

D R A F T

FOR DISCUSSION ONLY

MILITARY SERVICES AND OVERSEAS CIVILIAN ABSENTEE VOTERS ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR
SANTA FE, NEW MEXICO
JULY 9 - JULY 16, 2009

MILITARY SERVICES AND OVERSEAS CIVILIAN ABSENTEE VOTERS ACT

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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May 20, 2009

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Support for this project was provided by a grant from The Pew Charitable Trusts' "Make Voting Work" project. The views expressed are those of the drafting committee and do not necessarily reflect the view of Make Voting Work or The Pew Charitable Trusts.

MILITARY SERVICES AND OVERSEAS CIVILIAN ABSENTEE VOTERS ACT

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

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

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Absent uniformed services voter” means:

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

8 (B) a spouse or dependent of a member referred to in subparagraph (A) who, by
9 reason of the service of the member, is absent from the place of residence where the spouse or
10 dependent is otherwise qualified to vote.

11 (2) “Covered election” means any general, special, primary, or runoff election for federal,
12 state, or local government office [or a ballot measure] conducted according to the procedure of
13 [reference election title or other relevant portion of state code].

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

16 (A) is qualified to vote in this state;

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

20 (C) in the case of a citizen who was born outside the United States and who is not
21 included in subparagraph (A) or (B), would be eligible to vote in this state if a resident of this
22 state and if this state was the last place in the United States in which one of the citizen’s parents
23 was eligible to vote.

1 (4) “Uniformed services” means the Army, Navy, Air Force, Marine Corps, Coast Guard,
2 Merchant Marines, National Guard, the commissioned corps of the Public Health Service, and
3 the commissioned corps of the National Oceanic and Atmospheric Administration.

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

7 **Reporter’s Comment**

8
9 The Act’s definition of the terms “absent uniformed services voter” and “overseas voter”
10 builds upon the definitions of these same terms in the Uniformed and Overseas Citizens
11 Absentee Voting Act (“UOCAVA”), 42 U.S.C. § 1973ff-6(1), but simplifies these definitions
12 and particularizes them to an enacting state. The Act also adds, in definition (3)(c), a class of
13 voter not covered under UOCAVA, namely U.S. citizens born abroad who have never resided in
14 the United States, but who would be eligible to vote if they did reside in the United States.
15 Because this group of voters has no direct tie to any particular state, some device is needed to
16 align them with a particular jurisdiction. For this purpose, the definition uses the last state in
17 which a parent of the voter was eligible to vote. The draft permits these “stateless” voters to
18 participate in all covered elections, which is the approach taken by most of the sixteen states that
19 already statutorily enfranchise these voters.
20

21 Because these “stateless” voters lack a connection with a particular state, the drafting
22 committee considered limiting the participation of these voters to only federal elections. As a
23 policy matter, the committee was divided over whether to impose such a limitation. These voters
24 clearly have interests in U.S. policy and governance, and in order to have representation in
25 Congress concerning federal issues they must be affiliated with a particular state. Many observer
26 groups indicated that what mattered most to these voters was the chance to participate in federal
27 elections, and that these voters likely would not turn out in high numbers for purely state and
28 local elections even if they were eligible to participate in those elections, but that in those cases
29 in which individual voters did have particular interests in state and local elections they should be
30 able to participate.
31

32 The drafting committee also took note of the fact that limiting stateless voters to federal
33 elections likely would create some additional burdens on state and local elections officials to
34 classify and segregate these voters and treat them differently from other voters, including
35 creating special ballots for them. If these voters are allowed to participate in only federal
36 elections, other sections of the Act also would need modification to effectuate this limitation and
37 ensure that states properly identify and segregate these voters.
38

1 provided to voters, including developing standard identifying labels and other markings on such
2 materials to expedite their handling.
3

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

17 **Reporter’s Comment**
18

19 The starting point for this section was language from the Federal Voting Assistance
20 Program, which recommends providing states with authority to adjust UOCAVA voting
21 processes in the event of an emergency. As of 2008, eighteen states had provided some form of
22 emergency authority to their chief elections official.
23

24 **SECTION 5. SUPERSEDING OF OTHER LAW.** A provision of this [act] setting
25 out a date, timeline, or deadline for the submission of a voter registration or [absentee ballot]
26 application, or the casting, receipt, or counting of an [absentee ballot], to the extent that it
27 conflicts with other state law, shall supersede the other state law.
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(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.

(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.

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.

22
23
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25
26

(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

1 request an [absentee ballot] simultaneously.

2 (b) If an absent uniformed services voter or an overseas voter is already registered to vote
3 in this state, the voter may apply for an [absentee ballot] for any covered election using either the
4 regular [absentee ballot] application in use in the voter's jurisdiction, or the Federal Post Card
5 Application or its electronic equivalent. [The state's chief election authority] shall ensure that
6 each jurisdiction's regular [absentee ballot] application requires the applicant to supply sufficient
7 information for election officials to determine whether the applicant is an absent uniformed
8 services voter or an overseas voter. [The state's chief election authority] shall use best efforts to
9 minimize the information necessary, standardize its collection, and streamline the [absentee
10 ballot] application process.

11 **Alternative 2**

12 To receive the protection of this [act], an absent uniformed services voter or an overseas
13 voter must apply for an [absentee ballot] using the Federal Post Card Application, as prescribed
14 under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section
15 1973ff(b)(2), or its electronic equivalent, or complete a Federal Write-In Absentee Ballot as a
16 simultaneous [absentee ballot] application.

17 **End of Alternatives**

18 **Reporter's Comment**

19
20 The drafting committee continues to consider how best to rely on the Federal Post Card
21 Application while not complicating a state's ability to develop and use Internet-based and other
22 methods of accepting voter registration and absentee ballot applications that are not Federal Post
23 Card Applications. Alternatively, option 2 would limit the protections of the Act to voters who
24 used the FPCA, because its use immediately identifies for local election officials the special
25 status of the voter.

26
27 If the uniform act permits "stateless children" to vote only for candidates for federal
28 office, then some method would be needed to further distinguish these voters from other
29 overseas voters. The current Federal Post Card Application does not require overseas voters to

1 declare whether or not they have previously lived in the United States. One option would be to
2 require those voters who have not previously lived in the United States to declare this at the time
3 of registration in the portion of the Federal Post Card Application designated for additional
4 information for specific states.
5

6 **[SECTION 8. STANDING REQUEST FOR [ABSENTEE BALLOT].**

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

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

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

21
22 **Reporter's Comment**
23

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

1 law now requires states to provide this option to UOCAVA voters for all federal elections, and
2 voters might therefore reasonably expect to be receiving voting materials for all elections.
3

4 In light of this lack of agreement in the committee, the section is presented to the
5 Conference as a bracketed section. One option would be to let each enacting state make its own
6 determination about whether to include or omit this section, depending on its evaluation of the
7 cost and burden. Omitting the section would have no impact on other portions of the Act.
8 Another option would be to draft the section to permit individual voters to opt out of receiving
9 voting materials for subsequent elections involving only state or local, and not federal, races.
10

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

17 **SECTION 10. TRANSMISSION OF UNVOTED BALLOTS.**

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

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

28 (c) When an [absentee ballot] application of an absent uniformed services voter or

1 overseas voter arrives after the jurisdiction has begun transmitting [absentee balloting] materials
2 to voters, the official charged with distributing ballots and election materials shall transmit the
3 [absentee balloting] materials to the voter as promptly as possible.

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

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

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

19 **Reporter's Comment**

20
21 In light of occasional controversies about when election officials have "received"
22 absentee ballots, some additional clarification of this term may be worth considering.
23

24 **SECTION 13. ELECTRONIC TRANSMISSION OF REGISTRATION AND**
25 **[ABSENTEE BALLOT] APPLICATION.** In addition to any other method of registering to

1 vote or applying for an [absentee ballot], an absent uniformed services voter or an overseas voter
2 may submit a Federal Post Card Application or other application by electronic transmission, in a
3 manner directed by [the state's chief election authority], which protects the integrity of the
4 transmission and the privacy of the voter's identity and other personal data contained in the
5 application.

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

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

22 **SECTION 16. ACCEPTANCE OF FEDERAL WRITE-IN ABSENTEE BALLOT.**

23 (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

1 election. The listing must contain specific instructions for how a voter is to indicate on the
2 Federal Write-in Absentee Ballot the voter's choice for each office to be filled [and for each
3 ballot measure to be contested].

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

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

11 **SECTION 18. DECLARATION REQUIREMENTS.**

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

18 "I swear or affirm, under penalty of perjury, that:

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

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

23 3. I have not been convicted of a felony or other disqualifying offense or been

1 adjudicated mentally incompetent, or if so, my voting rights have been reinstated, and

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

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

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

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

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

14 Signature_____ Date_____”

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

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

22 **SECTION 19. NONESSENTIAL REQUIREMENT.** Mistake or omission in the
23 execution of any document under this [act] and a nonessential requirement, such as paper size

1 and weight, that does not prevent identifying or determining the eligibility of an absent
2 uniformed services voter or an overseas voter does not invalidate the document. An
3 abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a
4 political party must be disregarded in determining the validity of a write-in ballot cast by the
5 voter, if the intention of the voter can be ascertained.

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

9 **SECTION 21. APPLICATION AND CONSTRUCTION.**

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

12 (b) This [act] is designed to facilitate, and should be read in harmony with, the federal
13 Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff et seq.

14 **SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
15 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
16 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,
17 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
18 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
19 U.S.C. Section 7003(b).

20 **SECTION 23. EFFECT ON OTHER STATE AND LOCAL LAWS.** The exercise of
21 any right under this [act] shall not by itself affect, for purposes of any provision of a state or local
22 tax law or other nonelection law in which the residence or domicile of a person is a factor, the
23 residence or domicile of the person exercising the right.

1 **SECTION 24. REPEALS.**

2 The following are repealed:

3 (1)

4 (2)

5 (3)

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