

CHAPTER 61

AN ACT concerning overseas absentee ballots and amending various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1976, c.23 (C.19:59-1) is amended to read as follows:

C.19:59-1 Short title amended.

1. This act shall be known and may be cited as the "Overseas Residents Absentee Voting Law."

2. Section 2 of P.L.1976, c.23 (C.19:59-2) is amended to read as follows:

C.19:59-2 Definitions.

2. As used in this act:

- a. "United States" means each of the several states, the District of Columbia, Commonwealth of Puerto Rico, Guam, American Samoa and the Virgin Islands; the term does not mean or include the Canal Zone or any other territory or possession of the United States.

- b. "Residing abroad" means residing outside the United States.

- c. "Federal election" means any general, special or primary held for the purpose of nominating or electing any candidate for the office of President or Vice President of the United States, Presidential elector, United States Senator or member of the United States House of Representatives.

- d. "Overseas voter" means any person in military service who, by reason of active duty or service, is absent on the date of an election from the place of residence in New Jersey where the person is or would be qualified to vote, and any citizen of the United States residing abroad who (1) immediately prior to his departure from the United States was domiciled in New Jersey and (a) was registered to vote, or had all the qualifications to register and vote, in New Jersey; or (b) had all the qualifications to register and vote in New Jersey other than having attained 18 years of age but has since attained that age; or (c) would, but for residence, have the qualifications to register and vote in New Jersey; (2) does not maintain a residence in the United States and is not registered or qualified to vote elsewhere in the United States; and (3) holds a valid passport or card of identity and registration issued under authority of the Secretary of State of the United States.

- e. "Electronic means" means any transmission made by an electronic telefacsimile machine or a similar device or by any other form of electronic transmission including, but not exclusive to electronic mail, that transports an authentic copy of a document from one user to another.

3. Section 3 of P.L.1976, c.23 (C.19:59-3) is amended to read as follows:

C.19:59-3 Registration of "overseas voter."

3. Upon compliance with the provisions of this act, P.L.1976, c.23 (C.19:59-1 et seq.), any person meeting the qualifications of an "Overseas voter" may register to vote and may apply for and vote by absentee ballot in any election held in the election district of this State in which the voter was formerly domiciled.

4. Section 4 of P.L.1976, c.23 (C.19:59-4) is amended to read as follows:

C.19:59-4 Request for application; qualification to vote.

4. a. Requests for an application to vote in an election as an overseas voter may be made by or on behalf of an applicant to the county clerk of the county in which the applicant was formerly domiciled or to the Secretary of State of New Jersey if the applicant does not know the county of the applicant's former domicile. All such applications shall be forwarded to such voters by air mail or electronic means, if so requested by the voter. Any overseas voter requesting that an application for a ballot be sent to that voter by electronic means shall supply to the Secretary of State or the county clerk, as appropriate, the telephone number and location to which the application is to be sent or the electronic address of the voter, as may be appropriate. To qualify an applicant to be sent a ballot by air mail in order to vote in an election, the applicant's completed application shall be received by the appropriate county clerk on or before the thirtieth day preceding the election. To qualify an applicant to be sent a ballot by electronic means in order to vote in an election, the applicant's completed application shall be received by the appropriate county clerk on or before the fourth day preceding the election.

b. An overseas voter may use the federal postcard application form to register to vote or to apply for an overseas ballot for a federal election. The voter may send the form by air mail or electronic means to either the appropriate county clerk or the Secretary of State and, in the case of an application for a ballot, may request that the ballot be sent by air mail or electronic means. Any voter sending the form by electronic means shall also mail simultaneously the federal postcard application form to the appropriate county clerk or the Secretary of State. Any federal postcard application for a ballot sent by an overseas voter and received by a county clerk or the Secretary of State shall also be considered a request for registration if that voter is not already registered.

5. Section 5 of P.L.1976, c.23 (C.19:59-5) is amended to read as follows:

C.19:59-5 Application form.

5. a. An application for an overseas ballot shall be in substantially the following form:
APPLICATION FOR AN OVERSEAS BALLOT

I, the undersigned, certify the following as a basis for an application as citizen of the United States residing outside the United States to receive a ballot to be voted at the election to be held on (date of election) that is to say:

1. I am a citizen of the United States;
2. I presently reside at (if mail should be addressed other than to my residence, also provide address for mail);
3. I was born on (month, day, year)
4. a. I hold a valid U.S. Passport #, dated, or
b. I hold a United States Citizens Identity and Registration Card (Form FS 225) dated issued by (name and location of U.S. Embassy or Consulate).
5. Immediately prior to taking up residence abroad I was domiciled in New Jersey and resided at (street address), (municipality), (county) (If formerly registered to vote from that address check here ()).

6. I do not maintain a domicile in the United States and am not registered, entitled or applying to vote in any state other than New Jersey.

7. I understand that any false statement knowingly made in this application subjects me to the penalties provided by law for fraudulent voting.

..... Applicant

(Signature)

Dated:.....Applicant

(Print or type name)

b. There shall also be sent to the applicant by air mail or electronic means such instructions and portions of the law or regulations as the Secretary of State shall direct.

c. Any overseas voter requesting that a ballot be sent to that voter by electronic means shall indicate on the application for the ballot the telephone number and location to which the ballot is to be sent or the electronic address of the voter, as may be appropriate.

6. Section 6 of P.L.1976, c.23 (C.19:59-6) is amended to read as follows:

C.19:59-6 Approval; lists; inspection; delivery to county board.

6. Each county clerk, upon receipt of an application for an overseas ballot, shall determine whether or not the applicant is qualified to vote such a ballot, make a list of those applications approved and disapproved, which list shall be open to inspection by election officials and the public, and shall forward an overseas ballot to each person whose application is approved. For each voter whose application is approved, the county clerk shall deliver to the county board of elections the completed application form for retention by the board for signature comparison with that on the certificate on the inner envelope containing the ballot upon its receipt.

7. Section 7 of P.L.1976, c.23 (C.19:59-7) is amended to read as follows:

C.19:59-7 Overseas ballot; form.

7. The county clerk shall prescribe the form of the overseas ballot.

8. Section 8 of P.L.1976, c.23 (C.19:59-8) is amended to read as follows:

C.19:59-8 Instructions for completion, return of ballots; notice.

8. a. Each county clerk shall send by air mail, with each overseas ballot transmitted by such means, appropriate printed instructions for its completion and return, together with an inner and outer envelope similar to that required as to civilian absentee ballots with a legend on the inner envelope stating "Overseas Ballot."

b. Each county clerk shall send to each overseas voter requesting that an overseas ballot be sent to that voter by electronic means all appropriate printed instructions for its completion and return. The printed instructions sent to each such voter shall include a certificate substantially the same as provided for in section 9 of P.L.1976, c.23 (C.19:59-9).

c. The printed instructions sent with each overseas ballot, including instructions sent by electronic means, shall include a copy of the following notice:

PENALTY FOR FRAUDULENT VOTING

Any person who knowingly violates any of the provisions of the Overseas Residents Absentee Voting Law, or who, not being entitled to vote thereunder, fraudulently votes or attempts to vote thereunder or enables or attempts to enable another person, not entitled to vote thereunder, to vote fraudulently thereunder or who prevents or attempts to prevent by fraud the voting of any person legally entitled to vote under this act, shall be guilty of an indictable offense, and upon conviction thereof shall be subject, in addition to such other penalties as are authorized by law, to disenfranchisement unless and until pardoned or restored by law to the right of suffrage.

9. Section 12 of P.L.1993, c.73 (C.19:59-8.1) is amended to read as follows:

C.19:59-8.1 Processing overseas voter requests transmitted by electronic means.

12. Whenever a county clerk receives a request by electronic means from an overseas voter that an overseas ballot be sent to that person by electronic means, the county clerk shall verify the voter's eligibility to vote as an overseas voter in the State and the county desired. If the overseas voter is eligible to vote therein, the county clerk shall send the ballot to the voter as soon as practicable by electronic means using the telephone number or electronic address supplied by the voter for that purpose. If the overseas voter is not eligible to vote in the State or the county desired, notice of noneligibility shall be provided to the voter by electronic means as soon as practicable after the receipt of the request.

10. Section 9 of P.L.1976, c.23 (C.19:59-9) is amended to read as follows:

C.19:59-9 Printing of certificate upon margin of flap of inner envelope.

9. Upon the margin of the flap of the inner envelope to be sent to an overseas voter shall be printed a certificate substantially as follows:

I, the undersigned, residing at am the person who applied for, received and voted the enclosed Overseas Ballot.

Dated:.....

.....Voter (SIGNATURE)

.....Voter (PRINT or type name)

11. Section 10 of P.L.1976, c.23 (C.19:59-10) is amended to read as follows:

C.19:59-10 Completion and transmittal of ballot by mail or electronic means.

10. a. For overseas ballots other than such ballots sent to the voter by electronic means, the procedure for completing the ballot shall be as follows:

Upon completion of the ballot by indicating the voter's choice of candidates for the offices named, the ballot shall be placed in the inner envelope and sealed. Upon completion and signing in the voter's handwriting the certificate attached to the inner envelope, the inner envelope shall be placed in the outer envelope, which when sealed shall be mailed postage prepaid to the county board of elections whose address is printed thereon.

b. For overseas ballots sent to the voter by electronic means, the procedure for completing the ballot shall be as follows:

After the ballot is received and completed by the voter by indicating that person's choice of candidates for the offices named, the ballot shall be placed in a secure envelope. Upon completion and signing in the voter's handwriting of the certificate sent to the voter pursuant to section 8 of P.L.1976, c.23 (C.19:59-8), it shall be placed in the same envelope as the voted ballot. The envelope shall then be sealed securely and sent immediately by air mail to the appropriate county board of elections in this State.

c. Notwithstanding the provisions of subsections a. and b. of this section, a copy of a voted overseas ballot may be transmitted by electronic means to the appropriate county board of elections in this State. Such a ballot shall be subject to the provisions of sections 3 and 4 of P.L.1995, c.195 (C.19:59-14 and C.19:59-15).

12. Section 11 of P.L.1976, c.23 (C.19:59-11) is amended to read as follows:

C.19:59-11 Receiving and handling of ballots.

11. Upon receipt of each overseas ballot, other than a ballot which had been sent by electronic means to an overseas voter, the signature on the certificate on the inner envelope shall be compared to that on the person's application. All ballots, whether originally sent to an overseas voter by air mail or electronic means, shall be approved, disapproved, processed, counted and disputes in connection therewith shall be handled in the same manner as is applicable to other absentee ballots. No ballot received after the time designated for the closing of the polls shall be counted.

13. Section 12 of P.L.1976, c.23 (C.19:59-12) is amended to read as follows:

C.19:59-12 Request for overseas ballot for all elections during a calendar year.

12. An overseas voter may request, on any application form used, an overseas ballot for all elections held during the calendar year in which the request is made. Any instructions sent to an applicant pursuant to section 5 of P.L.1976, c.23 (C.19:59-5) shall inform the applicant that such a request may be made. If such a request is made, an overseas ballot shall be sent in a timely manner to the voter for all such elections.

14. Section 13 of P.L.1976, c.23 (C.19:59-13) is amended to read as follows:

C.19:59-13 Rules and regulations.

13. To effectuate the purposes of this act, P.L.1976, c.23 (C.19:59-1 et seq.), and its administration, the Secretary of State is authorized to promulgate such rules and regulations as he deems necessary and desirable.

15. Section 3 of P.L.1995, c.195 (C.19:59-14) is amended to read as follows:

C.19:59-14 Validity of voted overseas ballot transmitted by electronic means.

3. Notwithstanding any law, rule or regulation to the contrary, a copy of a voted overseas ballot or of a voted federal write-in absentee ballot which is transmitted by electronic means to the appropriate county board of elections in this State shall be considered valid and counted if it:

a. is from a qualified voter;

b. has been transmitted to the appropriate county board of elections no later than the time designated by law for the closing of the polls on that day; and

c. is accompanied by the following statement, which shall be certified by the voter's signature: "I understand that by transmitting by electronic means a copy of my voted ballot I am voluntarily waiving my right to a secret ballot. At the same time, I pledge to place the original voted ballot in a secure envelope, together with any other required certification, and send the documents immediately by air mail to the appropriate county board of elections."

16. Section 4 of P.L.1995, c.195 (C.19:59-15) is amended to read as follows:

C.19:59-15 Procedure relative to ballot transmitted by electronic means.

4. a. Immediately after a copy of the voted overseas ballot or federal write-in absentee ballot has been transmitted by electronic means to the appropriate county board of elections, as permitted pursuant to section 3 of P.L.1995, c.195 (C.19:59-14), the overseas voter shall place the original voted ballot in a secure envelope, together with a certificate substantially the same as provided for in section 9 of P.L.1976, c.23 (C.19:59-9), and send the documents by air mail to the appropriate county board of elections.

b. All copies of voted ballots received by electronic means shall be approved, disapproved, processed and counted, and disputes in connection therewith shall be handled, in the same manner as is applicable to other absentee ballots. No ballot received after the time designated for the closing of the polls shall be counted.

c. The county board of elections shall take all necessary precautions to preserve the security of the ballot materials and specifically shall ensure that the vote cast by a voter using a ballot transmitted by electronic means is not revealed, except to the extent necessary by law or judicial determination. Upon the completion of all inspections of a ballot transmitted by electronic means required by law, the board or any employee thereof acting under its direction shall promptly separate the waiver certification from the ballot transmitted by electronic means. Any person handling such a ballot shall not identify the votes cast by any voter, except upon judicial determination.

d. Prior to certification of the results of the election, the county board shall:

(1) compare the information on the copy transmitted by electronic means of each voted ballot with the same on the original voted ballot sent by air mail by the voter who transmitted to the county board a copy of the voted ballot by electronic means, and the signature on the statement received by electronic means with the signature on the certificate received by air mail; and

(2) ascertain whether an original voted ballot has been received for each copy of a voted ballot received by electronic means and counted.

Whenever the particulars of the copy of a voted ballot transmitted by electronic means do not conform exactly with the particulars of the original voted ballot sent by air mail to the county board afterwards by that voter and whenever an original voted ballot has not been received which corresponds to a copy of a voted ballot transmitted by electronic means which has been received and counted by the county board, those ballots and all other pertinent documents and information relative to those ballots shall be turned over to the superintendent of elections in counties having a superintendent and the prosecutor in all other counties for further investigation and action.

e. Within 30 days after the election, the county board shall gather and keep together the copy of the voted ballot transmitted by electronic means, the certified statement and the

original voted ballot sent by air mail of each voter who transmitted a copy of a voted ballot by electronic means. Those ballots needed for an investigation conducted by the superintendent of elections or the county prosecutor, as the case may be, or by any other law enforcement official shall be returned to the county board as soon as practicable after the conclusion of the investigation. All ballots and documents relative to a copy of a voted ballot transmitted by electronic means and received by the county board shall be retained by it for a period of one year following the day of the election. The superintendent of elections in counties having a superintendent and the prosecutor in all other counties shall have the authority to impound all such documents whenever the superintendent or prosecutor shall deem such action necessary.

17. Section 6 of P.L.1953, c.211 (C.19:57-6) is amended to read as follows:

C.19:57-6 Application, request to county clerk.

6. In the case of any election, the application or request shall be made to the county clerk of the county.

In the case of applications for civilian absentee ballots, the county clerk shall stamp thereon the date on which said application was received in his office. In the case of applications for military service ballots, as defined in section 2 of P.L.1953, c.211 (C.19:57-2) and overseas ballots, as provided for in P.L.1976, c.23 (C.19:59-1 et seq.), no application shall be refused on the grounds that it was submitted too early.

18. Section 7 of P.L.1953, c.211 (C.19:57-7) is amended to read as follows:

C.19:57-7 Absentee ballots; information and notices.

7. a. The Secretary of State, through the Division of Elections in the Department of State shall be responsible for providing all information regarding military service ballots, as defined in section 2 of P.L.1953, c.211 (C.19:57-2), and overseas ballots, as provided for in P.L.1976, c.23 (C.19:59-1 et seq.). The division shall also make available valid military service voter registration applications, military service ballot applications and overseas registration and ballot applications to any military service or overseas voter who wishes to register to vote or to vote in any jurisdiction in this State. The division shall publish or cause to be published the following notice in substantially the following form:

**NOTICE TO MILITARY SERVICE VOTERS AND
TO THEIR RELATIVES AND FRIENDS**

If you are in the military service, or the spouse or dependent of a person in military service or are a patient in a veterans' hospital or a civilian attached to or serving with the Armed Forces of the United States, or the spouse or dependent of and accompanying or residing with a civilian attached to or serving with the Armed Forces of the United States, and desire to vote, or if you are a relative or friend of any such person who, you believe, will desire to vote in the..... (school, municipal, primary, presidential primary, general or other) election to be held on..... (date of election) kindly write to the undersigned at once making application for a military service ballot to be voted in said election to be forwarded to you, stating your name, age, serial number if you are in military service, home address and the address at which you are stationed or can be found, or if you desire the military service ballot for a relative or friend then make application under oath for a military service ballot to be forwarded to him, stating in your application that he is

over the age of 18 years and stating his name, serial number if he is in military service, home address and the address at which he is stationed or can be found.

Military service voters may also apply for a military service ballot by sending a federal postcard application form to the undersigned.

On the application for a military service ballot, military service voters may request that a military service ballot be sent for all subsequent elections through and including the next two regularly scheduled general elections for federal office which take place after the request is made.

(NOTE: MILITARY SERVICE VOTER CLAIMING MILITARY STATION AS HOME ADDRESS FOR VOTING PURPOSES MAY NOT USE MILITARY ABSENTEE BALLOT UNLESS REGISTERED TO VOTE IN THE MUNICIPALITY WHERE SUCH STATION IS LOCATED.)

Forms of application other than federal postcard application forms can be obtained from the undersigned. Dated.....

(signature and title of Director of Division of Elections)

.....

(address of Division of Elections)

b. The county clerk of the county, in the case of any Statewide election, countywide election, or school election in a regional or other school district comprising more than one municipality; the clerk of the municipality, in the case of any municipal election or school election in a school district comprising a single municipality; and the commissioners or other governing or administrative body of the district, in the case of any election to be held in any fire district, road district, sewerage district, street lighting district, water supply district or other special district, other than a municipality, created for specified public purposes within one or more municipalities, shall publish or cause to be published the following notice in substantially the following form:

NOTICE TO PERSONS DESIRING CIVILIAN ABSENTEE BALLOTS

If you are a qualified and registered voter of the State who wants to vote by absentee ballot in the..... (school, municipal, primary, presidential primary, general, or other) election to be held on..... (date of election) kindly complete the application form below and send to the undersigned, or write or apply in person to the undersigned at once requesting that a civilian absentee ballot be forwarded to you. Such request must state your home address, and the address to which said ballot should be sent, and must be dated and signed with your signature. If any person has assisted you to complete the absentee ballot application, the name, address and signature of the assistor must be provided on the application. Also, you must sign and date the application for it to be valid and processed. No person who is a candidate in the election for which the voter requests an absentee ballot may provide any assistance in the completion of the ballot or may serve as an authorized messenger. No civilian absentee ballot will be furnished or forwarded to any applicant unless request therefor is received not less than seven days prior to the election, and contains the foregoing information.

Voters who are permanently and totally disabled, and any other voters who wish to vote only by absentee ballot in a general election, and who state that on their request shall, after their initial request and without further action on their part, be forwarded an absentee ballot application by the county clerk for future elections in which they are eligible to vote and until the voter requests that he or she no longer be sent an application. Permanently and totally disabled voters also have the option of indicating on their absentee ballot applications

that they would prefer to receive absentee ballots for each election that takes place during the remainder of this calendar year. Permanently and totally disabled voters who exercise this option will be furnished with absentee ballots for each election that takes place during the remainder of this calendar year, without further action on their part.

Application forms may be obtained by applying to the undersigned either in writing or by telephone, or the application form provided below may be completed and forwarded to the undersigned.

Dated.....

(signature and title of county clerk)

.....

(address of county clerk)

.....

(Telephone No. of county clerk)

**APPLICATION FORM FOR CIVILIAN
ABSENTEE BALLOT**

(Form to be prepared by the Secretary of State pursuant to section 17 of P.L.1977, c.47 (C.19:57-4.1)).

c. The absentee ballot materials shall contain a notice that any person voting by absentee ballot who registers by mail after January 1, 2003, who did not provide personal identification information when registering and is voting for the first time in his or her current county of residence following registration shall include the required identification information with the absentee ballot, and that failure to include such information shall result in the rejection of the ballot.

d. Such notices as described in subsections a. and b. of this section shall be separately published prior to the 50th day immediately preceding the holding of any election.

Notices relating to any Statewide or countywide election shall be published in at least two newspapers published in the county. All officials charged with the duty of publishing such notices shall publish the same in at least one newspaper published in each municipality or district in which the election is to be held or if no newspaper be published in said municipality or district, then in a newspaper published in the county and circulating in such municipality, municipalities or district. All such notices shall be display advertisements.

19. Section 7 of P.L.2004, c.88 (C.19:61-7) is amended to read as follows:

C.19:61-7 Report on certain absentee ballots in federal elections.

7. No later than the 90th day following the day of each regularly scheduled general election of candidates for federal office, each county board of elections shall submit to the Secretary of State for transmittal to the Election Assistance Commission, established pursuant to section 201 of Pub.L.107-252 (42 U.S.C. s.15321), a report on the combined number of absentee ballots transmitted to military service voters and overseas voters and the combined number of such ballots which were returned by such voters, judged to be valid, cast and canvassed. The report shall be in the format developed by the commission. The Secretary of State shall make copies of each such report available to the general public.

20. This act shall take effect immediately.

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Approved August 12, 2008.