MILITARY SERVICES AND OVERSEAS CIVILIAN ABSENTEE VOTERS ACT

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MILITARY SERVICES AND OVERSEAS CIVILIAN ABSENTEE VOTERS ACT

WITHOUT PREFATORY NOTE AND WITH REPORTER’S COMMENTS

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NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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May 20, 2009
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MILITARY SERVICES AND OVERSEAS CIVILIAN ABSENTEE VOTERS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Military Services and Overseas Civilian Absentee Voters Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Absent uniformed services voter” means:

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

(B) a spouse or dependent of a member referred to in subparagraph (A) who, by reason of the 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 office [or a ballot measure] conducted according to the procedure of [reference election title or other relevant portion of state code].

(3) “Overseas voter” means a United States citizen who is outside the United States and who:

(A) is qualified to vote in this state;

(B) would be eligible to vote in this state, if this state was the last place in which the citizen was eligible to vote, or, if the person had been of voting age, would have been eligible to vote, before leaving the United States; or

(C) in the case of a citizen who was born outside the United States and who is not included in subparagraph (A) or (B), would be eligible to vote in this state if a resident of this state and if this state was the last place in the United States in which one of the citizen’s parents was eligible to vote.
(4) “Uniformed services” means the Army, Navy, Air Force, Marine Corps, Coast Guard, Merchant Marines, National Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(5) “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

The Act’s definition of the terms “absent uniformed services voter” and “overseas voter” builds upon the definitions of these same terms in the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. § 1973ff-6(1), but simplifies these definitions and particularizes them to an enacting state. The Act also adds, in definition (3)(c), a class of voter not covered under UOCAVA, namely U.S. citizens born abroad who have never resided in the United States, but who would be eligible to vote if they did reside in the United States. 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 state in which a parent of the voter was eligible to vote. The draft permits these “stateless” voters to participate in all covered elections, which is the approach taken by most of the sixteen states that already statutorily enfranchise these voters.

Because these “stateless” voters lack a connection with a particular state, the drafting committee considered limiting the participation of these voters to only federal elections. As a policy matter, the committee was divided over whether to impose such a limitation. These voters clearly have interests in U.S. policy and governance, and in order to have representation in Congress concerning federal issues they must be affiliated with a particular state. Many observer groups indicated that what mattered most to these voters was the chance to participate in federal elections, and that these voters likely would not turn out in high numbers for purely state and local elections even if they were eligible to participate in those elections, but that in those cases in which individual voters did have particular interests in state and local elections they should be able to participate.

The drafting committee also took note of the fact that limiting stateless voters to federal elections likely would create some additional burdens on state and local elections officials to classify and segregate these voters and treat them differently from other voters, including creating special ballots for them. If these voters are allowed to participate in only federal elections, other sections of the Act also would need modification to effectuate this limitation and ensure that states properly identify and segregate these voters.
SECTION 3. ROLE OF [STATE’S CHIEF ELECTION AUTHORITY].

(a) [The state’s chief election authority] shall implement this [act].

(b) [The state’s chief election authority] shall serve as the chief state official responsible for implementing the state’s responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff et seq.

(c) [The state’s chief election authority] shall provide information regarding voter registration procedures and absentee voting procedures under this [act] 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 election authority] may delegate this responsibility only 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).

(d) [The state’s chief election authority] shall develop standard absentee voting materials, including privacy envelopes or their electronic equivalent, transmission envelopes or their electronic equivalent, authentication materials, and voting instructions, to be used in conjunction with the [absentee ballot] of any jurisdiction within the state.

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.

The requirement that states develop “standard” voting materials is not meant to require statewide uniformity in voting processes where such uniformity does not already exist. Thus, in states using different voting systems in different jurisdictions around the state, “standard” voting materials may include one standard for jurisdictions using one system, and another standard for jurisdictions using another system. Nevertheless, the state’s chief elections authority should work with local election officials to simplify and standardize as much as possible the materials.
provided to voters, including developing standard identifying labels and other markings on such materials to expedite their handling.

SECTION 4. EMERGENCY POWER. If an international, national, state, or local emergency or other situation arises that makes substantial compliance with this [act] or the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff et seq., impossible or impracticable, as confirmed by an official declaration by [the governor] that a state of emergency exists, by the existence of armed conflict involving United States Armed Forces, or the mobilization of those forces, including State National Guard and Reserve component members of this state, or by the occurrence of a natural disaster or the existence of a state of emergency, civil unrest, war, or other exigency in a foreign country, [the state’s chief election authority] may prescribe, by emergency order or rule, a special procedure or requirement 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. [The state’s chief election authority] shall take reasonable steps to provide absent uniformed services voters and overseas voters with timely notice of any special procedure or requirement prescribed under this section.

Reporter’s Comment

The starting point for this section was 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.

SECTION 5. SUPERSEDMNG OF OTHER LAW. A provision of this [act] setting out a date, timeline, or deadline 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 it conflicts with other state law, shall supersede the other state law.
SECTION 6. ELIGIBILITY TO VOTE.

(a) If the place of residence from which an absent uniformed services voter is absent because of service in the uniformed services is within this state, the voter may register to vote and apply for an absentee ballot in this state for all covered elections.

(b) If the last place where an overseas voter was, or if then of voting age would have been, eligible to vote before leaving the United States is within this state, the voter may register to vote and apply for an absentee ballot in this state for all covered elections.

(c) If the last place where a parent of an overseas voter was eligible to vote before leaving the United States is within this state, and the voter has not previously registered to vote in any other state, the voter may register to vote and apply for an absentee ballot in this state.

(d) A voter eligible to register to vote under this section shall use the address of the voter’s last place of residence in this state, or, in the case of a voter eligible under subsection (c), the address of the voter’s parent’s last place of residence in this state.

Reporter's Comment

Because the definitions in Section 2 largely 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 that has adopted the uniform Act. Section 6 therefore makes their eligibility to vote depend on their ties to the enacting state.

SECTION 7. REGISTRATION AND [ABSENTEE BALLOT] APPLICATION.

Alternative 1

(a) For any covered election, an absent uniformed services voter or an overseas voter eligible to register to vote under Section 6 may use, and the state shall give effect to, a Federal Post Card Application, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff(b)(2), or its electronic equivalent, to register to vote and to
request an absentee ballot simultaneously.

(b) 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 for any covered election using either the regular absentee ballot application in use in the voter’s jurisdiction, or the Federal Post Card Application or its electronic equivalent. [The state’s chief election authority] shall ensure that each jurisdiction’s regular absentee ballot application requires the applicant to supply sufficient information for election officials to determine whether the applicant is an absent uniformed services voter or an overseas voter. [The state’s chief election authority] shall use best efforts to minimize the information necessary, standardize its collection, and streamline the absentee ballot application process.

**Alternative 2**

To receive the protection of this act, an absent uniformed services voter or an overseas voter must apply for an absentee ballot using the Federal Post Card Application, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff(b)(2), or its electronic equivalent, or complete a Federal Write-In Absentee Ballot as a simultaneous absentee ballot application.

**End of Alternatives**

**Reporter’s Comment**

The drafting committee continues to consider how best to rely on the Federal Post Card Application while not complicating a state’s ability to develop and use Internet-based and other methods of accepting voter registration and absentee ballot applications that are not Federal Post Card Applications. Alternatively, option 2 would limit the protections of the Act to voters who used the FPCA, because its use immediately identifies for local election officials the special status of the voter.

If the uniform act permits “stateless children” to vote only for candidates for federal office, then some method would be needed to further distinguish these voters from other overseas voters. The current Federal Post Card Application does not require overseas voters to
declare whether or not they have previously lived in the United States. One option would be to
require those voters who have not previously lived in the United States to declare this at the time
of registration in the portion of the Federal Post Card Application designated for additional
information for specific states.

SECTION 8. STANDING REQUEST FOR [ABSENTEE BALLOT].

(a) If an absent uniformed services voter or overseas voter submits a Federal Post Card
Application, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, 42
U.S.C. Section 1973ff(b)(2), or its electronic equivalent, and requests that the application be
considered an application for an [absentee ballot] for all subsequent elections for the time period
permitted under federal law[, including any runoff elections that may occur as a result of the
outcome of such general elections], election officials shall provide an [absentee ballot] to the
voter for each subsequent covered election, as provided in Section 10, for at least the period
required under federal law, or any longer period provided under state law other than this [act].

(b) Subsection (a) does not apply to any election held after an election official determines
that a voter is no longer eligible to vote in this state. Nothing in this section prevents an election
official from removing a voter from the rolls of registered voters in this state under any program
or method permitted under Section 8 of the National Voter Registration Act of 1993.]

Legislative Note: The bracketed language in subsection (a) pertaining to runoff elections is only
for states with runoff elections.

Reporter’s Comment

This section is only a default rule concerning whether voters covered under the Act can
request to automatically receive voting materials for all future elections, at least for the period
(currently two federal election cycles) for which UOCAVA voters can now ask to receive voting
materials for all federal elections. Some members of the drafting committee would omit this
section, largely out of reservations about the burden on local elections officials of automatically
sending absentee voting materials for every election to all voters covered under the Act, when
many of the covered voters may have little interest in nonfederal elections, and the “returned-as-
undeliverable” rate on voting materials sent to UOCAVA voters for subsequent elections has
been high. Other committee members thought it best to include this section given that federal
law now requires states to provide this option to UOCAVA voters for all federal elections, and voters might therefore reasonably expect to be receiving voting materials for all elections.

In light of this lack of agreement in the committee, the section is presented to the Conference as a bracketed section. One option would be to let each enacting state make its own determination about whether to include or omit this section, depending on its evaluation of the cost and burden. Omitting the section would have no impact on other portions of the Act. Another option would be to draft the section to permit individual voters to opt out of receiving voting materials for subsequent elections involving only state or local, and not federal, races.

SECTION 9. APPLICATION FOR [ABSENTEE BALLOT]. An application from an absent uniformed services voter or an overseas voter for an [absentee ballot] is timely if received by the later of the 30th day before the election or the last day for other voters in the state to apply for an [absentee ballot] for the election. A timely and otherwise valid [absentee ballot] application from an absent uniformed services voter or an overseas voter must be accepted at any time before the next election for which it is submitted.

SECTION 10. TRANSMISSION OF UNVOTED BALLOTS.

(a) For all covered elections, the official charged with preparing and distributing ballots and election materials in each jurisdiction shall prepare a sufficient number of [absentee ballots] as soon as possible after receiving information concerning candidates [and ballot measures] to be voted on at the election, and shall immediately transmit [absentee ballots] and related balloting materials to all absent uniformed services voters and overseas voters who have applied for them.

(b) No later than [___] days before an election, local election officials, with the assistance of [the state’s chief election authority], as appropriate, shall make available by electronic means, other than facsimile, an unvoted [absentee ballot] and related balloting materials to any absent uniformed services voter or overseas voter who by that date has submitted a valid [absentee ballot] application requesting electronic transmission of [absentee balloting] materials.

(c) When an [absentee ballot] application of an absent uniformed services voter or
overseas voter arrives after the jurisdiction has begun transmitting [absentee balloting] materials
to voters, the official charged with distributing ballots and election materials shall transmit the
[absentee balloting] materials to the voter as promptly as possible.

(d) A local election jurisdiction that maintains an Internet site shall make available on the
Internet site downloadable versions of [absentee ballots] and voting instructions for absent
uniformed services voters and overseas voters, as well as the most updated state and local
election listing required by Section 17.

SECTION 11. CASTING OF BALLOT. For [an absentee ballot] of an absent
uniformed services voter or overseas voter to be valid, the voter must have submitted the
[absentee ballot] for mailing, electronic transmission, or other means of delivery no later than
11:59 p.m. local time in the place where the voter completes the ballot, on the day before the day
of the election. If, at the time of completing the balloting materials, the voter has affirmed under
penalty of perjury, as provided in Section 18, that the [absentee ballot] was timely submitted, the
ballot may not be rejected on the basis that it lacks a postmark showing that it was submitted
before the day of the election.

SECTION 12. RECEIPT OF VOTED BALLOT. A valid [absentee ballot] cast by an
absent uniformed services voter or an overseas voter must be counted if the appropriate state or
local election office receives it by the deadline for completion of the [local canvass].

Reporter’s Comment

In light of occasional controversies about when election officials have “received”
absentee ballots, some additional clarification of this term may be worth considering.

SECTION 13. ELECTRONIC TRANSMISSION OF REGISTRATION AND
[ABSENTEE BALLOT] APPLICATION. In addition to any other method of registering to
vote or applying for an [absentee ballot], an absent uniformed services voter or an overseas voter may submit a Federal Post Card Application or other application by electronic transmission, in a manner directed by [the state’s chief election authority], which protects the integrity of the transmission and the privacy of the voter’s identity and other personal data contained in the application.

SECTION 14. CONFIRMATION OF RECEIPT OF APPLICATION AND VOTED BALLOT. [The state’s chief election authority], in coordination with a local election jurisdiction, shall develop an electronic system by which an absent uniformed services voter or overseas voter may determine, either by telephone, electronic mail, or Internet access, whether the voter’s Federal Post Card Application or other registration and [absentee ballot] application has been received and accepted, and whether the voter’s [absentee ballot] has been received and its current status.

SECTION 15. COLLECTION OF VOTERS’ ELECTRONIC MAIL ADDRESSES. A voter registration and [absentee ballot] application form must ask an absent uniformed services voter and overseas voter to provide an individual electronic mail address. A state or local election official may not release a personal electronic mail address provided on the form to any third party, and may use the electronic mail address provided on the form only for the purpose of communicating with the voter about the voting process, including confirming the present address of the voter. A form requesting a personal electronic mail address must clearly state the sole purpose for which the electronic mail address will be used, and that any other use or disclosure is prohibited by law.

SECTION 16. ACCEPTANCE OF FEDERAL WRITE-IN ABSENTEE BALLOT. (a) In a covered election, an absent uniformed services voter or an overseas voter may use
the Federal Write-In Absentee Ballot approved under the Uniformed and Overseas Citizens
Absentee Voting Act, 42 U.S.C. Section 1973ff, if the voter affirms that:

(1) the voter submitted a Federal Post Card Application or other application
requesting an [absentee ballot] in time to be received by [the later of the 30th day before the
election or the last date for other voters in the adopting state to apply for an absentee ballot for
the election]; and

(2) the voter has not received the requested [absentee ballot].

(b) In a 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 and an application for an [absentee ballot] simultaneous with the submission of
the Federal Write-In Absentee Ballot. The request for registration and application for an
[absentee ballot] must be accepted if:

(1) it is received by [the later of the 30th day before the election, or the adopting
state’s last day for registering to vote]; and

(2) the voter is otherwise eligible to vote in the jurisdiction to which the request is
submitted.

SECTION 17. PREPARATION OF ELECTION LISTING.

(a) No later than 180 days before a covered election, or as soon as practicable in the case
of a special or runoff election, the official in each jurisdiction charged with printing and
distributing ballots and election material shall prepare an election listing for that jurisdiction, to
be used in conjunction with the Federal Write-in Absentee Ballot identified in Section 16. The
election listing must contain a list of all of the federal, state, and local offices [and ballot
measures] that the official expects to be on the ballot in the jurisdiction on the date of the
election. The listing must contain specific instructions for how a voter is to indicate on the Federal Write-in Absentee Ballot the voter’s choice for each office to be filled [and for each ballot measure to be contested].

(b) An absent uniformed services voter or an overseas voter may request a copy of the election listing, which shall be delivered to the voter by facsimile, electronic mail, Internet transmission, or regular mail, as the voter requests.

(c) As soon as regular [absentee ballots] are printed, and no later than the date when regular [absentee ballots] are required to be transmitted to absentee voters, the official charged with preparing the election listing shall update the listing with the certified candidates for each office [and the text of ballot measures], and shall make the updated listing publicly available.

SECTION 18. DECLARATION REQUIREMENTS.

(a) Each voter registration application, [absentee ballot] application, and submitted [absentee ballot] of an absent uniformed services voter or an overseas voter must include or be accompanied by a single declaration for the voter to execute affirming that a material misstatement of fact in completing the document may be grounds for a conviction for perjury under the laws of the United States and this state. The declaration must read substantially as follows:

“I swear or affirm, under penalty of perjury, that:

1. I am a member of the Uniformed Service or an eligible spouse or dependent of such a member, or a U.S. citizen outside the U.S., and

2. I am a U.S. citizen, at least 18 years of age (or will be by the day of the election), eligible to vote in the requested jurisdiction, and

3. I have not been convicted of a felony or other disqualifying offense or been
adjudicated mentally incompetent, or if so, my voting rights have been reinstated, and

4. I am not registering, requesting a ballot, or voting in any other jurisdiction in the U.S., and

5. If this declaration accompanies my voted [absentee ballot], I have voted and sealed this ballot in private and have not allowed any person to observe the marking of this ballot, except for those authorized to assist voters under state or Federal law and I have not been influenced, and

6. My signature and the date listed below indicate when I completed this document, and

7. The information on this document is true and complete to the best of my knowledge.

I understand that a material misstatement of fact in completing this document may be grounds for conviction of perjury under the laws of the United States and [state].

Signature____________________________   Date___________________”

(b) [The state’s chief election authority] shall ensure that an appropriate form for the execution of the declaration specified in subsection (a), including the date of its execution, is a prominent part of each document or, in the case of a voted ballot, each transmission envelope, for which this declaration is required.

(c) A notarization or authentication requirement other than the declaration specified in subsection (a), or the declaration on the Federal Post Card Application and Federal Write-In Absentee Ballot, may not be required for the execution of any document under this [act].

**SECTION 19. NONESSENTIAL REQUIREMENT.** Mistake or omission in the execution of any document under this [act] and a nonessential requirement, such as paper size
and weight, that does not prevent identifying or determining the eligibility of an absent
uniformed services voter or an overseas voter does not invalidate the document. An
abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a
political party must be disregarded in determining the validity of a write-in ballot cast by the
voter, if the intention of the voter can be ascertained.

SECTION 20. ISSUANCE OF INJUNCTION. On application by any registered voter
of the state or by any person alleging eligibility to register to vote under this [act], the courts of
this state may issue an injunction or grant other equitable relief appropriate to enforce this [act].

SECTION 21. 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) This [act] is designed to facilitate, and should be read in harmony with, the federal

SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal
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 23. EFFECT ON OTHER STATE AND LOCAL LAWS. The exercise of
any right under this [act] shall not by itself affect, for purposes of any provision of a state or local
tax law or other nonelection law in which the residence or domicile of a person is a factor, the
residence or domicile of the person exercising the right.
SECTION 24. REPEALS.

The following are repealed:

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

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

(3) .............................................

SECTION 25. EFFECTIVE DATE. This [act] takes effect . . . .