

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
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SEPTEMBER 13, 2003

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

Penmor Lithographers
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2003

mail, public information access, gateway services, add-on services and electronic filing of information; and

J. Ensure that confidential information is not disclosed by the network manager without the express authorization of the data custodian; and

Sec. 10. 1 MRSA §535, sub-§2, ¶K is enacted to read:

K. Collect funds for electronic services and information provided and distribute funds collected to the appropriate data custodians or agencies pursuant to section 533, subsection 10;

See title page for effective date.

CHAPTER 407

S.P. 492 - L.D. 1486

An Act To Comply with Federal Election Laws Including the Help America Vote Act of 2002

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

Whereas, the federal Help America Vote Act of 2002, HAVA, requires Maine to adopt rules establishing an administrative complaint procedure to address grievances concerning Title III of HAVA; and

Whereas, such rules must be in effect by the September 30, 2003 certification deadline of Maine's initial state plan required under Section 254 of HAVA; 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Sec. 1. 21-A MRSA §1, sub-§2-A, as enacted by PL 1985, c. 614, §2, is repealed.

Sec. 2. 21-A MRSA §1, sub-§23-A is enacted to read:

23-A. Member of the merchant marine. "Member of the merchant marine" means a person, other than a member of a uniformed service or a person employed, enrolled or maintained on the Great Lakes or the inland waterways, who is:

A. Employed as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States or a vessel of foreign-flag registry under charter to or control of the United States; or

B. Enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of a vessel described in paragraph A.

Sec. 3. 21-A MRSA §1, sub-§27-B is enacted to read:

27-B. Overseas voter. "Overseas voter" means:

A. A person who resides outside the United States and who was qualified to vote in the last place in which the person was domiciled in the State before leaving the United States; or

B. A person who resides outside the United States and, except for such residence, would be qualified to vote in the last place in which the person was domiciled in the State before leaving the United States.

Sec. 4. 21-A MRSA §1, sub-§§46-A and 46-B are enacted to read:

46-A. Uniformed service. "Uniformed service" means the United States Army, Navy, Air Force, Marine Corps and Coast Guard, the commissioned corps of the United States Public Health Service and the commissioned corps of the National Oceanic and Atmospheric Administration.

46-B. Uniformed service voter. "Uniformed service voter" means:

A. A member of a uniformed service on active duty who, by reason of active duty or service, is absent from the place of residence in the State where the member is otherwise qualified to vote;

B. A member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

C. A spouse or dependent of a member referred to in paragraph A or B who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

Sec. 5. 21-A MRSA §112, sub-§§4, 7 and 8, as amended by PL 1993, c. 695, §3, are further amended to read:

4. Separate residence. The place where a person's family resides is presumed to be the person's place of residence, but a person may acquire a separate residence if the person takes another abode with the intention of remaining there. This subsection does not apply to ~~armed forces personnel~~ uniformed service voters, students and others covered by subsection 7.

7. Uniformed service voters, students, institutional patients, Indians. A person does not gain or lose a residence solely because of the person's presence or absence while employed in the ~~Armed Forces~~ uniformed service or the merchant marine of the United States ~~or of this State~~, while a student in any institution of learning, while kept in any institution at public expense or while residing upon any Indian or military reservations. This subsection may not be construed to prevent a student at any institution of learning from qualifying as a voter in the municipality where the student resides while attending that institution.

8. Voting residence retained. A person who has gained a voting residence in a municipality retains it, if the person so desires, when the person becomes a patient at a federal institution or an employee of a federal agency where the person is required to reside on land ceded to the Federal Government by the State. This subsection applies to a member of the ~~Armed Forces~~ uniformed service, merchant marine or the National Guard who is required to be in a place other than that in which the person has gained a voting residence.

Sec. 6. 21-A MRSA §112, sub-§§10 and 11, as amended by PL 1993, c. 695, §4, are further amended to read:

10. Becoming 18 on federal property. A person who becomes 18 years of age while residing on federal property as a patient at a federal institution or an employee of a federal agency, or while in the ~~Armed Forces~~ uniformed service, is considered to have gained a voting residence in the municipality in which the person resided at the time the person became such a patient, employee or member of the ~~Armed Forces~~ uniformed service.

11. Spouse of member of uniformed service or merchant marine. A ~~spouse of a member of the Armed Forces on active duty~~ person may have the same voting residence as that person's spouse who is a member of the uniformed service or merchant marine. A member of the ~~Armed Forces~~ uniformed service or merchant marine on active duty, whose spouse has a place of residence in this State, may establish a residence in the place of residence of the spouse by filing an affidavit with the registrar declaring an intention to reside in that place upon severance from

the ~~Armed Forces~~ uniformed service or merchant marine.

Sec. 7. 21-A MRSA §122, first ¶, as enacted by PL 1985, c. 161, §6, is amended to read:

A person may register as a voter by appearing before the registrar, proving that ~~he~~ the person is qualified under section 111, subsections 1 to 3, and filing an application provided by the registrar containing the information required by section ~~474~~ 172. Township residents may register as provided in section 156.

Sec. 8. 21-A MRSA §152, sub-§1, as amended by PL 1997, c. 436, §34, is further amended to read:

1. Application. In addition to the procedure provided by section 122, a person may register to vote or enroll in a political party, or both, by completing an application that is designed by the Secretary of State ~~and contains the following information. The application must include, but is not limited to:~~

A. First name, middle name or initial and last name, or first name or initial, middle name and last name;

B. Residence address, including street, street number, apartment number, town and zip code;

C. Mailing address;

D. Date of birth;

F. Most recent prior residence where registered to vote, including the name under which registered, if changed, legal address and mailing address;

H. Notification that failure to complete the entire application may prevent registration;

~~I. Sworn statement that the applicant is a United States citizen and that all information is correct;~~

J. Date of application;

K. Signature of applicant; ~~and~~

L. Choice of political party if the applicant desires to enroll in a political party or an indication that the applicant chose not to enroll in a party;

M. A place for the person's current, valid Maine driver's license number, if applicable; or, if the applicant has no driver's license number, the last 4 digits of the person's social security number, if applicable; or, if the applicant has neither number, a place to put "none" or "not applicable"; and

N. A place for the applicant to respond to the questions concerning the voter's qualifications as required by the federal Help America Vote Act of 2002, Public Law 107-252.

Sec. 9. 21-A MRSA §152, sub-§5, as amended by PL 2001, c. 310, §11, is further amended to read:

5. Design of application. The Secretary of State shall design the application ~~so that it may be mailed as a postcard.~~ The Secretary of State may design an application that can be completed electronically and that substantially meets the requirements of this section.

Sec. 10. 21-A MRSA §154, sub-§1, as amended by PL 1997, c. 436, §36, is further amended to read:

1. Application. A person qualified to register under section 111, subsections 1 and 2 and who resides outside the United States and does not maintain a fixed and principal home or other address in the State may register at the last residence address immediately before leaving the United States and enroll by filing a federal postcard application or an application designed by the Secretary of State ~~containing the following information.~~ The state application must include, but is not limited to:

A. First name, middle name or initial and last name, or first name or initial, middle name and last name;

B. Last residence address immediately before departing from the United States, including street, street number, apartment number, town and zip code;

C. Mailing address;

D. Date of birth;

H. Notification that failure to complete the entire application may prevent registration;

J. Signature of applicant;

~~K. Sworn statement that the applicant is a United States citizen and that all information is correct;~~

L. Date of application; ~~and~~

N. Choice of political party if the registrant wishes to enroll in a political party or an indication that the applicant chose not to enroll in a party;

O. A place for the person's current, valid Maine driver's license number, if applicable; or, if the

applicant has no driver's license number, the last 4 digits of the person's social security number, if applicable; or, if the applicant has neither number, a place to put "none" or "not applicable"; and

P. A place for the applicant to respond to the questions concerning the voter's qualifications as required by the federal Help America Vote Act of 2002, Public Law 107-252.

Sec. 11. 21-A MRSA §155, first ¶, as amended by PL 1991, c. 399, §1, is further amended to read:

The registrar shall conditionally accept the registration and enrollment of any person who is ~~between~~ 17 years of age and will attain 18 years of age by the next election, and who is otherwise qualified to be a voter. The registrar shall maintain a separate list of these persons, with a notation of their birthdates, and shall place their names on the voting list as soon as they have attained 18 years of age.

Sec. 12. 21-A MRSA §171, as amended by PL 1997, c. 436, §40, is repealed.

Sec. 13. 21-A MRSA §172 is enacted to read:

§172. Voter registration file

The registrar shall prepare and keep a voter registration file containing the voter registration documents for each voter on the voting list, arranged alphabetically by the last name of each voter. The file must contain an original, signed voter registration application for each voter, with all associated applications containing changes of name, address or enrollment and any documentation concerning these applications or the qualifications for these voters. When the name of a voter is removed from the voting list, the registrar shall indicate on the voter's registration documents the date that the voter's name was removed from the list and retain the documents for 5 years, either in the same file, or in a separate file.

Sec. 14. 21-A MRSA §181, sub-§1, ¶B, as amended by PL 1995, c. 418, Pt. A, §39, is further amended to read:

B. Outside agencies that include the following:

(1) The Department of Human Services, Bureau of Family Independence, Bureau of Health and Bureau of Rehabilitation;

(2) ~~The armed forces~~ uniformed service recruitment offices;

(3) The public high schools; and

(4) The offices of municipal clerks and registrars.

Sec. 15. 21-A MRSA c. 3, sub-c. 8 is enacted to read:

SUBCHAPTER 8

HELP AMERICA VOTE ACT

§221. State coordinator

The Secretary of State is the coordinator of the State's responsibilities under the federal Help America Vote Act of 2002, Public Law 107-252.

Sec. 16. 21-A MRSA §222 is enacted to read:

§222. Rule-making authority

The Secretary of State is authorized to adopt rules establishing an administrative procedure for handling complaints relating to compliance with the provisions of Title III of the federal Help America Vote Act of 2002. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 17. 21-A MRSA §629, sub-§1, ¶A, as amended by PL 1985, c. 315, is further amended to read:

A. In a general election, the municipal officers in each municipality ~~of 4,000 or more population must provide at least one voting booth for each 150, or fraction exceeding 1/2 of that number, of the voters qualified to vote at each voting place. In a municipality of less than 4,000 population, the municipal officers must provide at least one voting booth for each 200, or fraction exceeding 1/2 of that number, of the voters qualified to vote voters in each voting place. For purposes of this paragraph, "qualified voters" does not include voters who have been designated as inactive as a result of voter list maintenance procedures.~~

Sec. 18. 21-A MRSA §629, sub-§1, ¶A-1 is enacted to read:

A-1. In every election, the municipal officers shall provide at least one voting booth in each voting place that is accessible for persons with disabilities. The accessible voting booth may be used to meet the minimum requirements under paragraph A.

Sec. 19. 21-A MRSA §673, sub-§5 is enacted to read:

5. Challenged ballots relating to court order.
In an election for federal office, if a federal or state court has issued an order extending the time estab-

lished for closing the polls, any ballots cast during the period of that extension must be challenged according to this section, segregated and counted separately from all regular and challenged ballots cast during the normal polling hours.

Sec. 20. 21-A MRSA §752, sub-§1, as amended by PL 1997, c. 436, §106, is further amended to read:

1. Absentee ballots to be identical. Absentee ballots must be identical to the regular ballots used at an election, except as provided in paragraph A for ~~members of the Armed Forces or citizens outside the United States~~ uniformed service voters or overseas voters.

A. At least 3 months before the election to which they pertain, the Secretary of State shall furnish each municipality with a reasonable number of blank write-in absentee ballots for use by ~~members of the Armed Forces and citizens outside the United States~~ uniformed service voters or overseas voters who have met the qualifications in section 751. These ballots must be similar to regular ballots, except that no candidate names may be printed. The Secretary of State shall prepare a ballot listing all offices to be selected with a space after each office to write in the voter's preference. ~~The following instructions must be printed in bold type at the top of the ballot: YOU MAY VOTE FOR A PERSON BY WRITING IN THAT PERSON'S NAME AND MUNICIPALITY OF RESIDENCE IN THE BLANK SPACE UNDER THE PROPER OFFICE.~~ The Secretary of State shall design the form of the ballot, including any instructions to the voters in marking the ballot.

Sec. 21. 21-A MRSA §752, sub-§4, as enacted by PL 1985, c. 161, §6, is amended to read:

4. Delivery of materials; insufficient quantity. The Secretary of State shall send the voting materials to the clerk of each municipality. If the clerk believes that a larger number should be furnished, ~~he~~ the clerk must notify the Secretary of State who shall determine whether the additional materials are needed and, if so, shall furnish them as promptly as possible.

Sec. 22. 21-A MRSA §752-A, as enacted by PL 2001, c. 516, §16, is amended to read:

§752-A. Federal absentee ballot

The federal write-in absentee ballot may be used in primary ~~and~~ general and special elections for state and federal offices by ~~members of the United States Armed Forces and citizens outside the United States~~ uniformed service voters or overseas voters who are qualified pursuant to section 751.

Sec. 23. 21-A MRSA §753-A, sub-§1, as enacted by PL 1999, c. 645, §6, is amended to read:

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. This subsection does not apply to a uniformed service voter or an overseas voter who requests an absentee ballot under this subchapter.

Sec. 24. 21-A MRSA §753-B, sub-§6, ¶¶A and B, as enacted by PL 2001, c. 310, §54, are amended to read:

A. The list of absentee voters must include each voter's name, residence address, voting district and party affiliation; the date and manner by which the ballot was requested, ~~the date and manner by which the ballot was issued and received;~~ a notation of whether the application and the ballot were accepted or rejected; and a place for the registrar to certify the voter registration status of the absentee voters ~~who voted, without application, in the presence of the clerk.~~ The clerk must also indicate on the list when the absentee voter is a uniformed service voter or overseas voter.

B. The clerk shall submit this list of absentee voters to the registrar for certification of the registration status and, when applicable, the enrollment status of the voters ~~who voted in the presence of the clerk.~~ The clerk shall also submit all absentee ballot applications to the registrar for certification of the registration status and, when applicable, the enrollment status of the voter named on each application. The registrar shall certify the list and applications either before or as soon as possible after the ballot is issued to the voter. The certifications must be completed before the absentee ballots may be processed and cast on election day.

Sec. 25. 21-A MRSA §753-B, sub-§6, ¶D is enacted to read:

D. Within 20 days after each election, the clerk shall send a report to the Secretary of State stating the total number of absentee ballots issued to absentee voters in the municipality for that election. The report must further identify the number of ballots that were issued to uniformed service voters and overseas voters, respectively. For each category of absentee voters, the report must include the number of ballots that were returned by the voters and were processed and cast in the election.

Sec. 26. 21-A MRSA §776, as enacted by PL 1985, c. 161, §6, is amended to read:

§776. Applicability of provisions

~~This Article article applies to members of the Armed Forces uniformed service voters or overseas voters who are covered by the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 United States Code, Section 1973ff (2001).~~ The Secretary of State is responsible for carrying out the State's duties under that Act.

Sec. 27. 21-A MRSA §777, as amended by PL 1993, c. 695, §32, is repealed.

Sec. 28. 21-A MRSA §777-A is enacted to read:

§777-A. Registration and enrollment

Uniformed service voters or overseas voters may register or enroll at any time by completing a federal or state voter registration application form and filing it with the registrar.

Sec. 29. 21-A MRSA §778, as enacted by PL 1985, c. 161, §6, is amended to read:

§778. Duty of registrar

On receipt of an application under section ~~777~~ 777-A, the registrar shall register the applicant, unless it appears that ~~he~~ the applicant is not qualified. If ~~he~~ the applicant is not qualified, the registrar shall notify ~~him~~ the applicant of the reason ~~why~~ for rejection of the application.

1. Member specially designated. The registrar shall place the letter "S" on the voting list beside the name of each ~~member of the Armed Forces~~ uniformed service voter registered under this section.

2. Overseas voter specially designated. The registrar shall place the letter "O" on the voting list beside the name of each overseas voter registered under this section.

Sec. 30. 21-A MRSA §779, as enacted by PL 1985, c. 161, §6, is repealed.

Sec. 31. 21-A MRSA §780, as enacted by PL 1985, c. 161, §6, is repealed and the following enacted in its place:

§780. Absentee ballots; application

A uniformed service voter or an overseas voter may request an absentee ballot as provided in section 753-A or by submitting a federal application or form requesting an absentee ballot. With respect to any election for federal office, a clerk may not refuse to

accept or process any otherwise valid voter registration application or absentee ballot application submitted by a uniformed service voter or an overseas voter on the grounds that the voter submitted the application more than 3 months before the election for which the application will be used. An application or request for an absentee ballot for a uniformed service voter or overseas voter that is accepted pursuant to section 753-A remains valid through the next 2 regularly scheduled general elections for federal office and entitles the voter to receive absentee ballots for all elections during that period.

Sec. 32. 21-A MRSA §780-A is enacted to read:

§780-A. Use of blank write-in absentee ballot

Prior to the time when regular absentee ballots are available, if an applicant requests a blank write-in absentee ballot or indicates that it takes more than 6 weeks to receive and return mail to the applicant's location, the clerk shall send a blank write-in absentee ballot to the voter. Once the regular absentee ballots become available, the clerk shall issue a regular absentee ballot in response to any request under this section. If the clerk has issued a blank write-in absentee ballot to a voter before the regular absentee ballots become available, the clerk may send a regular absentee ballot to the voter, following the procedures for issuing a 2nd absentee ballot under section 753-B.

Sec. 33. 21-A MRSA §781, as enacted by PL 1985, c. 161, §6, is repealed.

Sec. 34. 21-A MRSA §781-A is enacted to read:

§781-A. Absentee ballot application; procedure on receipt

Upon receipt of an application, written request or telephone application for an absentee ballot that is accepted pursuant to section 753-A, 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. The clerk shall type or write in ink the name and the residence address of the voter in the designated section of the return envelope. The Secretary of State shall provide a return envelope which moves free of postage under federal law.

Sec. 35. 21-A MRSA §§782 and 783, as enacted by PL 1985, c. 161, §6, are amended to read:

§782. Absentee ballots; procedure on return

On receipt of a return envelope apparently containing an absentee ballot, the clerk shall ~~note the date~~

~~and time of delivery on it and deliver it to the registrar follow the procedures for regular absentee voting under this subchapter. The registrar shall certify on the envelope whether the person whose name appears as sender is registered and, in a primary election, enrolled in the municipality. He shall then return the envelope to the clerk.~~

§783. Authority of Secretary of State

The Secretary of State may act administratively to facilitate voting by ~~members of the Armed Forces uniformed service voters and overseas voters.~~ He ~~The Secretary of State~~ may use federal or other facilities available for this purpose.

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

Effective June 3, 2003.

CHAPTER 408

S.P. 551 - L.D. 1597

An Act To Implement Federal Requirements in Child Protection Matters

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

Sec. 1. 22 MRSA §4036-B is enacted to read:

§4036-B. Removal of child from home

1. Application. The provisions of this section apply in any case in which the court orders, or has ordered, the removal of a child from home.

2. Welfare of child. Before a court may order removal of a child from home, the court must specifically find that remaining in the home is contrary to the welfare of the child.

3. Reasonable efforts to prevent removal. The department shall make reasonable efforts to prevent removal of the child from home, unless the court finds the presence of an aggravating factor. In an order providing for removal of the child from home, or within 60 days of the date of removal of the child from home, the court shall make a finding:

A. Whether or not the department has made reasonable efforts to prevent the removal of the child from home; and

B. If the court finds that the department did not make reasonable efforts to prevent the removal