

A Bill for an Act Relating to the Uniform Military and Overseas Voters Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
UNIFORM MILITARY AND OVERSEAS VOTERS ACT**

§ -1 **Short title.** This chapter may be cited as the Uniform Military and Overseas Voters Act.

§ -2 **Definitions.** In this chapter:

“Covered voter” means:

- (1) A uniformed-service voter or an overseas voter who is registered to vote in this State;
- (2) An overseas voter who, before leaving the United States, was last eligible to vote in this State and, except for a state residency requirement, otherwise satisfies this State’s voter eligibility requirements;
- (3) An overseas voter who, before leaving the United States, would have been last eligible to vote in this State had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this State’s voter eligibility requirements; or
- (4) An overseas voter who was born outside the United States, is not described in paragraph (2) or (3), and except for a state residency requirement, otherwise satisfies this State’s voter eligibility requirements, if:
  - (A) The last place where a parent or legal guardian of the voter was, or under this chapter would have been, eligible to vote before leaving the United States is within this State; and
  - (B) The voter has not previously registered to vote in any other state.

“Dependent” means an individual recognized as a dependent by a uniformed service.

“Federal postcard application” means the application prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff(b)(2).

“Federal write-in absentee ballot” means the ballot described in Section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff-2.

“Military-overseas ballot” means:

- (1) A federal write-in absentee ballot;
- (2) A ballot specifically prepared or distributed for use by a covered voter in accordance with this chapter; or
- (3) A ballot cast by a covered voter in accordance with this chapter.

“Overseas voter” means a United States citizen who is living outside the United States.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“Uniformed service” means:

- (1) Active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States;
- (2) The Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or
- (3) The National Guard and state militia.

“Uniformed-service voter” means an individual who is qualified to vote and is:

- (1) A member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty;
- (2) A member of the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States;
- (3) A member on activated status of the National Guard or state militia; or
- (4) A spouse or dependent of a member referred to in this definition.

“United States”, used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

**§ -3 Elections covered.** The voting procedures in this chapter apply to:

- (1) A general, special, or primary election for federal office;
- (2) A general, special, or primary election for statewide or state legislative office or state ballot measure; and
- (3) A general, special, recall, primary, or runoff election for local government office or local ballot measure conducted under section 11-91.5 for which absentee voting or voting by mail is available for other voters.

**§ -4 Role of chief election officer.** (a) The chief election officer shall be the state official responsible for implementing this chapter and the State’s responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff et seq.

(b) The chief election officer shall establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information under this chapter. The chief election officer may satisfy the requirements of this chapter by utilizing an electronic transmission system established by the Federal Voting Assistance Program in lieu of creating a separate electronic transmission system.

(c) The chief election officer shall develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this State.

(d) The chief election officer shall accept forms prescribed by the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff et seq., for use by a covered voter that contains the prescribed standard declaration to swear or affirm specific representations pertaining to the voter’s identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot.

**§ -5 Overseas voter’s registration address.** In registering to vote, an overseas voter who is eligible to vote in this State shall use and be assigned to

the voting district of the person's residence, or the last place of residence prior to leaving this State, or, in the case of a voter described by paragraph (4) of the definition of "covered voter" under section -2, the address of the last place of residence in this State of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter shall be assigned a district for voting purposes.

**§ -6 Methods of registering to vote.** (a) To apply to register to vote, in addition to any other approved method, a covered voter may use the federal postcard application, or the application's electronic equivalent for all elections conducted in the State.

(b) A covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot, if it is received no later than thirty days prior to the election pursuant to section 11-16.

(c) The chief election officer shall ensure that the electronic transmission system described in section -4(b) is capable of accepting both a federal postcard application and any other approved electronic registration application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to register to vote.

**§ -7 Methods of applying for military-overseas ballot.** (a) A covered voter who is registered to vote in this State may apply for a military-overseas ballot using the absentee ballot application prescribed in section 15-4, the federal postcard application, or the application's electronic equivalent, as appropriate.

(b) A covered voter who is not registered to vote in this State may use a federal postcard application or the application's electronic equivalent to apply simultaneously to register to vote under section -6 and for a military-overseas ballot.

(c) The chief election officer shall ensure that the electronic transmission system described in section -4(b) is capable of accepting the submission of both a federal postcard application and any other approved electronic military-overseas ballot application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot.

(d) A covered voter may use the declaration accompanying the federal write-in absentee ballot as an application for a military-overseas ballot simultaneously upon its submission if it is received by the appropriate election official by the deadline prescribed under section 15-4.

**§ -8 Timeliness and scope of application for military-overseas ballot.** An application for a military-overseas ballot shall be timely if received by the request period prescribed under section 15-4. An application for a military-overseas ballot for a primary election, whether or not timely, shall be effective as an application for a military-overseas ballot for the general election and all subsequent elections held before December 31 of that calendar year.

**§ -9 Transmission of unvoted ballots.** (a) No later than forty-five days before the election or, if the forty-fifth day before the election is a weekend or holiday, no later than the business day preceding the forty-fifth day, the election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit a ballot and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application.

(b) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or, if offered by the voter's jurisdiction, internet delivery. The election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

(c) If a ballot application from a covered voter arrives after the jurisdiction begins transmitting ballots and balloting materials to voters, the official charged with distributing a ballot and balloting materials shall transmit them to the voter no later than two business days or as soon as allowable after the application arrives.

**§ -10 Receipt of voted ballot.** A valid military-overseas ballot shall be counted if it is received by the close of the polls on the day of the election and meets the requirements prescribed under section 15-9.

**§ -11 Declaration.** A military-overseas ballot shall include or be accompanied by a declaration or affirmation signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury or related offenses under the laws of the United States of this State.

**§ -12 Federal write-in absentee ballot.** A covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in section -3.

**§ -13 Confirmation of receipt of application and voted ballot.** The chief election officer, in coordination with local election officials, shall implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether:

- (1) The voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted; and
- (2) The voter's military-overseas ballot has been received.

**§ -14 Use of voter's electronic-mail address.** (a) The local election official shall request an electronic-mail address from each covered voter who registers to vote after the effective date of this chapter. An electronic-mail address provided by a covered voter may not be made available to the public or any individual or organization other than an authorized agent of the local election official and is exempt from disclosure under chapter 92F. The electronic-mail address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission, and verifying the voter's mailing address and physical location.

(b) A covered voter who provides an electronic-mail address may request that the voter's application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the calendar year of the date of the application or another shorter period the voter specifies, including for any runoff elections that occur as a result of those elections. An election official shall provide a military-overseas ballot to a voter who makes a standing request for each election to which the request is applicable. A covered voter who is entitled to receive a military-overseas ballot for a primary election under this subsection is entitled to receive a military-overseas ballot for the general election.

**§ -15 Publication of election notice.** (a) As soon as practicable before an election, an official in each jurisdiction charged with printing ballots and balloting material shall prepare an election notice for that jurisdiction, to be used in conjunction with a federal write-in absentee ballot. The election notice must contain a list of all of the ballot measures and federal, state, and local offices that as of that date the official expects to be on the ballot on the date of the election. The notice may contain specific instructions for how a voter is to indicate on the federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot measure to be contested.

(b) A covered voter may request a copy of an election notice. The official charged with preparing the election notice shall send the notice to the voter by facsimile, electronic mail, or regular mail, as the voter requests.

(c) As soon as ballot styles are finalized pursuant to section 11-119, and no later than the date ballots are required to be transmitted to voters under section 15-4, the official charged with preparing the election notice under subsection (a) shall update the notice with the certified candidates for each office and ballot measure questions and make the updated notice publicly available.

(d) A local election jurisdiction that maintains an internet website shall make the election notice prepared under subsection (a) and updated versions of the election notice regularly available on the website.

(e) The chief election officer or clerk in the case of county elections may satisfy the requirements of this section by making available ballot facsimiles or a certified list of candidates and ballot measures available on their respective websites.

**§ -16 Prohibition of nonsubstantive requirements.** (a) If a voter's mistake or omission in the completion of a document under this chapter does not prevent determining whether a covered voter is eligible to vote, the mistake or omission shall not invalidate the document. Failure to satisfy a nonsubstantive requirement, such as using paper or envelopes of a specified size or weight, shall not invalidate a document submitted under this chapter. In a write-in ballot authorized by this chapter if the intention of the voter is discernible under this State's uniform definition of what constitutes a vote, an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be accepted as a valid vote.

(b) Notarization is not required for the execution of a document under this chapter. An authentication, other than the declaration on the federal post-card application and federal write-in absentee ballot, shall not be required for execution of a document under this chapter. The declaration and any information in the declaration may be compared with information on file to ascertain the validity of the document.

**§ -17 Equitable relief.** A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with or enforce this chapter on application by:

- (1) A covered voter alleging a grievance under this chapter; or
- (2) The attorney general of the State.

No award of attorney fees or costs shall be permitted in any private cause of action initiated under this chapter.

**§ -18 Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. section

7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. section 7003(b).”

SECTION 2. Section 15-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If mailed absentee ballots are not received by the voter within five days of an election, ~~the~~ a covered voter under chapter \_\_\_ may request that absentee ballots be forwarded by facsimile. Upon receipt of such a request and confirmation that proper application was made, the clerk may transmit appropriate ballots by facsimile together with a form requiring the affirmations and information required by section 15-6, and a form containing a waiver of the right to secrecy, as provided by section 11-137. The voter may return the voted ballots and executed forms by facsimile or mail; provided that they are received by the issuing clerk no later than the close of polls on election day. Upon receipt, the clerk shall verify compliance with the requirements of section 15-9(c), and prepare the ballots for counting pursuant to section 15-10.”

SECTION 3. Section 15-3.5, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved July 5, 2012.)

**Note**

1. Edited pursuant to HRS §23G-16.5.