

DRAFT  
FOR DISCUSSION ONLY

# **MILITARY SERVICES AND OVERSEAS CIVILIAN ABSENTEE VOTERS ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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February 2009 Draft

*WITH PRELIMINARY COMMENTS*

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ON UNIFORM STATE LAWS

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January 28, 2009

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1       **MILITARY SERVICES AND OVERSEAS CIVILIAN ABSENTEE VOTERS ACT**

2  
3                                   **[ARTICLE] 1**

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

6               **SECTION 102. DEFINITIONS.** In this [act]:

7               (1) “absent uniformed services voter” means:

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

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

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

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

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

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

1 (B) enrolled with the United States for employment or training for employment,  
2 or maintained by the United States for emergency relief service, as an officer or crew member of  
3 any such vessel;

4 (4) “overseas voter” means:

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

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

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

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

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

21 (6) “state” means a state of the United States, the District of Columbia, the  
22 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 definition 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 definition 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

1 may delegate all or some of the associated duties, including duties that this [act] specifically  
2 assigns to the [state's chief elections authority], to the state office designated in compliance with  
3 the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff-1(b)(1), or  
4 to others.

5 (b) The [state's chief elections authority] shall be responsible for providing information  
6 regarding voter registration procedures and absentee ballot procedures to be used by absent  
7 uniformed services voters and overseas voters with respect to covered elections to all absent  
8 uniformed services voters and overseas voters who wish to register to vote or vote in any  
9 jurisdiction in the state. The [state's chief elections authority] may delegate this responsibility  
10 only to the state office designated in compliance with the Uniformed and Overseas Citizens  
11 Absentee Voting Act, 42 U.S.C. section 1973ff-1(b)(1).

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

16 (d) The [state's chief elections authority] shall also serve as the chief state official  
17 responsible for implementing and enforcing the state's responsibilities under the Uniformed and  
18 Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff *et seq.*

### 19 **Reporter's Comment**

20  
21 Each state will need to supply the appropriate title for its chief elections authority,  
22 whether it is the Secretary of State, State Board of Elections, or other official or entity. The  
23 expectation is that this authority in turn will delegate its duties at least in part to the same office  
24 that the state has designated to fulfill the UOCAVA requirement that the state designate a state  
25 office to facilitate the state's compliance with the UOCAVA. Other duties may naturally  
26 devolve to local election officials, depending on how the state has structured its election  
27 processes generally.  
28

**[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.

1 [ARTICLE] 2

2 VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION PROVISIONS

3 SECTION 201. ELIGIBILITY TO VOTE.

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

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

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

17 Reporter's Comment

18  
19 Because the definitions in section 102 track the UOCAVA definitions, they alone do not  
20 determine whether an absent uniformed services voter or overseas voter is eligible to vote in any  
21 particular state under its version of the uniform Act. Section 201 therefore makes their eligibility  
22 to vote depend on their ties to the enacting state.

23  
24 SECTION 202. REGISTRATION AND [ABSENTEE BALLOT] APPLICATION.

25 (a) For any covered election, an absent uniformed services voter or an overseas voter  
26 eligible to register to vote under section 201 may use a single application to register and to

1 request an [absentee ballot] simultaneously. The [state's chief elections authority] shall prepare  
2 and make available an appropriate form for this use.

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

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

### 13 **SECTION 203. STANDING REQUESTS FOR [ABSENTEE BALLOTS].**

14 (a) If an absent uniformed services voter or overseas voter submits either a state absentee  
15 ballot application described in section 202, or an official Federal Post Card Form application, as  
16 prescribed under the UOCAVA, 42 U.S.C. section 1973ff(b)(2), and requests that the application  
17 be considered an application for an [absentee ballot] for each subsequent covered election to be  
18 held through the next two regularly scheduled general elections for federal office (including any  
19 runoff elections which may occur as a result of the outcome of such general elections), the state  
20 shall provide an [absentee ballot] to the voter for each such subsequent election, as provided in  
21 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.?]**

1 [ARTICLE] 3

2 DEADLINES

3 SECTION 301. APPLICATIONS FOR ABSENTEE BALLOTS. Not earlier than

4 180 days before a covered election, an absent uniformed services voter or an overseas voter may  
5 submit an application for an [absentee ballot] for the election. An otherwise valid application for  
6 an [absentee ballot] from an absent uniformed services voter or an overseas voter shall be timely  
7 if received by the later of (1) the 30<sup>th</sup> day before the election, or (2) the last date for other voters  
8 to apply for an [absentee ballot] for the election.

9 SECTION 302. TRANSMISSION OF BLANK BALLOTS.

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

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

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

22 (d) With respect to absent uniformed services voters or overseas voters whose [absentee  
23 ballot] applications arrive after the jurisdiction has begun transmitting absentee balloting

1 materials to voters, the official charged with distributing ballots and election materials shall mail  
2 or electronically transmit to these voters their absentee balloting materials as promptly as  
3 possible.

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

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

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

1 [ARTICLE] 4

2 ELECTRONIC VOTING PROVISIONS

3 SECTION 401. APPROVAL OF METHODS OF ELECTRONIC VOTING.

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

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

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

20 SECTION 403. TRANSMISSION OF UNVOTED BALLOTS AND OTHER  
21 VOTING MATERIALS. Either directly or in coordination with the [state's chief elections  
22 authority], local election jurisdictions shall make use of approved electronic methods of

1 transmitting unvoted [absentee ballots] to absent uniformed services voters and overseas voters  
2 who have requested them.

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

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

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

1 [ARTICLE] 5

2 WRITE-IN ABSENTEE BALLOT PROVISIONS

3 SECTION 501. STATE WRITE-IN ABSENTEE BALLOT.

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

9 (b) An absent uniformed services voter or an overseas voter may request, not earlier than  
10 180 days before a covered election, a state write-in absentee ballot. The voter must submit with  
11 the request a statement that provides that because of military or other contingencies that preclude  
12 normal mail delivery, the voter will not be able to vote a regular [absentee ballot] during the  
13 normal absentee voting period. Notwithstanding a request for a state write-in absentee ballot, all  
14 other provisions of this [act], including registration and [absentee ballot] submission procedures,  
15 shall continue to apply.]

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

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

20 (a) In any covered election, an absent uniformed services voter or an overseas voter may  
21 use the Federal Write-In Absentee Ballot approved under the UOCAVA, 42 U.S.C. section  
22 1973ff.

1           (b) In any covered election, an absent uniformed services voter or an overseas voter may  
2 use the Federal Write-In Absentee Ballot transmission envelope's voter declaration as a request  
3 for registration simultaneous with the submission of the Federal Write-In Absentee Ballot. The  
4 request for registration shall be accepted if: (1) the request is received by the later of (a) the 30<sup>th</sup>  
5 day before the election, or (b) the state's registration deadline; (2) the information submitted is  
6 sufficient to determine that the voter has otherwise complied with state voter registration  
7 requirements; and (3) the voter is eligible to vote in the jurisdiction to which the request is  
8 submitted.

1 [ARTICLE] 6

2 BURDEN REDUCTION PROVISIONS

3 SECTION 601. AUTHENTICATION REQUIREMENTS.

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

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

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

1 [ARTICLE] 7

2 MISCELLANEOUS PROVISIONS

3 SECTION 701. APPLICATION AND CONSTRUCTION.

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

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

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

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

19 SECTION 704. REPEALS.

20 The following acts and parts of acts are hereby repealed:

21 (1) .....

22 (2) .....

23 (3) .....

1           **SECTION 705. EFFECTIVE DATE.** This [act] takes effect . . . .