

MAINE STATE LEGISLATURE

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L.D. 33
(Filing No. S-129)

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STATE OF MAINE
SENATE
112TH LEGISLATURE
FIRST REGULAR SESSION

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COMMITTEE AMENDMENT "A" to S.P. 32, L.D. 33,
Bill, "AN ACT Relating to Absentee Voting."

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Amend the bill by striking out all of the title
and inserting in its place the following:

11
12

'AN ACT to Amend the Laws Relating to Absentee
Voting.'

13
14
15

Further amend the bill by striking out everything
after the enacting clause and inserting in its place
the following:

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17

'Sec. 1. 21-A MRSA §1, sub-§9, as enacted by PL
1985, c. 161, §6, is amended to read:

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9. Clerk; municipal clerk. "Clerk" or "municipal clerk" means the clerk or, deputy clerk or assistant clerk, where directed by the clerk to carry out duties under this Title, of a municipality.

22
23

Sec. 2. 21-A MRSA §673, sub-§1, ¶A is enacted to
read:

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26

A. Only the following reasons for challenges may be accepted by the warden. The challenged person:

27

(1) Is not a registered voter;

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29

(2) Is not enrolled in the proper party, if voting in a primary election;

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31

(3) Is not qualified to be a registered voter because he is not;

32

(a) At least 18 years of age;

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1 (b) A citizen of the United States; or

2 (c) A resident of the municipality;

3 (4) Did not properly apply for an absentee
4 ballot;

5 (5) Is not a qualified absentee voter as
6 prescribed by section 751;

7 (6) Did not properly complete the affidavit
8 on the absentee return envelope;

9 (7) Did not cast the ballot or complete the
10 affidavit before the appropriate witness;

11 (8) Communicated with someone as prohibited
12 by section 754-A, subsection 1, paragraph B
13 or subsection 3, paragraph B or D; or

14 (9) Did not have his ballot returned to the
15 clerk by the time prescribed.

16 Sec. 3. 21-A MRSA §673, sub-§3, as enacted by PL
17 1985, c. 161, §6, is repealed and the following en-
18 acted in its place:

19 3. Ballot marked. The warden shall write a num-
20 ber on the outside of the ballot. The warden shall
21 also complete a certificate on which appears the word
22 "Challenged," the name of the voter challenged and
23 the reason for the challenge over his signature. The
24 challenger shall also sign the certificate. After
25 the challenger has signed the certificate, the warden
26 shall place the number which was written on the bal-
27 lot in a conspicuous place on the certificate. No
28 one other than the warden may know the ballot number.
29 The warden shall place the challenge certificate in
30 an envelope marked "Challenge Certificate #(certifi-
31 cate number)" and shall retain the envelope until it
32 is sealed with the ballot materials pursuant to sec-

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1 tion 698.

2 Sec. 4. 21-A MRSA §696, sub-§1, as enacted by PL
3 1985, c. 161, §6, is amended to read:

4 1. Challenged ballot. A challenged ballot must
5 be counted the same as a regular ballot. The validi-
6 ty of a challenged ballot need not be determined un-
7 less it affects the results of an election.

8 If the challenged ballot affects the result of an
9 election, its validity must be determined by the en-
10 velope containing the challenge certificate shall be
11 submitted to the Commission on Governmental Ethics
12 and Election Practices and its validity shall be
13 determined, subject to the right of appeal for county
14 offices under section 746, except where final deter-
15 mination of the election of a candidate is governed
16 by the Constitution of the State of Maine or the Con-
17 stitution of the United States. The challenge cer-
18 tificate shall be in such form as the Secretary of
19 State may by rule establish.

20 Sec. 5. 21-A MRSA §698, sub-§2, as enacted by PL
21 1985, c. 161, §6, is amended to read:

22 2. Ballots replaced in containers. The election
23 clerks shall place the sealed packages of used bal-
24 lots, envelopes containing challenge certificate, un-
25 used ballots, spoiled ballots, defective ballots,
26 void ballots, used and unused absentee ballots, used
27 absentee envelopes and used absentee applications in
28 the containers in which they the ballots were deliv-
29 ered. They shall then seal the containers publicly.
30 The total number of used ballots, unused ballots,
31 spoiled ballots, defective ballots and absentee bal-
32 lots must equal the number of ballots furnished by
33 the Secretary of State to the municipal clerk, less
34 the number of absentee ballots issued to voters and
35 not returned.

36 Sec. 6. 21-A MRSA §751, sub-§6, as enacted by PL

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1 1985, c. 161, §6, is repealed.

2 Sec. 7. 21-A MRSA §751, sub-§6-A is enacted to
3 read:

4 6-A. Working when polls are open. Working dur-
5 ing the entire time the polls in his municipality are
6 open.

7 Sec. 8. 21-A MRSA §752, first ¶, as enacted by
8 PL 1985, c. 161, §6, is amended to read:

9 At least 3 months before any election, the Secre-
10 tary of State shall furnish each municipality with a
11 reasonable number of dated absentee ballot applica-
12 tions. A reasonable time, not less than 30 days un-
13 less an emergency exists, before any election, the
14 Secretary of State shall furnish each municipality
15 with a reasonable number of absentee ballots and re-
16 turn envelopes.

17 Sec. 9. 21-A MRSA §752, sub-§3, as enacted by PL
18 1985, c. 161, §6, is amended to read:

19 3. Form of envelope. The return envelope in
20 which the absentee ballot is to be placed must in-
21 clude on its outside a conspicuously printed summary
22 warning to the voter of the provisions of section
23 758; section 791, subsection 1, paragraphs A and C;
24 and Title 17-A, section 703. The envelope must also
25 include on its outside a place for a statement of the
26 reason for requesting an absentee ballot and an affi-
27 davit to be signed by the voter. The envelope must
28 also include on its outside a certification to be
29 completed and signed by an aide who assists a voter
30 under section 754-A, subsection 3.

31 Sec. 10. 21-A MRSA §753, as enacted by PL 1985,
32 c. 161, §6, is amended to read:

33 §753. Procedure for obtaining

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1 The following procedure must be observed in ob-
2 taining an absentee ballot.

3 1. Applications available. On request, the
4 clerk shall furnish a reasonable number of ballot ap-
5 plications to any person, except that no application
6 shall be furnished more than 3 months before the
7 election for which the application will be used.
8 Each application must have the date of the election
9 for which it is to be used plainly printed on the
10 face of the application.

11 2. Applications by voters outside the State. If
12 a voter is temporarily outside ~~of the United States~~
13 the State, a written request for an absentee ballot
14 from the voter, the voter's spouse, a blood relative
15 of the voter or the voter's former guardian is suffi-
16 cient.

17 2-A. Request by telephone. The clerk may issue
18 a ballot to a voter without receiving an application
19 by the following procedures.

20 A. A voter may request a ballot from the clerk
21 by telephone.

22 B. The clerk shall ask the voter for the infor-
23 mation required on the application and shall fill
24 in the application with that information, except
25 the voter's signature.

26 C. The clerk shall verify that it is the voter
27 who is requesting the ballot by making the voter
28 confirm the voter's residence and birthdate on
29 the general register of voters.

30 D. The clerk shall mail the ballot to the voter
31 at the mailing address requested by the voter.

32 If a municipal election is to be held on the same
33 date as a statewide election, absentee ballots for

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1 the municipal and statewide election may be issued in
2 response to the same application.

3 3. Application or request received. On receipt
4 of a completed application or a request for an absen-
5 tee ballot signed by the applicant, the clerk shall
6 immediately send or deliver an absentee ballot and
7 return envelope to the applicant or to a 3rd person
8 designated in the application or request. The clerk
9 shall not deliver to a 3rd person any absentee ballot
10 requested under subsection 2-A. If a municipal elec-
11 tion is to be held on the same date as a statewide
12 election, absentee ballots for the municipal and
13 statewide election may be issued in response to the
14 same application. The clerk shall issue to any 3rd
15 person designated in an application or request only
16 enough absentee ballots to insure that that person
17 will not have more than 40 absentee ballots for vot-
18 ers in a municipality at any time. Such a 3rd person
19 must, unless good cause is shown, return an absentee
20 ballot to the clerk's office within the time limits
21 provided in section 755. The clerk shall include a
22 ballot application to be completed by the person who
23 signed only a written request, unless the written re-
24 quest is sufficient under subsection 2. The clerk
25 shall type or write in ink the name and the legal ad-
26 dress of the person for whom the absentee ballot is
27 intended in the upper left hand section of all return
28 envelopes.

29 A. If the clerk receives a duplicate application
30 from a person from whom the clerk has received a
31 return envelope apparently containing an absentee
32 ballot, the clerk shall not furnish another ab-
33 sentee ballot for that person.

34 B. The clerk may issue a 2nd absentee ballot to
35 an applicant, if the applicant requests one, in
36 person or in writing and:

37 (1) The applicant states good cause, in-
38 cluding, but not limited to, loss of, spoil-

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1 ing of or damage to the first absentee bal-
2 lot; or

3 (2) An absentee ballot for the applicant
4 which was furnished to a designated 3rd per-
5 son is not returned to the clerk's office
6 within 5 business days of the date that bal-
7 lot was sent or delivered to the 3rd person
8 or by 10 a.m. on the day before election
9 day, whichever is earlier. This subpara-
10 graph shall not be construed to affect the
11 time for delivery of absentee ballots under
12 section 755.

13 4. Assistance to certain voters. A voter who is
14 unable to read or complete his application because of
15 ~~blindness, ether his~~ physical disability, illiteracy,
16 ~~or whose religious faith prevents him from completing~~
17 ~~the application,~~ may request any person who is of
18 ~~voting age~~ another person, other than the voter's em-
19 ~~ployer or agent of that employer or officer or agent~~
20 of the voter's union, to assist him in completing the
21 application. That aide may read the application to
22 the voter or sign it, or both, according to the
23 voter's instructions, or may assist him in signing
24 the application. When an aide assists a voter in
25 this way, the aide must write on the application that
26 he has so assisted the voter in signing the applica-
27 tion, the reason the voter was unable to complete or
28 sign the application, or both, and must sign his
29 name.

30 5. Clerk to list. The clerk shall keep a list
31 of the persons to whom he furnishes absentee ballots
32 until after election day, or the clerk shall file the
33 applications and requests in alphabetical order. The
34 clerk shall keep a list of the persons who vote in
35 ~~the clerk's office~~ presence of the clerk under sub-
36 section 7. The clerk shall submit this list to the
37 registrar for certification before the close of busi-
38 ness on the day before election day.

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1 The clerk shall keep a list of the 3rd persons, des-
2 ignated in applications or requests, to whom absentee
3 ballots are sent or delivered under subsection 3 and
4 of the number of absentee ballots sent or delivered
5 to these persons. These 3rd persons may not have
6 more than 40 absentee ballots for voters in a munici-
7 pality at any time.

8 6. Application checked by registrar. As soon as
9 reasonably possible, the clerk shall deliver the com-
10 pleted application to the registrar. If the appli-
11 cant is registered and enrolled where necessary, the
12 registrar shall so certify on the application. If
13 the applicant has registered and enrolled where nec-
14 essary, under section 155, and will attain 18 years
15 of age on or before the date of the election, the
16 registrar shall so certify on the application. If
17 not, the registrar shall write "Not registered" or
18 "Not enrolled" on the face of the application and
19 sign his name. He shall immediately return all ap-
20 plications to the clerk.

21 7. Absentee voting in presence of clerk. A per-
22 son who wishes to vote by absentee ballot because he
23 will not be present in the municipality or able to
24 vote in person at the voting place on election day
25 may, without completing an application, vote by ab-
26 sentee ballot before in the presence of the clerk or
27 deputy clerk of the municipality in the clerk's of-
28 fice during regular business hours. The method of
29 voting shall otherwise be as prescribed in this Arti-
30 cle. After the person has voted, the clerk ~~or deputy~~
31 ~~clerk~~ shall determine whether the affidavit on the
32 return envelope is properly completed, ~~as described~~
33 ~~in section 754, subsection 4.~~

34 8. Denial of application. Whenever an applica-
35 tion for an absentee ballot is denied, the municipal
36 clerk shall immediately notify the applicant in writ-
37 ing of the reason for the denial.

38 Sec. 11. 21-A MRSa §754, as enacted by PL 1985,

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1 c. 161, §6, is repealed.

2 Sec. 12. 21-A MRSA §754-A is enacted to read:

3 §754-A. Method of voting

4 Except as provided in section 753, subsection 7,
5 the method of voting by absentee ballot is as fol-
6 lows.

7 1. Ballot delivered by mail and returned by
8 mail. When a voter obtains his ballot from the clerk
9 by mail and returns his ballot to the clerk by mail
10 and he receives no assistance in marking his ballot,
11 the following procedures apply.

12 A. The voter must mark his ballot according to
13 section 691 or 692 so that it is impossible for
14 anyone present at the time to see how he voted.

15 B. While the voter is marking the ballot, there
16 may be no communication between the voter and any
17 other individual as to the person or question for
18 which the voter is to vote.

19 C. After the voter has completed marking his
20 ballot, he must then seal the ballot in its re-
21 turn envelope and complete the affidavit on the
22 envelope. No notary or witness certification is
23 required.

24 D. The voter must then complete the address on
25 the envelope and mail it to the clerk of the mu-
26 nicipality of which he is a resident. He must
27 send a completed application, if necessary, in a
28 separate envelope.

29 2. Ballot delivered by 3rd person or returned by
30 3rd person. When a ballot is delivered to the voter
31 by a person other than the clerk, or is returned to
32 the clerk by a person other than the voter and the
33 voter receives no assistance in marking his ballot,

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1 the following procedures apply.

2 A. The voter must mark his ballot in the pres-
3 ence of the following witness or witnesses: One
4 notary public, clerk of a municipality, dedimus
5 justice, clerk of courts or 2 other individuals.
6 If a person who is a candidate in the same elec-
7 toral division as the voter, or who is a member
8 of that candidate's immediate family, serves as
9 one witness, a person who is not a candidate in
10 the same electoral division as the voter, or a
11 member of that candidate's immediate family, must
12 serve as a 2nd witness. The voter, before mark-
13 ing his ballot, must show it to the witness or
14 witnesses who must examine it to be certain it is
15 unmarked.

16 B. While the voter is marking the ballot, there
17 may be no communication between the voter and any
18 other individual as to the person or question for
19 which the voter is to vote.

20 C. The voter must mark his ballot according to
21 section 691 or 692 so that it is impossible for
22 anyone present at the time to see how he voted.
23 The voter must then seal the ballot in its return
24 envelope and complete the affidavit on the enve-
25 lope in the presence of the witness or witnesses,
26 who shall sign the witness certification.

27 D. The voter must then complete the address on
28 the envelope and mail or deliver it personally or
29 by agent to the clerk of the municipality of
30 which he is a resident. He must send a completed
31 application, if necessary, in a separate enve-
32 lope.

33 3. Assistance in reading or marking ballot. A
34 voter who is unable to read or mark his ballot be-
35 cause of his physical disability, illiteracy, or re-
36 ligious faith must vote according to the procedures
37 in this subsection instead of the procedures in sub-

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1 section 1 or 2.

2 A. A voter who needs assistance may request an-
3 other person, other than the voter's employer or
4 agent of that employer or officer or agent of the
5 voter's union, to assist the voter in reading or
6 marking the ballot.

7 B. The voter or the aide must mark the ballot in
8 the presence of one of the following witnesses:
9 Notary public, clerk of a municipality, dedimus
10 justice, clerk of courts or another individual.
11 No person who is a candidate in the same elector-
12 al division as the voter, or who is a member of
13 that candidate's immediate family, may serve as a
14 witness.

15 C. The voter or the aide, before marking the
16 ballot, must show it to the witness who must ex-
17 amine it to be certain it is unmarked.

18 D. While the voter or the aide is marking the
19 ballot, there may be no communication between the
20 voter and any individual, other than the aide who
21 must mark the ballot as the voter indicates, as
22 to the person or question for which the voter is
23 to vote.

24 E. The voter or the aide must mark the ballot
25 according to section 691 or 692 so that it is im-
26 possible for anyone else present to see how the
27 voter voted, then seal the ballot in its return
28 envelope. The voter, or the aide at the voter's
29 request, shall complete and sign the affidavit in
30 the presence of the witness, who shall sign the
31 witness certification. The aide must complete
32 and sign the certification for aides on the out-
33 side of the envelope.

34 F. The voter or the aide must then complete the
35 address on the envelope and mail or deliver it
36 personally or by agent to the clerk of the munic-

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1 ipality of which the voter is a resident. The
2 voter must send a completed application, if nec-
3 essary, in a separate envelope.

4 Sec. 13. 21-A MRSA §756, sub-§2, ¶A, as enacted
5 by PL 1985, c. 161, §6, is amended to read:

6 A. If the signatures do not appear to have been
7 made by the same person, but this discrepancy is
8 apparently the result of the voter's having prop-
9 erly obtained assistance under either section
10 753, subsection 4, or section ~~754~~, ~~subsection 6~~
11 754-A, subsection 3, or both, then the clerk
12 shall note the discrepancy on the return enve-
13 lope, but shall also write "OK" and his initials
14 on the return envelope.

15 Sec. 14. 21-A MRSA §756, sub-§4, as enacted by
16 PL 1985, c. 161, §6, is amended to read:

17 4. Lists prepared. The clerk shall prepare, in
18 duplicate, lists by districts of the names and ad-
19 dresses of the voters as shown on the return enve-
20 lopes. He shall maintain a copy for ~~4~~ a period of 2
21 years as a public record.

22 Sec. 15. 21-A MRSA §758, as enacted by PL 1985,
23 c. 161, §6, is amended to read:

24 §758. Personal vote required when possible

25 A person who has voted by absentee ballot, but
26 who is present in the municipality and able to vote
27 in person at the voting place on election day, must
28 do so, unless that person is ~~engaged in registering~~
29 ~~voters for that election on election day at the ef-~~
30 ~~fice of the registrar or the board of registration~~
31 working during the entire time the polls in his mu-
32 nicipality are open and, as a result, is unable to
33 get to his voting place while the polls are open.

34 Sec. 16. 21-A MRSA §759, sub-§2, as enacted by

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1 PL 1985, c. 161, §6, is repealed and the following
2 enacted in its place:

3 2. Deposited in ballot box if correct. If the
4 warden finds that the affidavit is properly com-
5 pleted, that the clerk has verified that the signa-
6 ture on the envelope matches the signature on the ap-
7 plication where applicable, that the person is regis-
8 tered and enrolled where necessary, the warden shall
9 then examine the incoming voting list to determine
10 whether the voter voted in person at the election.
11 The warden shall then announce the name of each ab-
12 sentee voter who has not voted at the election and
13 remove each ballot from its envelope without destroy-
14 ing the envelope or unfolding the ballot. After hav-
15 ing an election clerk from a political party differ-
16 ent from that of the warden mark the letters "AV" be-
17 side the name of each absentee voter on the incoming
18 voting lists, the warden shall deposit the ballot in
19 the ballot box.

20 Sec. 17. 21-A MRSA §759, sub-§3, ¶A, as enacted
21 by PL 1985, c. 161, §6, is amended to read:

22 A. The signatures do not appear to have been
23 made by the same person and the discrepancy is
24 not the result of the voter's having obtained as-
25 sistance under section 753, subsection 4 or sec-
26 tion 754, ~~subsection 6~~ 754-A, subsection 3, in
27 cases where an application is required;

28 Sec. 18. 21-A MRSA §791, sub-§1, as enacted by
29 PL 1985, c. 161, §6, is amended to read:

30 1. Class E crime. The commission of any act de-
31 scribed as follows in this subsection is a Class E
32 crime:

33 A. A person who ~~has voted~~ votes by absentee bal-
34 lot but who is present in the municipality and
35 able to vote at the proper voting place on elec-
36 tion day and fails to vote in person ~~is guilty of~~

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1 a Class E crime, unless that person was engaged
2 in registering voters for that election on elec-
3 tion day at the office of the registrar or the
4 board of registration working during the entire
5 time the polls in his municipality were open and,
6 as a result, was unable to get to his voting
7 place while the polls were open;

8 B. A municipal clerk who, when a person has
9 voted by absentee ballot in the clerk's office
10 presence under section 753, subsection 7, signs
11 his name to an affidavit on the absentee ballot
12 return envelope when the affidavit is not proper-
13 ly completed; or

14 C. A 3rd person, designated in an application or
15 request for an absentee ballot, who receives an
16 absentee ballot from the clerk in accordance with
17 that application or request, and who, without
18 good cause, fails to return that absentee ballot
19 to the clerk's office within the time limit pro-
20 vided in section 755; or

21 D. A person who is a candidate in the same elec-
22 toral division of the voter, or who is a member
23 of that candidate's immediate family and who
24 alone witnesses an absentee ballot.

25 Sec. 19. Effective date. This Act applies to
26 all elections held after January 1, 1986.'

27 STATEMENT OF FACT

28 This new draft incorporates the concepts origi-
29 nally contained in many bills into a single bill on
30 absentee voting.

31 1. In section 1 the definition of "clerk" is ex-
32 panded to include assistant clerks who have been di-
33 rected to carry out the duties under the election
34 laws. Clerks may appoint only one deputy clerk under

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1 the Maine Revised Statutes, Title 30, but may appoint
2 any number of assistant clerks. Assistant clerks can
3 fill in for the clerk when there are numerous duties
4 to carry out at once.

5 2. Section 2 of the new draft limits the reasons
6 why a ballot may be challenged to specific reasons.
7 This is intended to prohibit frivolous challenges.

8 3. Sections 3, 4 and 5 of the new draft address
9 the procedure to challenge ballots. Currently, the
10 challenge is noted on the ballot itself, so the way
11 the challenged voter voted is revealed when the chal-
12 lenge is investigated. The new procedure assures the
13 privacy of voting by placing all the information nec-
14 essary to challenge the ballot on a separate form.

15 4. Sections 6 and 7 of the new draft expand the
16 eligibility for voting absentee. Current law allows
17 persons registering voters on election day to vote
18 absentee. The new draft allows any person who is
19 working the entire time the polls in his municipality
20 are open to vote absentee. There is some concern
21 that the current law is unfair because it treats some
22 people who work all polling hours differently from
23 others in the same circumstances. This new draft
24 remedies that inconsistency.

25 5. Section 8 of the new draft requires the Sec-
26 retary of State to provide absentee ballots and re-
27 turn envelopes at least 30 days before the election,
28 unless an emergency exists. Such a situation would
29 be where there are changes in the candidates at the
30 last minute.

31 6. Section 9 of the new draft requires that a
32 statement of the reason for voting absentee and an
33 affidavit to be signed by the voter be included on
34 the return envelope for absentee ballots. This is
35 currently done, although not required by statute.
36 The envelope must also contain a certification to be
37 signed by an aide who assists the voter.

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1 7. The procedure for obtaining absentee ballots
2 is addressed in section 10. A voter may call the
3 clerk and, after giving the clerk the information
4 necessary for an application, receive his absentee
5 ballot in the mail. This cuts down on paperwork and
6 delays because the voter does not need to fill out
7 the application and send it back before receiving an
8 absentee ballot. No 3rd party may deliver the ballot
9 requested in this manner.

10 The provisions concerning assistance to certain vot-
11 ers is amended to comply with federal law. The only
12 people who cannot act as an aide in helping the voter
13 fill out the application are the voter's employer or
14 agent of the employer or an officer or agent of the
15 voter's union.

16 No application for an absentee ballot is necessary if
17 the voter votes in the presence of the clerk. This
18 is no longer required to take place in the clerk's
19 office or during regular business hours.

20 8. Sections 11 and 12 of the new draft redefine
21 the method of voting by absentee ballot.

22 A. If the voter receives the ballot by mail and
23 returns it to the clerk by mail, there is no
24 longer a notary or witness requirement.

25 B. If the ballot is delivered to the voter by a
26 person other than a clerk or returned to the
27 clerk by a person other than the voter, there is
28 a witness requirement. One official may witness
29 the voter's affidavit, as in current law, or 2
30 other individuals may witness instead. This is
31 intended to make balloting a little easier when
32 none of the officials are available.

33 C. When a voter requires assistance, a person
34 other than the voter and the aide must witness
35 the affidavit and certification by the aide.

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1 An important change is that a person who is a candi-
2 date in the voter's electoral division, or a member
3 of that candidate's immediate family, cannot witness
4 an absentee ballot alone. This will help avoid some
5 of the abuses of the absentee voting process. This
6 is a Class E crime under section 18 of the new draft.

7 9. Sections 13, 14 and 15 set out provisions for
8 the handling and counting of absentee ballots.

9 10. Section 19 provides that this Act applies to
10 all elections held after January 1, 1986. This al-
11 lows time for candidates, clerks, the parties and the
12 Secretary of State to prepare for the changes.

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Reported by Senator Najarian for the Committee on Legal Affairs.
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