

DRAFT

FOR DISCUSSION ONLY

MILITARY SERVICES AND OVERSEAS CIVILIAN ABSENTEE VOTERS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For March 6-8, 2009 Drafting Committee Meeting

Without Prefatory Note and With Preliminary Comments

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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February 26, 2009

**DRAFTING COMMITTEE ON MILITARY SERVICES AND OVERSEAS CIVILIAN
ABSENTEE VOTERS ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

STEVE WILBORN, 306 Tower Dr., Shelbyville, KY 40065, *Chair*

TERRY J. CARE, 2300 W. Sahara, Suite 1000, Las Vegas, NV 89102

STEPHEN T. DRAFFIN, South Carolina Legislative Council, P.O. Box 11489, Columbia, SC 29211

BARRY C. HAWKINS, 300 Atlantic St., Stamford, CT 06901

LYLE W. HILLYARD, 595 S. Riverwood Parkway, Suite 100, Logan, UT 84321

CLAIRE LEVY, House District 13, 3172 Redstone Rd., Boulder, CO 80305

LUKE MESSER, One American Square, Suite 2900, Indianapolis, IN 46282

SUSAN KELLY NICHOLS, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629

RALPH G. THOMPSON, 315 NW 39th St., Oklahoma City, OK 73118

NORA WINKELMAN, Legal Counsel's Office, Room 620 Main Capitol, Harrisburg, PA 17120

STEVEN F. HUEFNER, Moritz College of Law, The Ohio State University, 55 West 12th Ave., Columbus, OH 43210, *Reporter*

EX OFFICIO

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563, *President*

JACK DAVIES, 1201 Yale Place, Unit #2004, Minneapolis, MN 55403-1961, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

JOHN DEWITT ALTENBURG, 2101 L St. NW, Suite 1001, Washington, DC 20037-1526, *ABA Advisor*

JOHN C. KEENEY, JR., 555 13th St. NW, Suite 10W-206, Washington, DC 20004-1109, *ABA Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.nccusl.org

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MILITARY SERVICES AND OVERSEAS CIVILIAN ABSENTEE VOTERS ACT

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

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

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

1 registry under charter to or control of the United States; or

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

5 (4) “overseas voter” means:

6 **OPTION 1:**

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

9 (B) a person who resides outside the United States and is qualified to vote in this
10 State;

11 (C) a person who resides outside the United States but otherwise would be
12 qualified to vote in this State, if this State was the last place in which the person resided before
13 leaving the United States; and

14 (D) a United States citizen born outside 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 a resident of this State, if this State was the last place in the United States in
17 which one of the citizen’s parents [resided/was qualified to vote];

18 **END OPTION 1**

19 **OPTION 2**

20 [including below a new definition of “domicile” for this option]:

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

23 (B) a person who resides outside the United States and is qualified to vote in the
24

1 last place in which the person was domiciled before leaving the United States;

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

5 (D) a United States citizen born outside of the United States who resides outside
6 the United States but is not included in subsections (A), (B), or (C) above, and who would be
7 qualified to vote if domiciled in the last place in the United States in which one of the citizen’s
8 parents was domiciled;

9 (5) “domicile” means the place where the person’s habitation is fixed, and to which,
10 whenever the person is absent, the person has the intention of returning[, unless a federal court
11 construes the term “domicile” as used in the UOCAVA to mean something else, in which case it
12 takes the meaning given to it for purposes of the UOCAVA];

13 **END OPTION 2**

14 [(5)][(6)] “uniformed services” means the Army, Navy, Air Force, Marine Corps, and
15 Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps
16 of the National Oceanic and Atmospheric Administration; and

17 [(6)][(7)] “United States”, where used in the territorial sense, means the several states, the
18 District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and
19 American Samoa.

20 **Reporter’s Comment**

21
22 In accordance with the drafting committee’s tentative decision at the February meeting in
23 Portland, this Act defines the phrase “absent uniformed services voter” exactly as defined in the
24 Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. § 1973ff-6(1).
25 In turn, terms (3), [(5)][(6)], and [(6)][(7)] of the definitional section of this Act are necessary to
26 complete this borrowing of the UOCAVA definition of “absent uniformed services voter.”
27

1 The drafting committee also concluded to rely upon the UOCAVA definitions of
2 “overseas voter,” to the extent possible, but was concerned about the use of the phrase
3 “domiciled” in those definitions. This draft presents the drafting committee with two options,
4 one that significantly departs from the UOCAVA definition of this term in an effort to tailor it to
5 a uniform state act, and a second that continues to rely upon the UOCAVA definition while also
6 adding a definition of “domicile.” An alternative would be to define “domiciled” instead as
7 something along the lines of “having a physical presence in a particular place and a concurrent
8 intention to make that place one’s home.”
9

10 The drafting committee continues to work to expand the UOCAVA definition of
11 “overseas voter” to include United States citizens who have never resided in the United States,
12 but who would be eligible to vote if they did reside in the United States. This is the purpose of
13 subsection (D) of the definition of “overseas voter.” However, because this group of voters has
14 no direct tie to any particular state, some device is needed to align them with a particular
15 jurisdiction. For this purpose, the definition uses the last United States residence or domicile of a
16 parent of the voter to establish the state in which a voter would vote. The study committee left
17 unresolved the question of whether this voter should be able to participate in all elections in this
18 state, or only federal (or even only Presidential) elections.
19

20 For discussion purposes, this draft no longer limits the participation of these “stateless”
21 voters to only elections for federal offices. Upon further research, it appears that less than half of
22 those sixteen states that already statutorily enfranchise these voters limit their participation to
23 federal elections. But how to enfranchise these voters, and for what elections, remain live issues
24 before the drafting committee.
25
26

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

28 (a) The [state’s chief elections authority] is responsible for implementing this [act], [but
29 may delegate all or some of the associated duties, including duties that this [act] specifically
30 assigns to the [state’s chief elections authority], to other state or local officials.

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

1 Absentee Voting Act, 42 U.S.C. section 1973ff-1(b)(1).

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

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

9 **Reporter’s Comment**

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16
17
18

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.

19 **SECTION 104. EMERGENCY POWERS.** If an international, national, or local
20 emergency or other situation arises that makes substantial compliance with this [act] or the
21 Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable, as
22 confirmed by an official declaration by the U.S. Department of State that a state of emergency,
23 civil unrest, war, or other exigency exists in a foreign country such that a travel warning is
24 issued, or by an official declaration by [the Governor] that a state of emergency exists in this
25 State, or by the existence of an armed conflict involving United States Armed Forces, or
26 mobilization of those forces, including state National Guard and Reserve component members
27 residing in this State, [the state’s chief elections authority] may prescribe, by emergency orders
28 or rules, such special procedures or requirements as may be necessary to facilitate absentee

1 voting by those absent uniformed services voters or overseas voters directly affected who are
2 eligible to vote in this State.

3 **Reporter’s Comment**

4
5 The starting point for this section was language from the Federal Voting Assistance
6 Program, which recommends providing states with authority to adjust UOCAVA voting
7 processes in the event of an emergency. As of 2008, eighteen states had provided some form of
8 emergency authority to their chief elections official. In accordance with the drafting committee’s
9 discussions in Portland, this draft refines the FVAP language to restrict this emergency authority
10 to circumstances in which either the U.S. State Department or the state Governor have declared
11 an emergency, or to times of armed conflict.
12

13 **SECTION 105. SUPERSEDING OF OTHER PROVISIONS.** The provisions of this
14 [act] setting out dates, timelines, or deadlines for the submission of a voter registration or
15 [absentee ballot] application, or the casting, receipt, or counting of an [absentee ballot], to the
16 extent that they conflict with other provisions of state law, shall supersede and override those
17 other provisions of state law.
18

1 [ARTICLE] 2

2 VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION PROVISIONS

3 SECTION 201. ELIGIBILITY TO VOTE.

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

8 (b) If the last place in which an overseas voter resided before leaving the United States is
9 within this State, the voter may register to vote and apply for an [absentee ballot] in this State for
10 all covered elections.

11 (c) In the case of an overseas voter who has never resided in the United States, if
12 [OPTION A: a parent of the overseas voter is eligible to register to vote in this State/OPTION B:
13 the last place in which a parent of the overseas voter resided before leaving the United States is
14 within this State], and the voter has not previously registered to vote in any other state, the voter
15 may register to vote and apply for an [absentee ballot] in this State.

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

19 **Reporter’s Comment**

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

25
26 This version of section 201 is drafted to follow “option 1” of the definition of “overseas
27 voter.” If something closer to “option 2” is used, this section should be revised accordingly.
28

1 requests that the application be considered an application for an [absentee ballot] for all
2 subsequent elections for the time period permitted under federal law. [including any runoff
3 elections that may occur as a result of the outcome of such general elections (legislative note:
4 only for states with run-offs)], the State shall provide an [absentee ballot] to the voter for each
5 subsequent covered election, as provided in section 302, for the period required under federal
6 law, or any longer period elsewhere provided under state law.

7 (b) Subsection (a) does not apply for any election held after the voter notifies the State
8 that the voter no longer wishes to be registered to vote in this State or after election officials
9 determine that the voter has registered to vote in another state.

10 **[SECTION 204. UPDATING ADDRESSES/COORDINATION WITH FEDS.?)**

11 **[?mandate the collection of email addresses of these voters?]**

12

1 **[ARTICLE] 3**

2 **DEADLINES**

3 **SECTION 301. APPLICATIONS FOR [ABSENTEE BALLOTS].** A Federal Post
4 Card Application requesting an [absentee ballot] may be submitted [up to 365 days/at any time]
5 prior to the election for which it is submitted. An otherwise valid application for an [absentee
6 ballot] from an absent uniformed services voter or an overseas voter is timely if received by the
7 later of (a) the 30th day before the election, or (b) the last date for other voters in the State to
8 apply for an [absentee ballot] for the election. [consider making this uniform?]

9 **SECTION 302. TRANSMISSION OF UNVOTED 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 **OPTION 1**

15 (b) No later than the ___ day before the election, local election officials shall transmit by
16 facsimile, email, or Internet transmission, as designated by the voter, an unvoted [absentee
17 ballot] and related balloting materials to any absent uniformed services voter or overseas voter
18 who by that date has submitted a valid Federal Post Card Application requesting electronic
19 transmission of absentee balloting materials.

20 **END OPTION 1**

21 **OPTION 2**

22 (b) (1) No later than the ___ day before the election, jurisdictions not authorized to
23 transmit or not capable of transmitting absentee balloting materials, including unvoted [absentee

1 ballots], to the voter electronically, by facsimile, email, or Internet connection, as designated by
2 the voter, shall physically send unvoted [absentee ballots] and related balloting materials to any
3 absent uniformed services voter or overseas voter who by that date has submitted a valid Federal
4 Post Card Application for an [absentee ballot].

5 (b) (2) No later than the ___ day before the election, jurisdictions authorized to transmit
6 and capable of transmitting absentee balloting materials, including unvoted [absentee ballots], to
7 the voter electronically, by facsimile, email, or Internet connection, as designated by the voter,
8 shall transmit them to any absent uniformed services voter or overseas voter who by that date has
9 submitted a valid Federal Post Card Application requesting electronic transmission of absentee
10 balloting materials.

11 **END OPTION 2**

12 (c) With respect to absent uniformed services voters or overseas voters whose Federal
13 Post Card Applications arrive after the jurisdiction has begun transmitting absentee balloting
14 materials to voters, the official charged with distributing ballots and election materials shall
15 transmit to these voters their absentee balloting materials [as promptly as possible/within three
16 days of receiving the application].

17 **SECTION 303. CASTING OF BALLOTS.** To be valid, an [absentee ballot] from an
18 absent uniformed services voter or overseas voter must be [cast/marked and
19 sealed/submitted/transmitted by the voter] no later than 11:59 p.m. local time (in the place where
20 the voter is completing the ballot) on the day before the day of the election. If at the time of
21 completing the balloting materials the voter has affirmed under penalty of perjury, as provided in
22 section 601, that the [absentee ballot] was timely [cast/marked and sealed/
23 submitted/transmitted,] the ballot may not be rejected on the basis that it lacks a postmark

1 showing that it was cast before the day of the election.

2 **SECTION 304. RECEIPT OF VOTED BALLOTS.**

3 **OPTION 1**

4 A valid [absentee ballot] cast by an absent uniformed services voter or an overseas voter
5 must be counted if the appropriate state or local elections official receives it by [noon/the close
6 of business] on the 10th [business ??] day after the day of the election.

7 **END OPTION 1**

8 **OPTION 2**

9 (a) If by the ___ day before the election [absentee ballots] have been transmitted to all
10 absent uniformed services voters and overseas voters who have by then requested them, a valid
11 [absentee ballot] cast by an absent uniformed services voter or an overseas voter must be
12 received by the appropriate state or local elections official by election day in order to be counted.

13 (b) If by the ___ day before the election [absentee ballots] have not been transmitted to
14 all absent uniformed services voters and overseas voters who have by then requested them, a
15 valid [absentee ballot] cast by an absent uniformed services voter or an overseas voter must be
16 counted if the appropriate state or local elections official receives it by [noon/the close of
17 business] on the 10th [business??] day after the day of the election.

18 **END OPTION 2**

19

1 [ARTICLE] 4

2 USE OF ELECTRONIC TRANSMISSION METHODS

3 SECTION 401. ELECTRONIC TRANSMISSION OF REGISTRATION AND

4 [ABSENTEE BALLOT] APPLICATIONS. In addition to any other method of registering to
5 vote or applying for an [absentee ballot], an absent uniformed services voter or an overseas voter
6 may submit a Federal Post Card Application by facsimile, email, or Internet transmission, in the
7 manner directed by the [state's chief elections officer], which appropriately protects the integrity
8 of the transmission and the privacy of personal data contained in the application.

9 SECTION 402. ELECTRONIC TRANSMISSION OF UNVOTED BALLOTS AND

10 OTHER VOTING MATERIALS. Either directly or in coordination with the [state's chief
11 elections authority], local election jurisdictions shall use facsimile, email, or Internet
12 transmission, as chosen by the voter and in the manner directed by the [state's chief elections
13 officer], to transmit unvoted [absentee ballots] and related balloting materials to those absent
14 uniformed services voters and overseas voters who have requested to receive them electronically.
15 [When reasonably possible, local election jurisdictions that maintain a presence on the Internet
16 shall make available on their Internet site downloadable versions of [absentee ballots] and voting
17 instructions for absent uniformed services voters and overseas voters, as well as the most
18 updated state and local election ballot listing, as required under section 501.]

19 SECTION 403. CONFIRMATION OF RECEIPT OF APPLICATIONS AND

20 VOTED BALLOTS. The [state's chief elections authority], in coordination with local election
21 jurisdictions, shall develop an electronic system by which absent uniformed services voters and
22 overseas voters may determine, either by telephone or Internet access, whether their Federal Post
23 Card Application has been received and accepted, and whether their [absentee ballot] has been

1 received [and counted?].

2

1 [ARTICLE] 5

2 WRITE-IN ABSENTEE BALLOT PROVISIONS

3 SECTION 501. STATE AND LOCAL ELECTION BALLOT LISTING.

4 (a) No later than 180 days before a covered election, the official in each jurisdiction
5 charged with printing and distributing ballots and election materials shall prepare a state and
6 local election ballot listing for that jurisdiction, to be used in conjunction with the Federal Write-
7 in Absentee Ballot identified in section 502. The state and local election ballot listing shall
8 contain a list of all of the state and local offices [and ballot measures] that the official expects to
9 be before the voters in that jurisdiction on the date of the election, with specific instructions for
10 how a voter is to write in on the Federal Write-in Absentee Ballot the voter's choice for each
11 office to be filled [and ballot measure to be contested].

12 (b) An absent uniformed services voter or an overseas voter may request, not earlier than
13 180 days before a covered election, a copy of the state and local election ballot listing, which
14 shall be delivered to the voter by facsimile, email, Internet transmission, or regular mail, as the
15 voter requests.

16 (c) As soon as regular [absentee ballots] are printed, and no later than the date when
17 regular [absentee ballots] are required to be transmitted to absentee voters, the official charged
18 with preparing a state and local election ballot listing shall update the listing with the certified
19 candidates [and text of ballot measures] for each race.

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

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

1 1973ff, if the voter affirms that: (1) the voter submitted a Federal Post Card Application
2 requesting an [absentee ballot] in time to be received by the later of (a) the 30th day before the
3 election, or (b) the last date for other voters in the State to apply for an [absentee ballot] for the
4 election; and (2) the voter has not received the requested [absentee ballot].

5 (b) In any covered election, an absent uniformed services voter or an overseas voter may
6 use the Federal Write-In Absentee Ballot transmission envelope's voter declaration as a request
7 for registration and an application for an [absentee ballot] simultaneous with the submission of
8 the Federal Write-In Absentee Ballot. The request for registration and application for an
9 [absentee ballot] shall be accepted if: (1) it is received by the later of (a) the 30th day before the
10 election, or (b) the State's last day for registering to vote; and (2) the voter is otherwise eligible
11 to vote in the jurisdiction to which the request is submitted.

12

1 [ARTICLE] 6

2 BURDEN REDUCTION PROVISIONS

3 SECTION 601. AUTHENTICATION REQUIREMENTS.

4 (a) To assist in the 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, the voter shall execute a declaration, such as the
7 UOCAVA affirmation prescribed under 42 U.S.C. section 1973ff(b)(7), affirming that a material
8 misstatement of fact in the completion of such a document may constitute grounds for a
9 conviction for perjury under the laws of the United States and this State. The [state’s chief
10 elections authority] shall ensure that an appropriate form for the execution of this declaration,
11 including the date of its execution, is a prominent part of each document for which this
12 declaration is required.

13 (b) No notarization or authentication requirement other than the declaration specified in
14 subsection (a) may be required for the execution of any document under this [act].

15 Reporter’s Comment

16
17 The affirmation currently prescribed by the Federal Voting Assistance Program may not
18 quite capture everything that the drafting committee desires, in that by omitting the phrase
19 “under the laws of the United States and this State” the form of this affirmation may not
20 completely comport with the form recommended in the ULC’s Uniform Unsworn Foreign
21 Declarations Act. In addition, the committee may conclude that states with their own Internet-
22 based registration systems may wish to rely on those systems, rather than the Federal Post Card
23 Application, in which case the state may also need to incorporate its own affirmation into its
24 electronic registration system.
25

26 SECTION 602. NON-ESSENTIAL REQUIREMENTS. Elements of the absentee
27 balloting process not essential to identifying the identity and eligibility of the voter shall not be
28 enforced to deprive an absent uniformed services voter or an overseas voter of the opportunity to

1 cast a valid ballot. Any abbreviation, misspelling, or other minor variation in the form of the
2 name of a candidate or a political party shall be disregarded in determining the validity of a
3 write-in ballot cast by an absent uniformed services voter or an overseas voter, if the intention of
4 the voter can be ascertained.

5

1 [ARTICLE] 7

2 ENFORCEMENT

3 SECTION 701. ISSUANCE OF INJUNCTIONS. The courts of this State have

4 jurisdiction to issue injunctions or grant any other equitable relief appropriate to enforce the

5 provisions of this [act] upon application by any registered voter of the State or by any person

6 alleging eligibility to register to vote under this [act], and any registered voter of the State or any

7 person alleging eligibility to register to vote under this [act] has standing to seek injunctive or

8 any other equitable relief appropriate to enforce the provisions of this [act].

9

1 [ARTICLE] 8

2 MISCELLANEOUS PROVISIONS

3 SECTION 801. 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 802. 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 803. EFFECT ON OTHER STATE AND LOCAL LAWS. The exercise
16 of any right under this [act] shall not by itself affect, for purposes of any state or local tax law, or
17 other non-election provision of law where the residence or domicile is a factor, the residence or
18 domicile of the person exercising the right.

19 SECTION 804. REPEALS.

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

- 21 (1)
22 (2)
23 (3)

1 **SECTION 805. EFFECTIVE DATE.** This [act] takes effect