place of residence from which an absent uniformed services voter is absent by reason of active duty in the uniformed services or service in the merchant marine is within this state, the voter shall be permitted to register to vote and to apply for an [absentee ballot] in this state for all covered elections.

(b) Provided that the last place in which an overseas voter was domiciled before leaving the United States is within this state, the voter shall be permitted to register to vote and to apply for an [absentee ballot] in this state for all covered elections.

(c) In the case of an overseas voter who has never resided in the United States, provided that the last place in which a parent of the overseas voter was domiciled before leaving the United States is within this state, the voter shall be permitted to register to vote and to apply for an [absentee ballot] in this state, but may only vote for candidates for federal office. The [state’s chief elections authority] shall prepare special [absentee ballots] containing only federal contests for use by overseas voters who have never resided in the United States.

Reporter’s Comment

Because the definitions in section 102 track the UOCAVA definitions, they alone do not determine whether an absent uniformed services voter or overseas voter is eligible to vote in any particular state under its version of the uniform Act. Section 201 therefore makes their eligibility to vote depend on their ties to the enacting state.

SECTION 202. REGISTRATION AND [ABSENTEE BALLOT] APPLICATION.

(a) For any covered election, an absent uniformed services voter or an overseas voter eligible to register to vote under section 201 may use a single application to register and to
request an [absentee ballot] simultaneously. The [state’s chief elections authority] shall prepare
and make available an appropriate form for this use.

(b) For any covered election, the Federal Post Card Application, as prescribed under the
UOCAVA, 42 U.S.C. section 1973ff(b)(2), shall be an acceptable means of simultaneously
registering and applying for an [absentee ballot]. If the Federal Post Card Application does not
ask overseas voters to declare whether or not they have previously lived in the United States,
those voters who have not previously lived in the United States must declare this in the portion
of the Federal Post Card Application designated for additional information for specific states.

(c) If an absent uniformed services voter or an overseas voter is already registered to vote
in this state, the voter may apply for an [absentee ballot] using either the regular absentee ballot
application in use in the voter’s jurisdiction, or the form described in subsection (a) or the
Federal Post Card Application described in subsection (b).

SECTION 203. STANDING REQUESTS FOR [ABSENTEE BALLOTS].

(a) If an absent uniformed services voter or overseas voter submits either a state absentee
ballot application described in section 202, or an official Federal Post Card Form application, as
prescribed under the UOCAVA, 42 U.S.C. section 1973ff(b)(2), and requests that the application
be considered an application for an [absentee ballot] for each subsequent covered election to be
held through the next two regularly scheduled general elections for federal office (including any
runoff elections which may occur as a result of the outcome of such general elections), the state
shall provide an [absentee ballot] to the voter for each such subsequent election, as provided in
section 302.
(b) Subsection (a) shall not apply for any election held after the voter notifies the state
that the voter no longer wishes to be registered to vote in this state or after election officials
determine that the voter has registered to vote in another state.

[SECTION 204. UPDATING ADDRESSES/COORDINATION WITH FEDS.?]
[ARTICLE] 3

DEADLINES

SECTION 301. APPLICATIONS FOR ABSENTEE BALLOTS. Not earlier than 180 days before a covered election, an absent uniformed services voter or an overseas voter may submit an application for an [absentee ballot] for the election. An otherwise valid application for an [absentee ballot] from an absent uniformed services voter or an overseas voter shall be timely if received by the later of (1) the 30th day before the election, or (2) the last date for other voters to apply for an [absentee ballot] for the election.

SECTION 302. TRANSMISSION OF BLANK BALLOTS.

(a) For all covered elections, the official charged with preparing and distributing ballots and election materials in each jurisdiction shall prepare as many [absentee ballots] as may be necessary as soon as possible after receiving the information concerning candidates [and ballot measures] to be voted on at an election.

(b) Unless the jurisdiction is permitted by law and able to transmit the absentee balloting materials to the voter electronically, absentee balloting materials shall be mailed not later than the 60th day before the election to any absent uniformed services voter or overseas voter who has submitted a valid [absentee ballot] application by that date.

(c) Jurisdictions permitted by law and able to transmit absentee balloting materials electronically may wait until the 30th day before the election to do so to any absent uniformed services voter or overseas voter who has submitted a valid [absentee ballot] application by that date.

(d) With respect to absent uniformed services voters or overseas voters whose [absentee ballot] applications arrive after the jurisdiction has begun transmitting absentee balloting
materials to voters, the official charged with distributing ballots and election materials shall mail or electronically transmit to these voters their absentee balloting materials as promptly as possible.

**SECTION 303. CASTING OF BALLOTS.** To be valid, an [absentee ballot] from an absent uniformed services voter or overseas voter must be cast no later than 11:59 p.m. local time on the day before the day of the election. Provided that in completing the balloting materials the voter has affirmed under oath, as provided in section 601, that the [absentee ballot] was timely cast, the ballot shall not be rejected on the basis that it lacks a postmark showing that it was cast before the day of the election.

**SECTION 304. RECEIPT OF VOTED BALLOTS.** A valid [absentee ballot] cast by an absent uniformed services voter or an overseas voter must be counted if the appropriate state or local elections official receives it by the close of business on the 10th day after the day of the election.

**SECTION 305. SUPERSEDING OF OTHER PROVISIONS.** The provisions of this [act] setting out dates, timelines, or deadlines for the submission of a voter registration or [absentee ballot] application, or the casting, receipt, or counting of an [absentee ballot], to the extent that they conflict with other provisions of state law, shall supersede and override those other provisions of state law.
ELECTRONIC VOTING PROVISIONS

SECTION 401. APPROVAL OF METHODS OF ELECTRONIC VOTING.

(a) The [state’s chief elections authority] shall be responsible for approving methods of electronic transmission by which (1) absent uniformed services voters and overseas voters may submit voter registration applications and absentee ballot applications to their appropriate voting jurisdiction, and (2) local election jurisdictions may transmit unvoted absentee ballots to absent uniformed services voters and overseas voters who have requested them. Potential methods of electronic transmission include telephone, facsimile, email, and Internet connection.

(b) The [state’s chief elections authority] shall monitor the development of technologies and systems designed to facilitate the safe, anonymous, and secure electronic casting of ballots.

SECTION 402. SUBMISSION OF REGISTRATION AND ABSENTEE BALLOT APPLICATIONS. An absent uniformed services voter or an overseas voter may submit a voter registration application and an [absentee ballot] application by electronic transmission, in addition to any other method of registering to vote and applying for an [absentee ballot], using the means of electronic transmission approved under section 401. A local board of elections also may receive Federal Post Card Forms for registration and [absentee ballot] applications, as provided in the UOCAVA, 42 U.S.C. section 1973ff(b)(2), via electronic transmission, either directly or in coordination with the [state’s chief elections authority].

SECTION 403. TRANSMISSION OF UNVOTED BALLOTS AND OTHER VOTING MATERIALS. Either directly or in coordination with the [state’s chief elections authority], local election jurisdictions shall make use of approved electronic methods of
transmitting unvoted [absentee ballots] to absent uniformed services voters and overseas voters
who have requested them.

SECTION 404. DOWNLOADABLE BALLOTS. When reasonably possible, local
election jurisdictions that maintain a presence on the Internet shall make available on their
Internet site downloadable versions of [absentee ballots] and voting instructions for absent
uniformed services voters and overseas voters.

SECTION 405. CONFIRMATION OF RECEIPT OF CAST BALLOTS. The
[state’s chief elections authority], in coordination with local election jurisdictions, shall develop
an electronic system by which absent uniformed services voters and overseas voters may
determine, either by telephone or Internet access, whether their [absentee ballot] has been
received and counted.

[SECTION 406. INTERNET VOTING?]. If satisfied of the security of the electronic
casting of ballots over the Internet, the [state’s chief elections authority] shall have the authority
to permit absent uniformed services voters and overseas voters to cast their ballots electronically.
[ARTICLE] 5

WRITE-IN ABSENTEE BALLOT PROVISIONS

SECTION 501. STATE WRITE-IN ABSENTEE BALLOT.

(a) No later than 180 days before a covered election, the official charged with printing and distributing ballots and election materials shall prepare a state write-in absentee ballot. The ballot shall contain a list of all of the offices [and ballot measures] that the official expects to be before the voters on the date of the election, with space for a voter to write in the voter’s choice for each office to be filled [and ballot measure to be contested].

(b) An absent uniformed services voter or an overseas voter may request, not earlier than 180 days before a covered election, a state write-in absentee ballot. The voter must submit with the request a statement that provides that because of military or other contingencies that preclude normal mail delivery, the voter will not be able to vote a regular [absentee ballot] during the normal absentee voting period. Notwithstanding a request for a state write-in absentee ballot, all other provisions of this [act], including registration and [absentee ballot] submission procedures, shall continue to apply.]

(c) A local board of elections shall transmit a state write-in ballot as promptly as possible to any absent uniformed services voter or overseas voter who properly requests one.

SECTION 502. ACCEPTANCE OF FEDERAL WRITE-IN ABSENTEE BALLOT.

(a) In any covered election, an absent uniformed services voter or an overseas voter may use the Federal Write-In Absentee Ballot approved under the UOCAVA, 42 U.S.C. section 1973ff.
(b) In any covered election, an absent uniformed services voter or an overseas voter may use the Federal Write-In Absentee Ballot transmission envelope’s voter declaration as a request for registration simultaneous with the submission of the Federal Write-In Absentee Ballot. The request for registration shall be accepted if: (1) the request is received by the later of (a) the 30th day before the election, or (b) the state’s registration deadline; (2) the information submitted is sufficient to determine that the voter has otherwise complied with state voter registration requirements; and (3) the voter is eligible to vote in the jurisdiction to which the request is submitted.
[ARTICLE] 6

BURDEN REDUCTION PROVISIONS

SECTION 601. AUTHENTICATION REQUIREMENTS.

(a) For purposes of authentication of the eligibility and accuracy of a voter registration application, [absentee ballot] application, and completed [absentee ballot] of an absent uniformed services voter or an overseas voter, an oath affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury, such as the UOCAVA oath prescribed under 42 U.S.C. section 1973ff(b)(7), shall be sufficient. The [state’s chief elections authority] shall ensure that an appropriate form for the execution of this oath, including the date of its execution, is a prominent part of each document for which this oath is required.

(b) No notarization requirement shall be required for the execution of any document under this act.

SECTION 602. NON-ESSENTIAL REQUIREMENTS. Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of a ballot cast by an absent uniformed services voter or an overseas voter, if the intention of the voter can be ascertained. Other non-essential elements of absentee balloting materials also shall not be enforced to deprive an absent uniformed services voter or an overseas voter of the opportunity to cast a valid ballot.
MISCELLANEOUS PROVISIONS

SECTION 701. APPLICATION AND CONSTRUCTION.

(a) In applying and construing this uniform [act], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(b) The provisions of this [act] are designed to facilitate, and should be read in harmony with, the federal mandate of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. section 1973ff et seq.).

SECTION 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

SECTION 703. EFFECT ON STATE AND LOCAL TAX LAWS. The exercise of any right under this [act] shall not affect, for purposes of any state or local tax law, or other non-election provision of law where the residence or domicile is a factor, the residence or domicile of the person exercising the right.

SECTION 704. REPEALS.

The following acts and parts of acts are hereby repealed:

(1) ..............................................

(2) .............................................

(3) .............................................
SECTION 705. EFFECTIVE DATE. This [act] takes effect . . . .