

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 411

H. P. 373

House of Representatives, January 26, 1981

Referred to the Committee on Election Laws. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Kany of Waterville.

Cosponsors: Representative Berube of Lewiston, Senator Pierce of Kennebec and Representative Reeves of Pittston.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Revise the Law Concerning Absentee Voting.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 17-A MRSA § 701, sub-§ 4, as enacted by PL 1975, c. 499, § 1, is amended to read:

4. "Written instrument" includes any token, coin, stamp, seal, badge, trademark, credit card, **absentee ballot application**, **absentee ballot envelope**, other evidence or symbol of value, right, privilege or identification, and any paper, document, or other written instrument containing written or printed matter or its equivalent;

Sec. 2. 21 MRSA c. 29, as amended, is repealed and the following enacted in its place:

CHAPTER 29

ABSENTEE VOTING

§ 1251. Proper at any election

Absentee ballots may be cast at any election.

§ 1252. Materials furnished

The Secretary of State shall design the materials required under this chapter.

At least 3 months before any election, the Secretary of State shall furnish each municipality with a reasonable number of dated absentee ballot applications. A reasonable time before any election, the Secretary of State shall furnish each municipality with a reasonable number of absentee ballots and return envelopes.

1. Absentee ballots to be identical. Absentee ballots shall be identical in respect to the regular ballots used at an election, except that the words "Absentee Ballot" shall be printed conspicuously on both sides of the folded ballot.

2. Content of application. The application shall contain a place for the following: Name of applicant, address, address to which ballot is to be sent, title and year of election at which ballot is to be cast, name of party in which the applicant is or desires to be enrolled, date of application and signature of applicant. It shall contain a place for the applicant to designate the reason for requesting an absentee ballot and a place for the registrar to certify whether the applicant is registered and the party in which the applicant is or desires to be enrolled. It shall contain a conspicuously printed warning of the provisions of Title 17-A, section 703.

3. Form of envelope. The return envelope in which the absentee ballot is to be placed shall include on its outside a conspicuously printed warning to the voter of the provisions of section 1258, section 1579, subsections 4 and 15, and Title 17-A, section 703. The envelope shall include on its outside a statement of the reason for requesting an absentee ballot and a certification to be signed by the voter. The envelope shall include on its outside a certification to be completed and signed by an aide who assists a voter pursuant to section 1254, subsection 4.

4. Quantity of materials furnished. The Secretary of State shall send the voting material to the clerk of each municipality. If the clerk believes that a larger number should be furnished, he shall advise the Secretary of State who shall furnish them as promptly as possible.

#### § 1253. Procedure for obtaining absentee ballot

The following procedure shall be observed in obtaining an absentee ballot.

1. Application available. On request, the municipal clerk shall furnish a reasonable number of absentee ballot applications to any person, provided that the date of the election for which that application shall be used is plainly printed on its face and that no application may be furnished more than 3 months prior to the election for which that application shall be used.

2. Application received. On receipt of an absentee ballot application which includes all the information requested in section 1252, subsection 2, the municipal clerk shall mail by first class mail an absentee ballot and a prepaid return envelope to the applicant forthwith at the address designated in the application. The municipal clerk shall type or print in ink the name and legal address of the person for whom the absentee ballot is intended in the upper left-hand section of each return envelope.

If the municipal clerk receives a duplicate application from a person from whom the clerk has received a return envelope apparently containing an absentee ballot, the clerk may not furnish another absentee ballot for that person.

The municipal clerk may issue a 2nd absentee ballot to an applicant if the applicant in person or in writing requests one and if the applicant states good cause, including, but not limited to, loss of, spoiling of or damage to the first absentee ballot.

3. **Municipal clerk to list.** The clerk shall keep a list of persons to whom he furnishes absentee ballots until after the election. The clerk shall place the letter "P" beside the name of any voter on this list who voted in person at the clerk's office. The clerk shall also file the applications, where applicable, in alphabetical order. The clerk shall submit the list to the registrar for certification before the close of business on the day prior to election day.

4. **Application and list checked by registrar.** As soon as reasonably possible, the municipal clerk shall deliver the completed applications to the registrar. If the applicant is registered and enrolled where necessary, the registrar shall so certify on the application and shall verify and compare the signature on the application with the signature on the registration card. If the applicant is not registered, and not enrolled where necessary, the registrar shall write "Not Registered" or "Not Enrolled" upon the face of the application and sign his name.

The clerk shall also deliver the list of all persons who voted by absentee ballot to the registrar before the close of business on the day prior to the election day. The registrar shall check the name of each person who voted by absentee ballot in the clerk's office to insure that each person is correctly registered, and enrolled where necessary. If each person is correctly registered and enrolled where necessary, the registrar shall so certify next to the person's name. If not, the registrar shall write "Not Registered" or "Not Enrolled" next to the person's name and sign his name.

5. **Absentee voting in municipal clerk's office.** A person who wishes to vote by absentee ballot because he will not be present in the municipality or able to vote in person at the voting place on election day may, without completing an application, vote by absentee ballot before the clerk or deputy clerk of the municipality in the clerk's office during regular business hours. The method of voting shall otherwise be as prescribed in this chapter.

6. **Denial of application.** Whenever an application for an absentee ballot is denied, the municipal clerk shall notify the applicant in writing of the reason for the denial.

7. **Special teams; emergencies.** In the event that, within 3 business days prior to an election, a person becomes physically unable to vote in person, the person may submit to the municipal clerk an application for an absentee ballot. The application shall state the reason why the person became physically unable to vote in person within the period of 3 business days before the election and shall otherwise have the same content as provided in section 1252, subsection 2.

On receipt of the application, the clerk shall deliver an absentee ballot to the applicant or cause an absentee ballot to be delivered to the applicant by a special team, as provided in subsection 8. When the team delivers a ballot to the voter, one of the members of the team shall orally advise the voter of the provisions of section 1579, subsection 15.

8. **Special teams.** In a primary election, a special team shall be composed of 2 persons representing the same party in which an applicant is enrolled. In a general election, the team shall be composed of 2 or 3 persons to include no more than one representative from each of the 2 major parties. These teams shall be designated by the clerk from names if supplied by the municipal committee of the 2 major parties and from a list of registered voters in that municipality or a list of other registered Maine voters. Team members are not required to be residents of that municipality, but must be registered to vote in Maine. No candidate whose name appears on the ballot or spouse or child of that candidate may be a member of a team.

In a general election, if one or more candidates nominated by petition under chapter 17 is on the ballot, the clerk may designate an unenrolled voter, designated by one or more such candidates, as an additional team member, if the candidate or candidates so request.

The members of a team may be volunteers or may be paid a compensation determined by the municipal officers.

#### § 1254. Method of voting

The method of voting by absentee ballot is as follows.

1. **Ballot marked and sealed.** The voter shall mark his ballot according to section 921 or 922 in such a way as to make it impossible for anyone to see how he voted. The voter shall then seal the ballot and complete the certification on the envelope.

2. **No communication.** While the voter is marking the ballot, there shall be no communication, except as provided in subsection 4, between the voter and any other individual as to the person or question for which the voter is to vote.

3. **Delivery of ballot.** The voter shall complete the address on the envelope and mail or deliver it personally to the clerk of the municipality of which the voter is a resident.

If the ballot is delivered by the special team designated in section 1253, subsection 7 or 8, the voter shall seal the ballot in the return envelope and remit the sealed ballot to the special team. The team shall be responsible for delivering the sealed ballot to the municipal clerk's office by 5 p.m. on the next business day after the ballot was voted or by the close of the polls on election day, whichever is earlier.

4. **Assistance.** A voter who is unable to read or to mark his ballot because of blindness or other physical disability, or because of illiteracy or whose religious faith prevents him from marking the ballot, may request another person, provided

that the aide is of voting age, and that no candidate for election may act as an aide, to read the ballot to him and mark it according to the voter's instructions or to assist the voter in marking the ballot. The aide may, at the request of the voter, complete and sign the certification on the outside of the envelope. The aide shall complete and sign the certification for aides on the outside of the envelope.

**§ 1255. Deadline**

The office of the municipal clerk shall be open a minimum of 4 hours on the Saturday immediately preceding a general election to allow voters to obtain or cast absentee ballots. In order to be valid, an absentee ballot must be delivered to the clerk at any time before the closing of the polls.

**§ 1256. Procedure on receipt**

When the municipal clerk receives a return envelope apparently containing an absentee ballot, the clerk shall observe the following procedure.

1. Time of receipt noted. The municipal clerk shall note the date and time of delivery on each return envelope.

2. Municipal clerk to examine signatures and certification. The clerk shall compare the signature of the voter on the application with that on the corresponding envelope when an application is required. The clerk shall examine the certification on the return envelope. If the signatures appear to have been made by the same person, and if the certification on the return envelope is properly completed, the clerk shall write "OK" and his initials on the return envelope; otherwise, he shall note any discrepancy on the return envelope. The fact that the voter signed an application and that an aide assisted in the marking of the ballot pursuant to section 1254, subsection 4, does not constitute a discrepancy, if the certification on the envelope was properly completed.

Where no application is required, the municipal clerk shall examine the certification on the return envelope and if it is properly completed, the clerk shall write "OK" and his initials on the return envelope; otherwise, the clerk shall note any discrepancy on the return envelope.

3. List prepared. The municipal clerk shall prepare, in duplicate, lists by districts of the names and addresses of the voters as shown on the return envelopes. The clerk shall maintain a copy of this list for a period of 2 years. This list is a public record.

4. Envelopes and lists delivered. On election day, the municipal clerk shall deliver, or cause to be delivered, the return envelopes prescribed by section 1254 and the lists required by subsection 3 to the warden of the voting district in which the voter is registered, except in those municipalities where the municipal officers have authorized the clerk to process the absentee ballots. If more than one return envelope is received from the same voter, the clerk shall deliver, or cause to be delivered, to the warden for counting only the return envelope bearing the earliest date and time. This does not apply to municipalities with 2 or more

voting precincts where absentee ballots are counted at a place other than the voting district.

5. **Centralized counting place.** When the municipal officers have authorized the counting of absentee ballots at a centralized counting place at the close of voting in municipalities with 2 or more voting districts, the checklist shall be returned to the municipal clerk for use in processing the absentee ballots, and released in accordance with section 992, except that the municipal clerk shall countersign each copy. The ballots shall be counted publicly so that those present may observe the proceedings.

#### § 1257. Challenges

An absentee ballot may be challenged in the same way as a regular ballot may be challenged under section 863.

#### § 1258. Personal vote required when possible

A person who has voted by absentee ballot, but who is present in the municipality and able to vote in person at the voting place on election day, must do so.

#### § 1259. Counting procedure

The following procedure must be observed at each voting place.

1. **Warden to review notes of municipal clerk.** As soon as the polls are closed and the regular ballots removed from the ballot box, the warden shall review the notes of the clerk on each return envelope.

2. **Deposited in ballot box if correct.** If the warden finds that the certification is properly completed, that the municipal clerk has verified that the signature on the envelope matches the signature on the application where applicable, that the person is registered, and enrolled where necessary, the warden shall then examine the checklist to determine whether the voter voted in person at the election. The warden shall then announce the name of each absentee voter who has not voted at the election and remove each ballot from its envelope without destroying the envelope or unfolding the ballot. After having an election clerk, who is of a different political party from the warden, mark the letters "AV" beside the name of each absentee voter on the incoming voting lists, the warden shall deposit the ballot in the ballot box.

3. **Rejected if incorrect.** If the warden finds that the municipal clerk has indicated the signatures on the envelope and the application, where applicable, do not appear to have been made by the same person, that the certification is not properly completed, that the person is not registered or enrolled when necessary, that the voter has voted in person, or that the ballot was received by the clerk after the deadline, the warden may not open the envelope. The warden shall write "Rejected" on it, the reason for the rejection and the warden's initials.

4. **Primary provisions.** At a primary election, when the warden removes a

ballot from its envelope, he shall check its color to be sure it is the ballot of the party in which the voter is enrolled. If it is not, the warden shall immediately replace it in its envelope and write "Rejected" on it, the reason for the rejection and the warden's initials.

5. Rejected ballots separate. The warden shall place the return envelopes containing rejected ballots in a separate box. The warden may not deposit them in the ballot box.

6. Ballots counted. As soon as the absentee ballots have been processed, they shall be removed from the ballot box and counted the same as regular ballots. Rejected ballots shall not be counted.

#### § 1260. Procedure when counting to be by the municipal clerk

The following procedure shall be used when the municipal officers have voted to have the municipal clerk process the absentee ballots.

1. Envelopes and lists retained. The municipal clerk shall retain possession of the return envelopes and the lists required by section 1256, subsection 4.

2. Ballot box provided. The municipality shall provide a ballot box with a padlock for the use of the municipal clerk in all primary, regular and special state elections. If the same procedure is to be used in municipal elections, the clerk shall be provided with a separate ballot box with padlock for each voting district.

3. Checklist to municipal clerk. As soon as the polls are closed, the warden shall fold, wrap and seal the incoming checklist. The package shall be signed on one of the seals holding the package together by the warden and ward clerk. A ballot clerk or counter shall take the checklist to the designated counting place. These persons shall be named by the clerk prior to the election and the total number from the voting districts shall be as evenly divided as possible between the political parties.

4. Counting procedure. The municipal clerk shall use the same counting procedure as set forth in sections 1259, 1261 and 1262.

#### § 1261. Deceased voter; ballot rejected

If an absentee voter dies before the opening of the polls on election day and this fact comes to the attention of the clerk, registrar or any election official, that person shall so advise the warden, who shall reject the ballot of the deceased person. The warden shall write on the unopened envelope "Rejected as Deceased," and place it with the other rejected bills.

#### § 1262. Irregularities disregarded

An absentee ballot may not be rejected for any immaterial irregularity in completing the application or certification on the return envelope. In order for a ballot to be accepted, the envelope shall contain the voter's name and legal address, typed or written in ink by the municipal clerk in the upper left-hand corner and the completed certifications required under section 1252, subsection 3.



**§ 1263. Return of election materials**

As soon as the ballots have been counted, the absentee ballots, return envelopes, the lists required by section 1256 and other election materials shall be repacked in accordance with section 926 and returned to the municipal clerk. The Clerk shall keep them in the clerk's office for 2 months after election day, unless sooner released to the Secretary of State. The clerk shall also keep the applications for 2 months after the election, unless released to the Secretary of State.

Sec. 3. 21 MRSa § 1579, sub-§ 17, is enacted to read:

**17. Improper absentee voting.** A person who applies for an absentee ballot and requests a special team, as provided in section 1253, subsection 7, or who casts an absentee ballot by means of such a special team, when that person did not become physically unable to vote within 3 business days prior to an election.

**Sec. 4. Application; effective date.** This Act shall take effect on January 1, 1982, and shall apply to any election conducted on or after that date.

**STATEMENT OF FACT**

The intent of this bill is to provide a comprehensive change in the absentee ballot system. The changes include recommendations prepared as the result of a national study of absentee balloting prepared for the Office of Federal Elections, U. S. General Accounting Office, in cooperation with the United States Federal Election Commission. This bill:

1. No longer allows a candidate listed on a ballot or other 3rd person to deliver an absentee ballot to a physically incapacitated voter, except as provided in 2, below;
2. Establishes the mechanism whereby a special team would deliver an absentee ballot to a voter who has become physically incapacitated, within 3 business days prior to election day; and
3. Removes the requirement that voters' signatures be witnessed by a notary public or justice of the peace. The purpose of this change is to encourage balloting via the mails. Those temporarily away from their communities and ill persons would no longer have to search out a justice of the peace or notary for the purpose of witnessing a signature. The voter's signature can, of course, be compared with the signature previously witnessed on the voter registration card.