STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 115

By: Ivester, Sparks, David, Bass, Garrison and Brinkley of the Senate

and

Trebilcock, Walker, Tibbs and Ritze of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Uniform Military and Overseas Voters Act; providing short title; defining terms; specifying application of voting procedures; specifying duties of Secretary of State Election Board; providing procedures for registration of overseas voters; providing procedures relating to ballot applications; specifying certain duties of covered voters; providing procedures for processing of ballot applications and transmittal of ballots; requiring receipt of ballots by certain date and time to be valid; specifying offices and ballot measures for which certain ballot may be used; requiring ballot be counted if delivered by certain date and time; requiring certain declaration; requiring implementation of electronic free-access system; providing for request of electronic-mail addresses from certain voters; exempting certain information from Open Records Act; requiring certain election notice and providing procedures therefor; providing for processing of ballots containing mistake or omission; specifying that notarization of ballot not required; specifying circumstances under which court may issue injunction to enforce act; providing for application and construction of uniform act; specifying laws modified, limited or superseded; repealing 26 O.S. 2001, Sections 14-116 and 14-117, as last amended by Sections 1 and 2, Chapter 272,

O.S.L. 2009, 14-119, as amended by Section 5, Chapter 272, O.S.L. 2009 and 14-120.1, as last amended by Section 2, Chapter 149, O.S.L. 2010 (26 O.S. Supp. 2010, Sections 14-116, 14-117, 14-119 and 14-120.1), which relate to absentee ballots for overseas and military voters; repealing 26 O.S. 2001, Section 20-101, as last amended by Section 17 of Enrolled House Bill No. 1615 of the 1st Session of the 53rd Oklahoma Legislature, which is a duplicate section and which relates to Presidential Preferential Primary elections; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-136 of Title 26, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Uniform Military and Overseas Voters Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-137 of Title 26, unless there is created a duplication in numbering, reads as follows:

As used in the Uniform Military and Overseas Voters Act:

1. "Covered voter" means:

a. a uniformed-service voter or an overseas voter who is registered to vote in this state,

b. a uniformed-service voter defined in subparagraph a of paragraph 9 of this section, whose voting residence is

in this state and who otherwise satisfies this state's voter eligibility requirements,

c. 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,

d. 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

e. an overseas voter who was born outside the United States, is not described in subparagraph c or d of this paragraph, and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements, if:

(1) the last place where a parent or legal guardian of the voter was, or under this act would have been, eligible to vote before leaving the United States is within this state, and

(2) the voter has not previously registered to vote in any other state;

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

3. “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);

4. “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;

5. “Military-overseas ballot” means:

a. a federal write-in absentee ballot,

b. a ballot specifically prepared or distributed for use by a covered voter in accordance with this act, or

c. a ballot cast by a covered voter in accordance with this act;

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

7. “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;

8. “Uniformed service” means:

a. active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States,

b. 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

c. the National Guard and state militia;

9. "Uniformed-service voter" means an individual who is qualified to vote and is:

a. 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,

b. 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,

c. a member on activated status of the National Guard or state militia, or

d. a spouse or dependent of a member referred to in this paragraph; and

10. "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.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-138 of Title 26, unless there is created a duplication in numbering, reads as follows:

The voting procedures in the Uniform Military and Overseas Voters Act apply to:

1. A general, special, presidential preferential primary, primary or runoff primary election for federal office;

2. A general, special, primary or runoff primary election for statewide or state legislative office or state ballot measure; and

3. A general, special, primary or runoff primary election for local government office or local ballot measure for which absentee voting or voting by mail is available for other voters.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-139 of Title 26, unless there is created a duplication in numbering, reads as follows:

A. The Secretary of the State Election Board is the state official responsible for implementing the Uniform Military and Overseas Voters Act and the state's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff et seq.

B. The Secretary shall make available to covered voters information regarding voter registration procedures for covered voters and procedures for casting military-overseas ballots. The Secretary may delegate the responsibility under this subsection only

to the state office designated in compliance with Section 102(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff-1(b)(1).

C. The Secretary 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 act.

D. The Secretary shall:

1. 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; and

2. To the extent reasonably possible, coordinate with other states to carry out this subsection.

E. The Secretary shall prescribe the form and content of a declaration for use by a covered voter 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. The declaration must be based on the declaration prescribed to accompany a federal write-in absentee ballot, as modified to be consistent with this act. The Secretary shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration,

is a prominent part of all balloting materials for which the declaration is required.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-140 of Title 26, unless there is created a duplication in numbering, reads as follows:

In registering to vote, an overseas voter who is eligible to vote in this state shall use and must be assigned to the voting precinct of the address of the last place of residence of the voter in this state, or, in the case of a voter described by subparagraph c of paragraph 1 of Section 2 of this act, 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 must be assigned an address for voting purposes.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-141 of Title 26, unless there is created a duplication in numbering, reads as follows:

A. To apply to register to vote, in addition to any other approved method, a covered voter may use a federal postcard application, or the application's electronic equivalent.

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. Such application shall be processed as provided in Section 4-110.1 of Title 26 of the Oklahoma Statutes.

C. The Secretary of the State Election Board shall ensure that the electronic transmission system described in subsection C of Section 4 of this act 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.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-142 of Title 26, unless there is created a duplication in numbering, reads as follows:

A. A covered voter who is registered to vote in this state may apply for a military-overseas ballot using either the regular absentee ballot application in use in the voter's jurisdiction under Section 14-101 et seq. of Title 26 of the Oklahoma Statutes or the federal postcard application or the application's electronic equivalent.

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 of this act and for a military-overseas ballot.

C. The Secretary of the State Election Board shall ensure that the electronic transmission system described in subsection C of Section 4 of this act 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 a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by the last day for other voters in this state to apply for an absentee ballot for that election pursuant to the provisions of Section 14-103 of Title 26 of the Oklahoma Statutes.

E. To receive the benefits of the Uniform Military and Overseas Voters Act, a covered voter must inform the appropriate election official that the voter is a covered voter. Methods of informing the appropriate election official that a voter is a covered voter include:

1. The use of a federal postcard application or federal write-in absentee ballot;

2. The use of an overseas address on an approved voter registration application or ballot application; and

3. The inclusion on an approved voter registration application or ballot application of other information sufficient to identify the voter as a covered voter.

F. This act does not preclude a covered voter from voting under the provisions of Section 14-101 et seq. of Title 26 of the Oklahoma Statutes.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-143 of Title 26, unless there is created a duplication in numbering, reads as follows:

An application for a military-overseas ballot is timely if received by the last day for other voters in this state to apply for an absentee ballot for that election. An application for a military-overseas ballot for a primary election, whether or not timely, is effective as an application for a military-overseas ballot for the general election. An application for a military-overseas ballot is effective for a runoff election necessary to conclude the election for which the application was submitted.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-144 of Title 26, unless there is created a duplication in numbering, reads as follows:

A. For an election described in paragraph 1 or 2 of Section 3 of this act for which this state has not received a waiver pursuant to Section 579 of the Military and Overseas Voter Empowerment Act, 42 U.S.C. 1973ff-1(g)(2), 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

submit a valid military-overseas ballot application as required by Section 14-118 of Title 26 of the Oklahoma Statutes.

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 not later than two business days after the application arrives.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-145 of Title 26, unless there is created a duplication in numbering, reads as follows:

To be valid, a military-overseas ballot must be received by the appropriate local election official not later than the close of the polls, or the voter must submit the ballot for electronic transmission or other authorized means of delivery not later than 12:01 a.m., at the place where the voter completes the ballot, on the date of the election.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-146 of Title 26, unless there is created a duplication in numbering, reads as follows:

A covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in paragraphs 1 and 2 of Section 3 of this act.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-147 of Title 26, unless there is created a duplication in numbering, reads as follows:

A. A valid military-overseas ballot cast in accordance with Section 10 of this act must be counted if it is delivered by 7:00 p.m. the day of the election to the address that the appropriate state or local election office has specified.

B. If, at the time of completing a military-overseas ballot and balloting materials, the voter has declared under penalty of perjury that the ballot was timely submitted, the ballot may not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-148 of Title 26, unless there is created a duplication in numbering, reads as follows:

A military-overseas ballot must include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury

under the laws of the United States or this state.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-149 of Title 26, unless there is created a duplication in numbering, reads as follows:

The Secretary of the State Election Board, 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 and the current status of the ballot.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-150 of Title 26, unless there is created a duplication in numbering, reads as follows:

A. The local election official shall request an electronic-mail address from each covered voter who registers to vote after November 1, 2011. 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 the Open Records Act. The 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. The request for an electronic-mail address must describe the purposes for which the electronic-mail address may be used and include a statement that any other use or disclosure of the electronic-mail address is prohibited.

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 year following the calendar year of the date of the application or another shorter period the voter specifies, including for any runoff primary elections that occur as a result of such 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.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-151 of Title 26, unless there is created a duplication in numbering, reads as follows:

A. At least one hundred (100) days before a regularly scheduled election and as soon as practicable before an election not regularly

scheduled, an official in each jurisdiction charged with printing and distributing 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 also must 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 certified, and not later than the date ballots are required to be transmitted to voters under Section 14-106 of Title 26 of the Oklahoma Statutes, the official charged with preparing the election notice under subsection A of this section 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 of this section and updated versions of the election notice

regularly available on the website.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-152 of Title 26, unless there is created a duplication in numbering, reads as follows:

A. If a voter's mistake or omission in the completion of a document under the Uniform Military and Overseas Voters Act does not prevent determining whether a covered voter is eligible to vote, the mistake or omission does not invalidate the document. Failure to satisfy a nonsubstantive requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted under this act. In a write-in ballot authorized by this act, if the intention of the voter is discernable 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 must be accepted as a valid vote.

B. Notarization is not required for the execution of a document under this act. An authentication, other than the declaration specified in Section 13 of this act or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under this act. The declaration and any information in the declaration may be compared with information on file to ascertain the validity of the document.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-153 of Title 26, unless there is created a duplication in numbering, reads as follows:

A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, the Uniform Military and Overseas Voters Act on application by:

1. A covered voter alleging a grievance under this act; or

2. An election official in this state.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-154 of Title 26, unless there is created a duplication in numbering, reads as follows:

In applying and construing the Uniform Military and Overseas Voters Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-155 of Title 26, unless there is created a duplication in numbering, reads as follows:

The Uniform Military and Overseas Voters Act 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 21. REPEALER 26 O.S. 2001, Sections 14-116 and 14-117, as last amended by Sections 1 and 2, Chapter 272, O.S.L. 2009, 14-119, as amended by Section 5, Chapter 272, O.S.L. 2009 and 14-120.1, as last amended by Section 2, Chapter 149, O.S.L. 2010 (26 O.S. Supp. 2010, Sections 14-116, 14-117, 14-119 and 14-120.1), are hereby repealed.

SECTION 22. REPEALER 26 O.S. 2001, Section 20-101, as last amended by Section 17 of Enrolled House Bill No. 1615 of the 1st Session of the 53rd Oklahoma Legislature, is hereby repealed.

SECTION 23. This act shall become effective November 1, 2011.

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