

## CHAPTER 39

**AN ACT** concerning voting by New Jersey's overseas residents, and amending and supplementing various parts of the statutory law.

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

1. 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 United States 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. "Election" shall have the same meaning as defined in R.S.19:1-1, and include any federal, State, or local election, and any public question placed before the voters.

- e. "Overseas voter" means any person in military service, or that person's spouse, partner in civil union, domestic partner, or dependent, who, by reason of the person's active duty or service, is, in the case of the person, 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, or in the case of the person's spouse, partner in civil union, domestic partner, or dependent, absent on the date of an election from the place of residence in New Jersey where that spouse, partner in civil union, domestic partner, or dependent, is or would be qualified to vote.

The term also means any citizen of the United States temporarily residing abroad who (1) immediately prior to departure from the United States was domiciled in New Jersey and (a) was last registered to vote, or last eligible to register and vote, in New Jersey; or (b) would have been eligible to register and vote in New Jersey except that the citizen had not attained 18 years of age the requirement of which has since been met; or (c) would have been eligible to register and vote in New Jersey except that the citizen had not met the residency requirement; (2) is not registered or qualified to vote elsewhere in the United States; and (3) holds a valid passport or passport card or other proof of citizenship issued under authority of the Secretary of State of the United States.

- f. "Overseas federal election voter" means any citizen of the United States residing abroad who does not intend to return or whose intent to return is uncertain and who (1) immediately prior to departure from the United States was domiciled in New Jersey and (a) was last registered to vote, or last eligible to register and vote, in New Jersey; or (b) would have been eligible to register and vote in New Jersey except that the citizen had not attained 18 years of age the requirement of which has since been met; or (c) would have been eligible to register and vote in New Jersey except that the citizen had not met the residency requirement; (2) is not registered or qualified to vote elsewhere in the United States; and (3) holds a valid passport or passport card or other proof of citizenship issued under authority of the Secretary of State of the United States.

The term also means any citizen of the United States who was born outside of the United States, is not described above, and, except for the residency requirement of New Jersey,

otherwise satisfies the State's voter eligibility requirements, if the last place where a parent, legal guardian, spouse, partner in civil union, or domestic partner of the voter was, or under P.L.1976, c.23 (C.19:59-1 et seq.) would have been, eligible to register and vote before departure from the United States is within New Jersey and the voter has not previously registered to vote elsewhere in the United States.

g. "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.

h. "Dependent" means an individual recognized as a dependent by a military service.

i. "Federal postcard application" means the application prescribed under section 101 of Pub.L.99-410 (42 U.S.C. s.1973ff(b)(2)).

j. "Federal write-in absentee ballot" means the ballot described under section 103 of Pub.L.99-410 (42 U.S.C. s.1973ff-2).

k. "Military service" means the active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States; 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 the National Guard or State militia.

2. 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, overseas federal election voter.

3. Upon compliance with the provisions of this act, P.L.1976, c.23 (C.19:59-1 et seq.), as amended by P.L.2017, c.39: a. any person meeting the qualifications of an overseas voter may register to vote and may apply for and vote by mail-in ballot in any election held in the election district of this State in which the voter was formerly domiciled; and b. any person meeting the qualifications of an overseas federal election voter may register to vote and may apply for and vote by mail-in ballot in any federal election held in the election district of this State in which the voter, or in the case of an overseas federal election voter who was born outside of the United States described in subsection f. of section 2 of P.L.1976, c.23 (C.19:59-2), in which the voter's parent, legal guardian, spouse, partner in civil union, or domestic partner was formerly domiciled.

3. 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 or a federal election as an overseas federal election voter may be made by or on behalf of an applicant to the county clerk of the county in which the applicant, or in the case of an overseas federal election voter who was born outside of the United States described in subsection f. of section 2 of P.L.1976, c.23 (C.19:59-2), in which the voter's parent, legal guardian, spouse, partner in civil union, or domestic partner, was formerly domiciled, or to the Secretary of State of New Jersey if the applicant does not know the county of 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 or overseas federal election voter requesting that an application for a ballot be sent to that voter by electronic means shall supply in the request 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, and, if known, the address where the voter, or the voter's parent, legal guardian, spouse, partner in civil union, or domestic partner, as appropriate, was domiciled before departure from the United States. To qualify for a ballot to be sent by air mail, the applicant's completed application shall be received by the appropriate county clerk or the Secretary of State on or before the thirtieth day preceding the election. To qualify for a ballot to be distributed by electronic means, the applicant's completed application shall be received by the appropriate county clerk or the Secretary of State on or before the fourth day preceding the election.

b. An overseas voter or overseas federal election voter may use the federal postcard application form to register to vote or to apply for an overseas ballot for any election in which the voter is eligible to vote. 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 the use of a federal postcard 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 or overseas federal election 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.

4. 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. Other than a federal postcard application, an application for a ballot by an overseas voter or overseas federal election voter shall be in substantially the following form:

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) for ..... (fill in elected office or public question, or both):

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. I hold a:
  - a. valid U.S. Passport # ....., dated ....., or
  - b. valid U.S. Passport Card # ....., dated ....., or
  - c. valid Certificate of Citizenship, dated ....., or
  - d. other valid form of identification recognized as such under federal or state law: ..... (form of identification), dated .....
5. a. 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 ( ) ), or
  - b. I was born outside of the United States and my parent, legal guardian, spouse, partner in civil union, or domestic partner, before leaving the United States, was last domiciled in New Jersey, residing at ..... (street address), ..... (municipality), .....(county).
6. I 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 or overseas federal election 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.

5. 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 a ballot by an overseas voter or overseas federal election voter, including a federal postcard application, 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.

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

C.19:59-7 Form of ballot.

7. The county clerk shall prescribe the form of the ballot for overseas voters and overseas federal election voters.

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

C.19:59-10 Completion, transmittal of ballot.

10. a. For ballots sent to overseas voters or overseas federal election voters, 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 or the voter's choice regarding a public question, or both, 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 ballots sent to overseas voters or overseas federal election voters 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 or that person's choice regarding a public question, or both, 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 an overseas voter's or overseas federal election voter's 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).

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

C.19:59-12 Request for ballots, transmittal.

12. An overseas voter or overseas federal election voter may request, on any application form used, a ballot for all elections held during the calendar year in which the request is made and in which the voter is eligible to vote. 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, a ballot shall be sent in a timely manner to the voter for all such elections in which the voter is eligible to vote and by the transmission method first requested by the voter unless the voter instructs otherwise.

9. Section 26 of P.L.2011, c.37 (C.19:59-16) is amended to read as follows:

C.19:59-16 Information provided to overseas voters, overseas federal elections voters.

26. For the purpose of complying with the federal "Uniformed and Overseas Citizens Absentee Voting Act," 42 U.S.C. s.1973ff-1 et seq., the office of the Secretary of State shall:

a. be designated as the single State office responsible for providing information to all overseas voters and overseas federal election voters who wish to register to vote or vote in any jurisdiction in the State with respect to voter registration procedures and vote by mail procedures to be used by overseas voters and overseas federal election voters for all elections in which the voter is eligible to vote;

b. work with the federal Election Assistance Commission and the federal Department of Defense to develop standards to report data on the number of ballots transmitted and received by mail or electronic means by overseas voters or overseas federal election voters pursuant to the "Overseas Residents Absentee Voting Law," P.L.1976, c.23 (C.19:59-1 et seq.) and section 7 of P.L.2004, c.88 (C.19:61-7); and

c. provide such additional information relating to voting by overseas voters and overseas federal election voters from this State as the Department of Defense determines is necessary.

10. R.S.19:31-6 is amended to read as follows:

Registration places, time, requirements.

19:31-6. Any person qualified to vote in an election shall be entitled to vote in the election if the person shall have registered to vote on or before the 21st day preceding the election by:

- a. registering in person at any offices designated by the commissioner of registration for providing and receiving registration forms;
- b. completing a voter registration form while applying for a motor vehicle driver's license from an agent of the New Jersey Motor Vehicle Commission, as provided for in section 24 of P.L.1994, c.182 (C.39:2-3.2);
- c. completing and returning to the Secretary of State or having returned thereto a voter registration form received from a voter registration agency, as defined in subsection a. of section 26 of P.L.1994, c.182 (C.19:31-6.11), while applying for services or assistance or seeking a recertification, renewal or change of address at an office of that agency;
- d. completing and returning to the Secretary of State a voter registration form obtained from a public agency, as defined in subsection a. of section 15 of P.L.1974, c.30 (C.19:31-6.3);
- e. completing and returning to the Secretary of State or having returned thereto a voter registration form received from a door-to-door canvass or mobile registration drive, as provided for in section 19 of P.L.1974, c.30 (C.19:31-6.7);
- f. completing and returning to the Secretary of State a federal mail voter registration form, as prescribed in subsection (b) of section 9 of the "National Voter Registration Act of 1993 (42 U.S.C. s.1973gg et seq.);
- g. completing and returning to the Secretary of State or the appropriate county clerk an application for a federal postcard application form to register to vote, as permitted pursuant to the "Overseas Absentee Voting Act" (42 U.S.C. s.1973ff-1 et seq.) and section 4 of P.L.1976, c.23 (C.19:59-4); or
- h. completing a provisional ballot affirmation statement and voting the provisional ballot in the previous election, if the person who submitted the provisional ballot in that election is determined not to be a registered voter.

When the commissioner has designated a place or places other than his office for receiving registrations, the commissioner shall cause to be published a notice in a newspaper circulated in the municipality wherein such place or places of registration shall be located. Such notice shall be published pursuant to R.S.19:12-7.

Any office designated by the commissioner of registration for receiving registration forms shall have displayed, in a conspicuous location, registration and voting instructions. These instructions shall be the same as those provided for polling places under R.S.19:9-2 and shall be provided by the commissioner.

11. 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 ballot for an overseas voter or overseas federal election voter 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 vote by mail ballots with a legend on the inner envelope stating "Ballot for Overseas Voter" or "Ballot for Overseas Federal Election Voter," as appropriate.

b. Each county clerk shall send to each overseas voter or overseas federal election voter requesting that a 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 ballot to an overseas voter or overseas federal election voter, 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.

12. 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, overseas federal election voter requests, transmittal by electronic means.

12. Whenever a county clerk receives a request by electronic means from an overseas voter or overseas federal election voter that a ballot be sent to that person by electronic means, the county clerk shall verify the voter's eligibility to vote as an overseas voter or overseas federal election voter in the State and the county desired. If the overseas voter or overseas federal election voter is eligible to vote therein, the county clerk shall send the appropriate ballot to the voter at least 45 days before the day of the election and thereafter by electronic means using the telephone number or electronic address supplied by the voter for that purpose. If the overseas voter or overseas federal election 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.

13. 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 or overseas federal election 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 Ballot.

Dated:.....

.....Voter (SIGNATURE)

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

14. 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 ballot from an overseas voter or overseas federal election voter, other than a ballot which had been sent by electronic means to an overseas voter or overseas federal election 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 or overseas federal election 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 vote by mail ballots. No ballot received after the time designated for the closing of the polls shall be counted.

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 an overseas voter's or overseas federal election voter's voted ballot, or 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 transmission by electronic means.

4. a. Immediately after a copy of an overseas voter's or overseas federal election voter's voted ballot, or a voted 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 or overseas federal election 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 vote by mail 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. This act shall take effect on the 90th day after the date of enactment.

Approved March 30, 2017.