

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

SECOND REGULAR SESSION
January 5, 2000 to May 12, 2000

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 11, 2000

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
2000

2. It is an affirmative defense to prosecution under this section that the actor reasonably believed that the actor's conduct was necessary to prevent a false public alarm or report as described in section 509.

3. Obstructing report of crime or injury is a Class D crime.

See title page for effective date.

CHAPTER 645

S.P. 631 - L.D. 1796

An Act to Improve the Absentee Voting Process

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:

3. Qualifications declared. The consent must contain a declaration of the candidate's place of residence and the fact that the candidate has not been enrolled in a party qualified to participate in a primary or general election ~~on or before~~ after March 1st of that election year and that the candidate meets the qualifications of the office the candidate seeks. The candidate must verify by oath or affirmation before a notary public or other person authorized by law to administer oaths or affirmations that the declaration is true. If, pursuant to the challenge procedures in section 356, any part of the declaration is found to be

false by the Secretary of State, the consent and 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. Application for state and municipal ballots at same time. If a municipal election is to be held on the same date as a statewide election, absentee ballots for the municipal and statewide election may be issued in response to the same application unless the municipal ballots are not ready to be issued at the time the statewide ballot is available. The clerk may not delay the issuance of a statewide absentee ballot in order to include a municipal ballot pursuant to this subsection.

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

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

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

§753-B. Procedure for issuing absentee ballot

1. Application or written request received. Upon receipt of a completed application or a written request for an absentee ballot signed by the voter or an immediate family member, the clerk shall immediately issue an absentee ballot and return envelope by mail or in person to the applicant or to the immediate family member or to a 3rd person designated in a written application or request made by the voter. Upon completion of a telephone request, the clerk shall issue an absentee ballot by mail or in person to the voter at the address requested by the voter. The clerk shall type or write in ink the name and the legal address of the voter in the designated section of the return envelope.

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

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

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

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

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

5. Alternate method of balloting by residents of certain licensed facilities. The municipal clerk shall designate one or more times during the 30-day period prior to an election during which the municipal clerk shall be present in each licensed nursing home subject to the provisions of Title 22, chapter 405; licensed residential care facility subject to the provisions of Title 22, chapter 1665; and certified congregate housing unit subject to the provisions of Title 22, chapter 1665, in the municipality for the purpose of conducting absentee voting by residents of these facilities. The licensed residential care facilities referred to in this subsection are those that are licensed as Level II facilities. The clerk shall designate which areas in these facilities constitute the voting place, the voting booth and the guardrail enclosure. Sections 681 and 682 apply to voting in these facilities within the areas designated by the clerk.

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

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

7. Registration verified. If the applicant is registered and enrolled when necessary, the ballot

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

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

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

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

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

§754-A. Method of voting

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

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

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

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

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

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

E. If an immediate family member of the voter returns an absentee ballot that was requested by the voter or another immediate family member of the voter, in writing or in person, the clerk shall accept the ballot. The clerk shall have the immediate family member who returned the ballot sign the application or written request and shall indicate that the ballot was returned by that person.

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

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

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

C. The voter must mark ~~his~~ the ballot according to section 691 or 692 so that it is impossible for anyone present at the time to see how ~~he~~ the voter voted. The voter must then seal the ballot

in its return envelope and complete the affidavit on the envelope in the presence of the witness or witnesses, who shall sign the witness certification.

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

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

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

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

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

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

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

F. The voter or the aide must then complete the address on the envelope and mail or deliver it personally or by ~~agent~~ the 3rd person who was designated in the application to the clerk of the municipality of which the voter is a resident. The voter must send a completed voter registra-

tion or absentee ballot application, if necessary, in a separate envelope.

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

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

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

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

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:

8. Inspection of absentee envelopes before processing. If a candidate or the candidate's representative notifies the clerk before 5 p.m. on the day before election day that the candidate or the candidate's representative wishes to inspect absentee ballot applications and envelopes before they are processed, the warden or clerk shall allow the candidate or representative to 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.

If the municipality processes absentee ballots only after the polls close on election day, then the candidate or the candidate's representative must notify the warden by 5 p.m. on election day that the candidate or the candidate's representative 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.

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

§763. Return of election materials

As soon as the ballots have been counted, the applications, where required, absentee ballots, return envelopes, lists 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, ~~subsection~~ 7.

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

B. A municipal clerk who, when a person has voted by absentee ballot in the clerk's presence under section ~~753~~ 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

Sec. 13. 21-A MRSA §819, as enacted by PL 1995, c. 161, §6, is repealed.

Sec. 14. 21-A MRSA §862, as enacted by PL 1995, c. 459, §113, is repealed.

Sec. 15. 30-A MRSA §2502, sub-§1, as amended by PL 1995, c. 483, §22, is further amended to read:

1. Reports by candidates. A candidate for municipal office of a town or city with a population of 15,000 or more is governed by Title 21-A, sections 1001 to 1020-A, except that notices of appointment of a treasurer and campaign reports must be filed with the municipal clerk instead of the ~~Secretary of State~~ Commission on Governmental Ethics and Election Practices. A town or city with a population of less than 15,000 may choose to be governed by Title 21-A, sections 1001 to 1020-A by vote of its legislative body at least 90 days before an election for office. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to those sections.

A. Notwithstanding Title 17-A, section 4-A, a candidate who fails to file a notice or report as required by this section is guilty of a Class E crime and may be punished by a fine of \$5 for every day the candidate is in default or by imprisonment for not more than 30 days, or both.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 10, 2000.

CHAPTER 646**H.P. 848 - L.D. 1182****An Act to Amend the Qualifications of Weighmasters**

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

Sec. 1. 10 MRSA §2501, as amended by PL 1997, c. 454, §6, is repealed and the following enacted in its place:

§2501. Qualifications

1. Individual license. A person wishing to be a licensed public weighmaster shall make application to the state sealer upon forms provided by the state sealer, and each application must be accompanied by an annual fee of \$25. When the state sealer receives an application and is satisfied that the applicant is of good moral character, has the ability to weigh accurately and to make correct weight certificates, has passed such oral or written examination as the state sealer may require and makes an oath to execute the requisite duties satisfactorily, the state sealer shall grant the applicant a license as a public weighmaster. A license expires on December 31st annually or in a manner consistent with the Maine Administrative Procedure Act, whichever is later, unless sooner revoked or suspended under section 2506.

Except as provided in subsection 2, a licensed public weighmaster shall, at the public weighmaster's own expense, procure an impression seal. The public weighmaster's name and the word "Maine" must be inscribed around the outer margin of the seal and the words "licensed public weighmaster" must appear in the center of the seal. The seal must be impressed upon each weight certificate issued by the licensed public weighmaster.

2. Corporate license. A business, company or corporation wishing to be a licensed corporate public weighmaster shall make application to the state sealer upon forms provided by the state sealer. The application must name the owner or manager of the business, company or corporation who is making the application. Each application must be accompanied by an annual fee of \$250 and a list of employees who hold valid individual licenses under subsection 1. When the state sealer receives an application and is satisfied that the business, company or corporation has the ability to train its employees to weigh accurately and to make correct weight certificates and that at least one employee of that business, company or corporation holds a valid individual license under subsection 1, the state sealer shall grant the business, company or corporation a license as a corporate public weigh-