

# MAINE STATE LEGISLATURE

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**Legislative Document**

**No. 512**

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S. P. 338

In Senate, February 11, 1943.

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

ROYDEN V. BROWN, Secretary.

Presented by Senator Sanborn of Cumberland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-THREE

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**AN ACT to Simplify the Absent Voting Law.**

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

**Sec. 1. Term "absentee voter" defined.** An absentee voter is hereby defined to be any duly qualified and registered voter, and in respect to any primary election one who is duly enrolled as a member of a political party, who by reason of absence on election day from the municipality in which he is entitled to vote, provided that such absence is not caused by his serving a sentence in some penal institution after conviction of a criminal offense, or who by reason of some physical incapacity not adversely affecting his soundness of mind is unable to cast his ballot in person at the polling place where he is entitled to vote at any state or city election as defined in section 1 of chapter 8, at any primary election authorized by chapter 7, at any election for the choice of presidential electors, or at any election held in accordance with the initiative and referendum provisions of the constitution of Maine or to vote upon amendments to the constitution of Maine.

**Sec. 2. Application for absent voting ballot and action thereon.** A person anticipating the need therefor may make application to the clerk of the municipality in which he is entitled to vote upon the form prescribed

therefor, for an absent voting ballot, which application may be delivered in person, by mail, or by private messenger. Upon receipt of such application, the clerk shall submit it to the officials charged by law with the registration and enrollment of voters in that municipality who shall examine it and if they believe the signature thereon to be genuine and the statements therein made to be true, they shall so certify, using the blank provided therefor upon the application, and shall forthwith return it to the clerk who shall then cause to be placed on the voting list opposite the name of the applicant, the letters "A. V." in capitals. He shall then transmit to the applicant by mail or by such other method as the applicant may have requested, an absent voting ballot together with the papers provided for in clauses (c), (d) and (e) of section 10 hereof.

If the registration and enrollment officials above referred to, do not believe the signature of the applicant to be genuine or his statements to be true, they shall forthwith mail to the purported applicant at his last address as stated on his application written notice to that effect, giving their reasons therefor. They shall preserve the application until the time fixed by law for the destruction of ballots cast in the then forthcoming 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, and shall post copies of such lists for public inspection at each polling place.

**Sec. 3. Method of voting by absent ballot.** A voter who has obtained an absent voting ballot in accordance with the provisions of the preceding section may vote by mailing it as hereinafter provided or by otherwise delivering it to the clerk of his municipality so that it be received at least 24 hours before the opening of the polls. He shall mark his ballot in the presence of some official authorized by law to administer oaths, if the marking is done within the state of Maine, and in the presence of a notary public having a seal if the marking is done outside of the state of Maine; 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 the 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 that purpose in clause (c) of section 10. He shall then execute before the official the affidavit on the envelope as set forth in said clause (c); the official shall endorse thereon the certificate specified in said clause (c) and affix

his official seal, if any, and the voter shall enclose the envelope containing the ballot in the envelope provided therefor in clause (d) of section 10, shall seal it, and shall endorse thereon his name, address, and voting place, and transmit it to the clerk of his municipality as hereinbefore provided. If transmitted by mail, the post mark, if legible, shall be conclusive evidence of the time and place of mailing. Any clerk, if requested thereto, shall give to the person delivering such ballot in person, a receipt therefor setting forth the precise date, hour, and minute of the delivery.

**Sec. 4. Procedure of clerk upon receipt of envelope containing absent voting ballot.** Upon receipt of an envelope purporting to contain an official absent voting ballot, the clerk of the municipality shall attach thereto the application therefor executed by the voter whose name appears thereon and certified by the registration officials as hereinbefore provided, and the clerk 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, which lists shall be public records and shall be preserved by the clerk until the time set by law for the destruction of ballots cast in the then forthcoming election. All such envelopes shall be preserved unopened. Upon election day before the hour for closing the polls the clerk shall deliver all 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 upon such envelopes.

**Sec. 5. Procedure of election officials at polls in respect to absent voting ballots.** Immediately after the closing of the polls, and before the ballots cast have been removed from the ballot-box, the presiding officer in each polling 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 voter's 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, 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 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 the event of its appearing from the color of a ballot at a primary election, when it is taken from its envelope by the presiding officer, that it is for the nomination of candidates of a political party other than that in which the absentee voter is enrolled, the presiding officer, without opening the ballot, shall endorse on the outside thereof and of the envelope containing it, "Rejected as not enrolled in the proper party," and shall thereupon replace it in its envelope and reseal the envelope securely. 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, or 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.

**Sec. 6. Challenged absent voting ballots; penalty.** All absent voting ballots shall be subject to challenge when and as presented, by any qualified elector of the municipality where said ballot is presented for non-compliance 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 polling place, who shall note the fact of such challenge upon the voting list there in use. The presiding officer shall also note the fact of such challenge together with the name of the voter upon the ballot so challenged, witnessed by two election officers representing two 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.

**Sec. 7. Rejected ballots, or if voter has died since application.** 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 ballot so presented 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.

**Sec. 8. Disposition of ballots received too late to be cast.** All envelopes

received by the clerks too late to admit of their delivery to their appropriate polling places before the hour fixed for closing the polls shall be retained by them unopened until the time fixed by law for the destruction of ballots cast at such election, at which time the envelopes shall likewise be destroyed, unopened and unexamined.

**Sec. 9. Voter must vote in person if in town; penalty for non-compliance.** Nothing herein contained shall prevent a voter who has undertaken to vote at an election in accordance with the provisions of this chapter by reason of absence from the municipality from voting at such election in person. In case such voter shall be present on the day of election in the municipality 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 so to do, he shall go in person to the polling place where he is entitled to vote and cast his ballot, or offer to cast it, 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.

**Sec. 10. Secretary of state to prepare ballots, blank forms, instructions, etc. for city and town clerks.** For the purpose of carrying into effect the provisions of this chapter, the secretary of state, or in case of city elections the respective city clerks, shall prepare in such quantities as may be deemed necessary and shall cause to be available in the offices of the various municipal clerks, 30 days at least when practicable and in other cases as early as may be practicable, prior to any election at which absentee voting is authorized, the following papers:

(a) Official absent voting ballots similar in all respects to the official ballots except that the words, "Official Absent Voting Ballot", shall be printed conspicuously on the back and outside thereof.

(b) Blank applications for absent voting ballot appended to which shall be blanks for use of registration officials and for physician's certificate of physical incapacity substantially in form following:

#### APPLICATION FOR ABSENT VOTING BALLOT.

(Strike out portions of the text not applicable.)

I, \_\_\_\_\_, am a legal resident of the city town plantation  
of \_\_\_\_\_ in the county of \_\_\_\_\_ and state of  
Maine. I am a duly qualified and registered voter and am, as I believe,

entitled to vote at the next state city primary election in precinct \_\_\_\_\_, ward \_\_\_\_\_, in the said city town plantation of \_\_\_\_\_.

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.

I am unable to cast my ballot in person at the said election because of absence from the said municipality physical incapacity. I therefore hereby apply for an official absent voting ballot.

My address, including street and number, if any, on April 1 last past was \_\_\_\_\_ and now is \_\_\_\_\_.

Signature.....

We, the undersigned, a majority of the officials having charge of the registration of voters of the city town plantation 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.....

To the election officials of the city town plantation of \_\_\_\_\_ in the county of \_\_\_\_\_, and state of Maine:

This is to certify that I, the subscriber, am a duly licensed and regularly practicing physician and resident in the city town plantation of \_\_\_\_\_, in the county of \_\_\_\_\_ and state of Maine:

(A) That on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, I examined the applicant above named and that he is suffering from the following described ailment: .....

(B) That the applicant above named is confined to his her home because of illness and is under my care and treatment; that the ailment with which he is afflicted is: .....

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

That said ailment does not adversely affect the soundness of his her mind but does prevent him her from going to the polls on the day of 19 .

Signature .....

When the application is based upon physical incapacity, the appropriate certificate shall be made and signed by a licensed and regularly practising physician residing in Maine and shall briefly describe the physical incapacity and state that it does not adversely affect the soundness of mind of the applicant but that it prevents him from going to the polls.

(c) Envelopes of sufficient size to contain the ballot specified in clause (a) bearing on their reverse the following affidavit:

State of }  
County of } ss.

I, , do solemnly swear that I am a legally registered voter in the city town plantation of , in the county of , and state of Maine, and entitled to cast the within ballot; that I am unable to cast my ballot on election day at the polling place where I am entitled to vote because of physical incapacity, because I shall be absent from said municipality on election day\*; that I have carefully read the instructions forwarded to me with the ballot herein enclosed; that I showed to the undersigned person taking my oath thereto, said ballot unmarked; and that I then marked said ballot and sealed it in this envelope, all in his presence and in the presence of no other person, but without his seeing how I marked said ballot and without communicating to him how I voted or intended to vote.

Signature .....

\*Use but one of the causes.

Subscribed and sworn to before me by the above affiant, personally known to me, this day of 19 , in the city town plantation of and state of .

I hereby certify that the above statements made by said affiant are true to the best of my knowledge and belief and that I have no knowledge as to how said affiant voted.

(Official seal, if any.)

Name .....  
Residence .....  
Official title .....



(d) Envelopes of sufficient size to contain the envelope mentioned in clause (c) addressed to the clerk of the city town plantation of \_\_\_\_\_ in the county of \_\_\_\_\_ and 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.

(e) 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.

**Sec. 11. Penalty for voting in violation of terms hereof.** Whoever, not being entitled to vote under the provisions of this chapter votes or attempts so to vote, or whoever, being entitled so to vote, knowingly votes or attempts to vote in violation of the terms hereof, or whoever, being an official entrusted with the execution of any of the provisions of this chapter, wilfully or negligently violates any provision thereof, shall be punished by a fine of not more than \$500 and by imprisonment for not more than 11 months.

**Sec. 12. Amending clause.** All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, or amended to conform therewith.