

MAINE STATE LEGISLATURE

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NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

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IN FIVE VOLUMES

VOLUME 1



THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA

Chapter 6.

Absent Voting. Physical Incapacity Voting.

Cross Reference.—See c. 7, re Voting by Armed Forces.

Sec. 1. "Absentee voters" defined.—An absentee voter is defined to be any person who is a duly qualified registered voter and, in respect to any primary election, duly enrolled as a member of the political party in the primary of which he proposes to vote except when he is serving a sentence in jail or in any penal institution, after conviction, in this or any other state, of a criminal offense, but who, through absence from the city or town in which he is entitled to vote, or who, through some physical incapacity not adversely affecting his soundness of mind, to which condition a physician duly admitted to practice shall have certified after examination, or who for religious reasons, is unable to cast his ballot at the voting place where he is entitled to vote, at any city election, which shall include a city primary where the Australian ballot is used, at any primary election held pursuant to the provisions of sections 1, 15, 46 and 47 of chapter 4, or at any general or special state election as the term state election is defined in section 1 of chapter 5, including also elections for the choice of electors of president and vice-president of the United States, elections held in accordance with the initiative or referendum provisions of the constitution of Maine, and elections to vote upon amendments to the constitution of Maine. (R. S. c. 6, § 1. 1945, c. 52. 1953, c. 127, § 1.)

Sec. 2. Secretary of state to prepare ballots, blank forms, instructions, etc., for city and town clerks.—Thirty days at least, when practicable, prior to any election at which absentee voting or voting prevented because of physical incapacity is authorized, and in other cases as early as may be practicable, the secretary of state, or in case of city elections the respective city clerks, shall prepare, in such quantities as the official preparing the same may deem necessary, the following papers:

I. Official absent voting ballots similar in all respects to the official ballots to be used at such election, except that the words, "Official Absent Voting or Physical Incapacity Voting Ballot," shall be printed conspicuously on the back and outside thereof.

II. Blank forms of application for such ballots worded as follows, but varying the bracketed word (state) so as to properly designate the election then next to be held, and omitting the bracketed clause concerning enrollment in elections other than primary:

"I, _____, hereby apply for an official absent voting ballot. I am a legal resident of the city or town of _____, in the county of _____, state of Maine. I am a duly qualified and registered voter, and am, as I believe, entitled to vote at the next (state) _____ election, at precinct _____, ward, _____, in the city or town of _____, in the county of _____ and state of Maine.

(I have conformed to all the requirements of the laws of Maine relative to enrollment and am entitled to vote for the nomination of candidates of the party.)

My address, including street and number if any, on April 1 of the present year was _____ and is now _____.

(Signature)

We, the undersigned, a majority of the officials having charge of the registration of voters of the city or town of _____ hereby certify that the above signature, to the best of our knowledge and belief, is genuine, and that we believe the facts stated in the above application to be true.

(Signature)
.....

III. Blank forms of application for such ballots worded as follows, but varying the bracketed word (state) so as to properly designate the election then next to be held, and omitting the bracketed clause concerning enrollment in elections other than primary:

"I, _____, hereby apply for an official physical incapacity voting ballot. I am a legal resident of the city or town of _____, in the county of _____, state of Maine. I am a duly qualified and registered voter, and am, as I believe, entitled to vote at the next (state) election, at precinct _____, ward _____, in the city or town of _____, in the county of _____ and state of Maine.

(I have conformed to all the requirements of the laws of Maine relative to enrollment and am entitled to vote for nomination of candidates of the party.)

My address, including street and number if any, on April 1 of the present year was _____ and is now _____

(Signature)

We, the undersigned, a majority of the officials having charge of the registration of voters of the city or town of _____ hereby certify that the above signature, to the best of our knowledge and belief, is genuine and that we believe the facts stated in the above application to be true.

(Signature)
....."

IV. Envelopes of sufficient size to contain the ballots specified in subsection I, addressed to the clerk of the city or town of _____, county of _____, state of Maine having at the top blank spaces for the name, voting residence, and voting place of the sender with the words "Name," "Voting Residence," "Ward," and "Precinct" appropriately printed thereon and the following affidavit:

"I, _____, do solemnly swear that I am unable to cast my ballot on election day at the voting place where I am entitled to vote because I shall be absent on the day of election, or prevented from going to the polls due to physical incapacity or religious reasons on the day of election (strike out reason not applicable). I have carefully read the instructions on the reverse side of this envelope and have marked my ballot in accordance with them.

(Signature)

Personally appeared the above and made oath to the truth of the statement contained hereon.

(Official seal, if any.)

Name
Residence
Official Title"

Such envelopes shall bear on their reverse side instructions as to the manner of voting.

V. "STATE OF MAINE

PHYSICIAN'S CERTIFICATE—PHYSICAL INCAPACITY VOTING

To the Election officials of the _____ of _____, County, Maine:

This is to certify that I, the subscriber, am a duly licensed and regularly practicing physician and resident in the _____ of _____, County, Maine:

A. That on the _____ day of _____, 19____, I examined _____ of _____ in _____ County, Maine; that said _____ is suffering from the following described ailment:

B. That _____, of _____ County, Maine, is confined to his (her) home because of illness and is under my care and treatment; that the ailment with which the said _____ is afflicted is _____.

(Physicians should use whichever paragraph, A or B, is applicable.)

That said ailment does not adversely affect the soundness of mind but does prevent the above-named person from going to the polls on the _____ day of _____, 19____, the day of the _____ election.

.....
.....”

VI. Envelopes of sufficient size to contain the ballot and the return envelope mentioned in subsection IV bearing on the face thereof “From the Clerk of _____” with appropriate lines for the address of the voter.

VII. Copies of this chapter with such explanatory matter and instructions as the secretary of state with the approval of the attorney general, or in case of city elections such as the respective city clerks shall deem appropriate to carry into effect the purposes of this chapter. (R. S. c. 6, § 2. 1951, c. 348, §§ 7, 8. 1953, c. 127, § 2; c. 365, § 19.)

Sec. 3. Secretary of state to supply each city and town with as many papers as he deems necessary.—The secretary of state shall supply each city and town clerk in the state with as many as he may deem necessary of the papers prepared by him in accordance with the provisions of the preceding section, and in city elections shall furnish sufficient copies of this chapter to the city clerks. (R. S. c. 6, § 3.)

Sec. 4. Notice of number of ballots.—In the case of city elections, the city clerk shall notify in writing each municipal officer of his city as to the exact number of official absent voting ballots or physical incapacity voting ballots which he has prepared for each voting precinct or ward of his city, 3 days at least, Sundays included, before such city election; and a copy of such notice shall be filed by him in his office in a book kept for that purpose, 2 days at least, Sundays included, before such election. (R. S. c. 6, § 4.)

Sec. 5. Ballots, blank forms, etc., to be sent to absent voters by city and town clerks upon application.—The papers mentioned in subsections II and III, whichever is applicable, of section 2 shall be delivered to any person who by mail or otherwise applies therefor to the clerk of the city or town where he is entitled to vote. The papers described in subsections I, IV, VI and VII of section 2, except copies of this chapter, and also, if physical incapacity ballot is applied for, the form described in subsection V of section 2, shall be mailed without unnecessary delay, postage prepaid or otherwise delivered to the applicant, by the city or town clerk applied to as aforesaid, to every absentee voter or voter physically incapacitated who seasonably files the application set forth in said subsections II or III, provided such application is duly certified by the proper officials as required by the 2 following sections. (R. S. c. 6, § 5. 1947, c. 146, § 1.)

Sec. 6. Procedure in cities.—When a written request for an absent voting ballot or physical incapacity voting ballot is received by the clerk of a city, he shall forthwith mail or deliver the application and ballot to the applicant; provided, however, that if the request is made on the form prescribed by subsection III of section 2, then he shall mail or deliver only the ballot. Before the closing of the polls on election day, the clerk shall deliver to the officials charged by law with the registration and enrollment of voters in such city all applications for absent voting and physical incapacity voting ballots which have been received by him. Such officials shall examine each application and, if they believe the

signature thereon to be genuine and the statements therein made to be true, they shall execute the certificate thereon and return it to the clerk. If the officials do not believe the signature to be genuine or the statements made by the applicant to be true, and so decline to execute the certificate, they shall forthwith mail to the applicant at his address as stated on his application written notice to that effect, giving their reasons for so declining and informing him that his ballot will not be counted. They shall keep a record in a book provided for that purpose of all voters whose applications for official absent voting ballots or physical incapacity voting ballots are certified to the city clerk together with the date of the execution of the certificate on the application. They shall preserve the application until the time set by law for the destruction of ballots cast in the coming election, at which time the application shall also be destroyed. The clerk shall keep lists of the names and addresses, arranged by voting precincts, of all voters filing applications for absent voting ballots or physical incapacity voting ballots and shall post copies of such lists for public inspection at each voting place. The clerk shall cause to be placed on the voting list, opposite the name of each person to whom an official absent voting ballot or physical incapacity voting ballot is mailed or delivered, the letters in capitals A. V. (R. S. c. 6, § 6. 1949, c. 349, § 3. 1951, c. 303.)

Sec. 7. Procedure in towns and plantations.—When a written request for an absent voting ballot or physical incapacity voting ballot is received by a clerk of a town or plantation, he shall forthwith mail or deliver the application and ballot to the applicant; provided, however, that if the request is made on the form prescribed by subsections II and III of section 2, then he shall mail or deliver only the ballot. Before the closing of the polls on election day, the clerk shall deliver to the officials charged by law with the registration and enrollment of voters in such town or plantation all applications for absent voting and physical incapacity voting ballots which have been received by him. Said officials shall examine each application and if they believe the signature thereon to be genuine and the statements therein made by the applicant to be true, they shall execute the certificate thereon and return it to the clerk. If the officials do not believe the signature to be genuine or the statements made by the applicant to be true, and so decline to execute the certificate, they shall forthwith mail to the applicant at his address as stated on his application written notice to that effect, giving their reasons for so declining and informing him that his ballot will not be counted. They shall preserve the application until the time set by law for the destruction of ballots cast in the coming election, at which time the application shall also be destroyed. The clerk shall cause to be placed on the voting list, opposite the name of each person to whom an official absent voting ballot or physical incapacity voting ballot is mailed or delivered, the letters in capitals A. V. (1947, c. 146, § 2. 1951, c. 348, § 9. 1953, c. 308, § 5.)

Sec. 8. Manner of voting.—A voter who has executed and filed an application for an official absent voting ballot or physical incapacity voting ballot with the clerk of the city or town in which he is a registered voter and has obtained an official absent voting ballot or physical incapacity voting ballot, may vote by mailing or delivering such ballot as hereinafter provided to such city or town clerk. He shall mark his ballot in the presence of any official authorized by law to administer oaths, if the marking is done within this state, or in the presence of any notary public having a seal, if the marking is done outside this state, or in the presence of any commissioned officer of the army, navy or marine corps, including officers of the national guard, officers' reserve corps, naval militia, naval reserve or marine corps reserve in federal service, if the voter is in the military service of the United States, whether within or outside this state, who are authorized to administer the oaths herein required, but, in either case, no person other than the voter and the official taking his oath shall be present during the marking and sealing of the ballot. Before marking his ballot, the voter

shall exhibit it to the official, who shall satisfy himself that it is unmarked, but he shall not allow the official to see how he marks it. The official shall hold no communication with the voter, nor he with the official, as to how he is to vote. Thereafter the voter shall enclose and seal the ballot in the envelope provided for in subsection IV of section 2. He shall then execute before the official the affidavit on the envelope as set forth in said subsection IV, and commissioned officers of the army, navy and marine corps, including officers of the national guard, officers' reserve corps, naval militia, naval reserve and marine corps reserve in federal service are authorized to administer the oaths herein required. The official shall indorse thereon the certificate provided for in said subsection IV and affix his official seal, if any, and the voter shall enclose and seal the envelope with the ballot in the envelope provided for in subsection VI of section 2, indorse thereon his name, address and voting place, and mail the same within the time prescribed in the following section, at any post office, or may deliver it in person or by his accredited agent. For the purpose of this section, the clerk of any city or town within this state is authorized to administer the required oath.

Any voter, voting in accordance with the provisions of the preceding paragraph and who is unable to mark his ballot due to blindness or other physical incapacity, may request the official who is authorized by law to administer oaths to mark the ballot for him in accordance with his instructions. (R. S. c. 6, § 7. 1947, c. 146, § 3. 1951, c. 348, § 10.)

Sec. 9. Receipt of ballots from absent voter.—All ballots cast under the provisions of the preceding section whether delivered in person or by mail shall be received by the plantation, town or city clerk before the closing of the polls on the day of election. (R. S. c. 6, § 8. 1953, c. 107.)

Sec. 10. Procedure to be employed by clerk upon receipt of envelope purporting to contain absent voting ballot or physical incapacity voting ballot.—Upon receipt of an envelope purporting to contain an official absent voting ballot or physical incapacity voting ballot, the city clerk shall attach thereto the corresponding application and shall keep lists of names and addresses, arranged by voting precincts, of all voters whose names appear thereon together with the date when such envelopes were received, and these lists shall be public records and shall be preserved by the clerk until the time fixed by law for the destruction of ballots cast in the coming election. All such envelopes shall be preserved unopened. Upon election day before the hour for closing the polls the clerk shall deliver all such envelopes received by him to the election officials in the several voting precincts in which the voters named therein assert the right to vote, together with a list signed by him of the voters' names and addresses as shown thereon.

In towns and plantations, the clerk shall attach to any envelope purporting to contain an official absent voting or physical incapacity voting ballot the corresponding application as soon as the same has been returned to him properly certified. All such envelopes shall be preserved unopened. Upon election day before the hour for closing the polls the clerk shall deliver all such envelopes received by him to the election officials in the several voting precincts in which the voters named therein assert the right to vote. (R. S. c. 6, § 9. 1947, c. 146, § 4.)

Sec. 11. Procedure to be employed by election officials at polls, in respect to absent voting ballots or physical incapacity voting ballots.—Immediately after the closing of the polls, and after the ballots cast have been removed from the ballot box, the presiding officer in each voting place shall open all envelopes delivered to him under the provisions of the preceding section and shall compare the signatures on the envelopes therein enclosed with the signatures on the applications attached thereto, and shall examine the affidavits. If the affidavits are

duly and properly executed in accordance with the provisions of this chapter, and if the voters' signatures on the affidavits appear to be made by the same persons who signed the applications, and to be the signatures of duly registered voters who have not voted at the election, he shall make public announcement of the names of the absentee voters or voters physically incapacitated, open the envelopes in such manner as not to destroy the affidavits thereon, take out the ballots without unfolding them or permitting them to be opened or examined, and, after checking the names of the absentee voters, or voters physically incapacitated, on the voting list, shall deposit the ballots in the ballot box. If he finds an envelope to bear an affidavit not duly and properly executed as aforesaid, or not signed by the same person who signed the accompanying application, or if the voter whose name appears thereon is not a registered voter, is not enrolled when enrollment is requisite to the casting of the ballot, or has voted in person, the presiding officer shall not open the envelope, but shall mark across the face thereof "Rejected as defective," "Rejected as not a voter," "Rejected as not enrolled" or, "Voted in person" as the case may be. In event of its appearing from the color of the ballot at a primary election, when such ballot is taken from its envelope by the presiding officer, that it is for the nomination of candidates of a party other than that in which the absentee voter, or voter physically incapacitated, is enrolled, the presiding officer, without opening such ballot, shall indorse on the outside thereof and on the envelope containing it, "Rejected as not enrolled in the proper party," and shall thereupon replace the ballot in its envelope and securely reseal the same. All envelopes, opened or unopened, shall be retained with the ballots cast at the election, and preserved and destroyed in the manner provided by law for the retention, preservation and destruction of official ballots. The tally sheets in use at elections shall provide in convenient form for the recording thereon of all envelopes, as well as all accepted or rejected ballots of absentee voters, or voters physically incapacitated. (R. S. c. 6, § 10.)

See c. 5, § 39, re preservation of ballots.

Sec. 12. Challenge of absent voting ballots, procedure; penalty.—Any absent voting ballot or physical incapacity voting ballot shall be subject to challenge when and as presented by any qualified elector of the city or town where such ballot is presented, for noncompliance with the provisions of this chapter, or for any reason disqualifying the person whose ballot is challenged from voting, and an opportunity shall be given for such challenge by the officer presiding at the voting place, and such officer presiding shall note the fact of such challenge upon the voting list used thereat. He shall also note the fact of such challenge together with the name of the voter upon the ballot so challenged, witnessed by 2 election officers representing 2 different political parties. Any failure to comply with the provisions of this section shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 2 years. (R. S. c. 6, § 11.)

Sufficiency of indictment.—In general, an indictment for an offense under this section is simply required to cover only, with time and place, all the material statutory terms, and need not be expanded beyond them. *State v. Dunn*, 136 Me. 299, 8 A. (2d) 594.

It is not necessary to prove any intent in order to justify a conviction under this section. As to unlawful acts which naturally affect the result of an election, a criminal intent will be presumed. *State v. Dunn*, 136 Me. 299, 8 A. (2d) 594.

Sec. 13. Ballot not to be rejected for any irregularity; ballot not to be counted if voter has died since application was made.—No ballot presented under the provisions of this chapter shall be rejected for any immaterial addition, omission or irregularity in the preparation or execution of any writing or affidavit required herein, nor shall any such ballot be counted if the officers charged with the duty of counting the same are cognizant of the fact that the

voter has died prior to the opening of the polls on the day of election. (R. S. c. 6, § 12.)

Sec. 14. Ballots received after close of polls to be retained by clerk until time set for destruction of regular ballots.—All envelopes received by clerks of cities and towns after the hour fixed for the closing of the polls on the day of election shall be retained by them unopened until the time fixed by law for the destruction of ballots cast at such election, at which time such envelopes shall likewise be destroyed, unopened and unexamined. (R. S. c. 6, § 13.)

Sec. 15. Voter who is in town on day of election and attempts to vote as an absent voter guilty of a misdemeanor.—Nothing herein contained shall prevent a voter who has undertaken to vote at an election in accordance with the provisions of this chapter from voting at such election in person. In case such voter shall be present on the day of such election, in the city or town where he is entitled to vote, for so long after the opening or so long before the close of the polls therein as to give him time to do so, he shall go in person to the voting place where he is entitled to vote and cast his ballot, or offer to do so, in person. Any such voter who shall willfully or knowingly neglect to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$100, or by imprisonment for not more than 30 days, or by both such fine and imprisonment. (R. S. c. 6, § 14.)

Sec. 16. Secretary of state to furnish printed information and full instructions to local election officials in regard to absent voting.—The secretary of state shall seasonably furnish to election officials, city and town clerks, and officials having charge of the registration of voters in the various cities and towns of the state such printed information and instructions, to be approved as to form by the attorney general, as he may deem proper to facilitate the carrying into effect of the provisions of this chapter. He is further authorized to prepare and distribute, subject to like approval, such general information relative to this chapter as he may deem expedient. (R. S. c. 6, § 15.)

Sec. 17. Violations by private individuals and election officials. — Whoever not being entitled to vote under the provisions of this chapter so votes or attempts so to vote, or whoever being entitled to vote under the provisions of this chapter knowingly votes or attempts to vote in violation of any of its provisions, or whoever being an official charged with the performance of any duty under the provisions of this chapter willfully or negligently violates any of its provisions, shall be punished by a fine of not more than \$500, and by imprisonment for not more than 11 months. (R. S. c. 6, § 16.)