

MAINE STATE LEGISLATURE

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MM
R. 08

L.D. 1796

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**STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 631, L.D. 1796, Bill, "An Act to Improve the Absentee Voting Process"

Amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, clarifications to the election laws are necessary to appropriately administer the process of the current election cycle; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 21-A MRSA §1, sub-§43-A is enacted to read:

43-A. Third person or 3rd person. "Third person" or "3rd person," with respect to an absentee ballot, means a person, other than the clerk or an immediate family member of a voter, who delivers an absentee ballot to a voter.

Sec. 2. 21-A MRSA §355, sub-§3, as amended by PL 1999, c. 426, §12, is further amended to read:

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2 **3. Qualifications declared.** The consent must contain a
4 declaration of the candidate's place of residence and the fact
6 that the candidate has not been enrolled in a party qualified to
8 participate in a primary or general election ~~en-or-before~~ after
10 March 1st of that election year and that the candidate meets the
12 qualifications of the office the candidate seeks. The candidate
14 must verify by oath or affirmation before a notary public or
16 other person authorized by law to administer oaths or
18 affirmations that the declaration is true. If, pursuant to the
20 challenge procedures in section 356, any part of the declaration
22 is found to be false by the Secretary of State, the consent and
24 the nomination petition are void.

A. Candidates for the office of county charter commission
need not verify by oath or affirmation that they are not
enrolled in a party.

Sec. 3. 21-A MRSA §671, sub-§8 is enacted to read:

8. Secrecy preserved. The warden at each voting place may
not remain or allow any other person to remain where the warden
or that person can see how a voter votes, except that a proper
official may remain when the official's assistance has been
requested by a voter.

Sec. 4. 21-A MRSA §751, as amended by PL 1999, c. 426, §29,
is repealed and the following enacted in its place:

§751. Proper at any election

Absentee ballots may be cast at any election by any voter
who requests an absentee ballot as provided under this
subchapter. The voter need not specify a reason to receive an
absentee ballot.

Sec. 5. 21-A MRSA §753, as amended by PL 1999, c. 426, §30,
is repealed.

Sec. 6. 21-A MRSA §§753-A and 753-B are enacted to read:

§753-A. Procedure for requesting an absentee ballot

1. Applications available. On request, the clerk shall
furnish a reasonable number of absentee ballot applications to
any person, except that an application may not be furnished more
than 3 months before the election for which the application will
be used.

2 2. Application for state and municipal ballots at same
3 time. If a municipal election is to be held on the same date as
4 a statewide election, absentee ballots for the municipal and
5 statewide election may be issued in response to the same
6 application unless the municipal ballots are not ready to be
7 issued at the time the statewide ballot is available. The clerk
8 may not delay the issuance of a statewide absentee ballot in
9 order to include a municipal ballot pursuant to this subsection.

10 3. Request in writing. A voter may complete an application
11 or make a written request for the voter's own ballot by mail, in
12 person or by facsimile. The voter may designate an immediate
13 family member or a 3rd person to deliver the ballot on the
14 voter's behalf. An immediate family member of a voter may also
15 make an application or written request for an absentee ballot for
16 the voter.

17 4. Request by telephone. A voter may make a telephone
18 request for the voter's own ballot. In this case, the voter may
19 not designate an immediate family member or a 3rd person to
20 deliver the ballot on the voter's behalf. The clerk shall ask
21 the voter for the information required on the application and
22 complete the application, with the exception of the voter's
23 signature, and shall write "telephone request" on the
24 application. The clerk shall verify that it is the voter who is
25 requesting the ballot by making the voter confirm the voter's
26 residence and birth date on the voting list.

27 5. Assistance to certain voters. A voter who is unable to
28 read, sign or complete an application because of physical
29 disability, illiteracy or religious faith may request another
30 person, other than the voter's employer or agent of that employer
31 or an officer or agent of the voter's union, to assist the voter
32 in reading, signing or completing the application. If an aide
33 assists a voter by reading or signing the application, the aide
34 shall complete and sign the certificate on the application
35 stating that the aide has assisted the voter.

36 **§753-B. Procedure for issuing absentee ballot**

37 1. Application or written request received. Upon receipt of
38 a completed application or a written request for an absentee
39 ballot signed by the voter or an immediate family member, the
40 clerk shall immediately issue an absentee ballot and return
41 envelope by mail or in person to the applicant or to the
42 immediate family member or to a 3rd person designated in a
43 written application or request made by the voter. Upon
44 completion of a telephone request, the clerk shall issue an
45 absentee ballot by mail or in person to the voter at the address
46 requested by the voter. The clerk shall type or write in ink the
47 ballot number on the ballot.

2 name and the legal address of the voter in the designated section
3 of the return envelope.

4 2. Restrictions on issuing ballot. The clerk may not
5 deliver an absentee ballot to any 3rd person who is a candidate
6 or a member of a candidate's immediate family. The clerk may not
7 deliver to an immediate family member or to a 3rd person any
8 absentee ballot requested by telephone. The clerk may not issue
9 more than 5 absentee ballots to any 3rd person designated in
10 applications or written requests at any time.

11 3. Return of ballot by 3rd person. A 3rd person shall,
12 unless good cause is shown, return an absentee ballot to the
13 clerk's office within 2 business days of the date that ballot was
14 provided to the 3rd person or the date that 3rd person was
15 notified by the clerk that the ballot was available or by the
16 close of the polls on election day, whichever is earlier.

17 4. Duplicate application. If the clerk receives a
18 duplicate application or request from a person from whom the
19 clerk has received a return envelope apparently containing a
20 statewide absentee ballot, the clerk may not furnish another
21 statewide absentee ballot for that person. The clerk may issue a
22 2nd statewide absentee ballot to an applicant if the applicant
23 requests one in person or in writing and:

24 A. The applicant states good cause, including, but not
25 limited to, loss of, spoiling of or damage to the first
26 absentee ballot; or

27 B. An absentee ballot for the applicant that was furnished
28 to a designated 3rd person is not returned to the clerk's
29 office within the time limits provided in subsection 3. If
30 a ballot for an applicant is not returned to the clerk
31 within 2 days of notification, the clerk shall mail or hand
32 deliver a ballot to that applicant on the 3rd day after
33 notification and may not issue another ballot to the
34 applicant except for good cause as provided in this
35 subsection. This paragraph does not affect the time for
36 delivery of absentee ballots under section 755.

37 5. Alternate method of balloting by residents of certain
38 licensed facilities. The municipal clerk shall designate one or
39 more times during the 30-day period prior to an election during
40 which the municipal clerk shall be present in each licensed
41 nursing home subject to the provisions of Title 22, chapter 405;
42 licensed residential care facility subject to the provisions of
43 Title 22, chapter 1665; and certified congregate housing unit
44 subject to the provisions of Title 22, chapter 1665, in the
45 municipality for the purpose of conducting absentee voting by
46

2 residents of these facilities. The licensed residential care
3 facilities referred to in this subsection are those that are
4 licensed as Level II facilities. The clerk shall designate which
5 areas in these facilities constitute the voting place, the voting
6 booth and the guardrail enclosure. Sections 681 and 682 apply to
7 voting in these facilities within the areas designated by the
8 clerk.

9 6. Clerk to list. The clerk shall keep a list, by
10 district, of the persons furnished absentee ballots, including
11 the persons who vote in the presence of the clerk under
12 subsection 8. The clerk shall submit this list to the registrar
13 for certification before the close of business on the day before
14 election day.

15 The clerk shall keep a list of the 3rd persons designated in
16 applications or written requests to whom absentee ballots are
17 sent or delivered under subsection 1 and of the number of
18 absentee ballots sent or delivered to them.

19 7. Registration verified. If the applicant is registered
20 and enrolled when necessary, the ballot must be sent to the
21 applicant. If the applicant has registered and enrolled when
22 necessary under section 155 and will attain 18 years of age on or
23 before the date of the election, the registrar or clerk shall so
24 certify on the application. If not, the registrar or clerk shall
25 write "not registered" or "not enrolled" on the face of the
26 application and sign the registrar's or clerk's name. Whenever
27 an application for an absentee ballot is denied, the municipal
28 clerk shall immediately notify the applicant in writing of the
29 reason for the denial.

30 8. Absentee voting in presence of clerk. A person who
31 wishes to vote by absentee ballot may, without completing an
32 application, vote by absentee ballot in the presence of the
33 clerk. The method of voting is otherwise as prescribed in this
34 article. After the person has voted, the clerk shall sign the
35 affidavit on the return envelope as a witness, indicate on the
36 envelope that the voter voted in the presence of a clerk and
37 ensure that the affidavit on the return envelope is properly
38 completed by the voter. For the 45 days preceding an election,
39 during the hours when the clerk's office is open and may be
40 conducting absentee voting, the display or distribution of any
41 advertising material intended to influence a voter's decision
42 regarding a candidate or ballot issue is prohibited within the
43 clerk's office and on public property within 250 feet of the
44 entrance to the clerk's office.

2 This subsection does not apply to the display or distribution of
3 any campaign advertising material on private property that is
4 within 250 feet of the entrance to the clerk's office.

6 This subsection does not apply to campaign advertising material
7 on automobiles traveling to and from the municipal office or
8 parked on municipal property while the occupants are visiting the
9 municipal office to conduct municipal business. It does not
10 prohibit a person who is at the municipal office for the purpose
11 of conducting municipal business or for absentee voting from
12 wearing a campaign button when the longest dimension of the
13 button does not exceed 3 inches.

14 **Sec. 7. 21-A MRSA §754-A**, as amended by PL 1997, c. 436,
15 §112, is further amended to read:

16 **§754-A. Method of voting**

17
18 Except as provided in section 753 753-B, subsection 7 8, the
19 method of voting by absentee ballot is as follows.

20
21 **1. Ballot delivered to voter or immediate family member.**
22 When a voter or an immediate family member of a voter obtains a
23 ballot from the clerk in person or by mail and returns that
24 ballot to the clerk in person or by mail and receives no
25 assistance in marking the ballot, the following procedures apply.

26
27 A. The voter shall mark that ballot according to section
28 691 or 692 so that it is impossible for anyone present at
29 the time to see how the voter voted.

30
31 B. While the voter is marking the ballot, there may be no
32 communication between the voter and any other individual as
33 to the person or question for which the voter is to vote.

34
35 C. After the voter has completed marking the ballot, the
36 voter shall then seal the ballot in its return envelope and
37 complete the affidavit on the envelope. No notary or
38 witness certification is required.

39
40 D. The voter or an immediate family member of the voter
41 shall then ~~complete the address on the envelope and~~ mail it
42 or deliver it in person the sealed envelope containing the
43 voted ballot to the clerk of the municipality of which the
44 voter is a resident. The voter shall send a completed voter
45 registration or absentee ballot application, if necessary,
46 in a separate envelope.

47
48 E. If an immediate family member of the voter returns an
49 absentee ballot that was requested by the voter or another
50

2 immediate family member of the voter, in writing or in
3 person, the clerk shall accept the ballot. The clerk shall
4 have the immediate family member who returned the ballot
5 sign the application or written request and shall indicate
6 that the ballot was returned by that person.

7 **2. Ballot delivered by 3rd person or returned by 3rd**
8 **person.** When a ballot is delivered to the voter by a person
9 other than the clerk, or an immediate family member of the voter
10 or is returned to the clerk by a person other than the voter, the
11 clerk or an immediate family member of the voter and the voter
12 receives no assistance in marking his the ballot, the following
13 procedures apply.

14 A. The voter must mark his the ballot in the presence of
15 the following witness or witnesses: One notary public,
16 clerk of a municipality, or clerk of courts or 2 other
17 individuals. The voter, before marking his the ballot, must
18 show it to the witness or witnesses who must examine it to
19 be certain it is unmarked.

20 B. While the voter is marking the ballot, there may be no
21 communication between the voter and any other individual as
22 to the person or question for which the voter is to vote.

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

29 D. The voter must then complete the address on the envelope
30 and mail or deliver it personally or by agent the 3rd person
31 who was designated in the application to the clerk of the
32 municipality of which he the voter is a resident. He The
33 voter must send a completed voter registration or absentee
34 ballot application, if necessary, in a separate envelope.

35 **3. Assistance in reading or marking ballot.** A voter who is
36 unable to read or mark his the ballot because of his the voter's
37 physical disability, illiteracy, or religious faith must vote
38 according to the procedures in this subsection instead of the
39 procedures in subsection 1 or 2.

40 A. A voter who needs assistance may request another person,
41 other than the voter's employer or agent of that employer or
42 officer or agent of the voter's union, to assist the voter
43 in reading or marking the ballot.

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2 B. The voter or the aide must mark the ballot in the
presence of one of the following witnesses: Notary public,
4 clerk of a municipality, clerk of courts or another
individual.

6 C. The voter or the aide, before marking the ballot, must
show it to the witness who must examine it to be certain it
8 is unmarked.

10 D. While the voter or the aide is marking the ballot, there
may be no communication between the voter and any
12 individual, other than the aide who must mark the ballot as
the voter indicates, as to the person or question for which
14 the voter is to vote.

16 E. The voter or the aide must mark the ballot according to
section 691 or 692 so that it is impossible for anyone else
18 present to see how the voter voted, then seal the ballot in
its return envelope. The voter, or the aide at the voter's
20 request, shall complete and sign the affidavit in the
presence of the witness, who shall sign the witness
22 certification. The aide must complete and sign the
certification for aides on the outside of the envelope.

24 F. The voter or the aide must then complete the address on
the envelope and mail or deliver it personally or by agent
26 the 3rd person who was designated in the application to the
clerk of the municipality of which the voter is a resident.
28 The voter must send a completed voter registration or
absentee ballot application, if necessary, in a separate
30 envelope.

32 **Sec. 8. 21-A MRSA §756, sub-§2, ¶A**, as amended by PL 1985, c.
34 357, §§13 and 19, is further amended to read:

36 A. If the signatures do not appear to have been made by the
same person, but this discrepancy is apparently the result
38 of the voter's having properly obtained assistance under
either section 753 753-A, subsection-4-5, or section 754-A,
40 subsection 3, or both, then the clerk shall note the
discrepancy on the return envelope, but shall also write
42 "OK" and his the clerk's initials on the return envelope.

44 **Sec. 9. 21-A MRSA §759, sub-§3, ¶A**, as amended by PL 1985, c.
46 357, §§17 and 19, is further amended to read:

48 A. The signatures do not appear to have been made by the
same person and the discrepancy is not the result of the
voter's having obtained assistance under section 753 753-A,

2 subsection-4-5 or section 754-A, subsection 3, in cases
where an application is required;

4 **Sec. 10. 21-A MRSA §759, sub-§8**, as amended by PL 1997, c.
436, §114, is repealed and the following enacted in its place:

6 **8. Inspection of absentee envelopes before processing.** If
8 a candidate or the candidate's representative notifies the clerk
10 before 5 p.m. on the day before election day that the candidate
12 or the candidate's representative wishes to inspect absentee
14 ballot applications and envelopes before they are processed, the
16 warden or clerk shall allow the candidate or representative to
18 inspect the applications and envelopes of ballots before they are
processed or for 30 minutes after the time specified in the
notice for processing on election day. The warden may
immediately proceed to process the ballots after the candidate or
representative has completed the review.

20 If the municipality processes absentee ballots only after the
22 polls close on election day, then the candidate or the
24 candidate's representative must notify the warden by 5 p.m. on
26 election day that the candidate or the candidate's representative
28 wishes to inspect absentee ballot applications and envelopes
after the polls close. The warden shall allow the candidate or
representative to inspect the applications and envelopes for 30
minutes after the polls close. The warden may immediately
proceed to process the ballots after the candidate or
representative has completed the review.

30 **Sec. 11. 21-A MRSA §763**, as repealed and replaced by PL 1985,
32 c. 614, §21, is amended to read:

34 **§763. Return of election materials**

36 As soon as the ballots have been counted, the applications,
38 where required, absentee ballots, return envelopes, lists
40 required by ~~section~~ sections 753-B and 756 and other election
materials shall must be repacked, in accordance with section 698,
and returned to the clerk. The clerk shall keep them in the
clerk's office for the time required by section 23, ~~sub-section~~-7.

42 **Sec. 12. 21-A MRSA §791, sub-§1, ¶B**, as amended by PL 1985, c.
44 357, §§18 and 19, is further amended to read:

46 B. A municipal clerk who, when a person has voted by
48 absentee ballot in the clerk's presence under section 753
50 753-B, subsection 7 8, signs his the clerk's name to an
affidavit on the absentee ballot return envelope when the
affidavit is not properly completed; or

