

CHAPTER 383

ELECTIONS

HOUSE BILL 09-1205

BY REPRESENTATIVE(S) Looper and Balmer, Apuan, Baumgardner, Casso, Kerr J., Labuda, Lambert, McNulty, Murray, Priola, Soper, Swalm, Todd, Vaad, Bradford, Court, Ferrandino, Fischer, Frangas, Gardner B., Gardner C., Green, Kefalas, Liston, Massey, Nikkel, Pommer, Rice, Ryden, Scanlan, Sonnenberg, Stephens, Summers, Carroll T.; also SENATOR(S) Williams, Bacon, Boyd, Gibbs, Schultheis, Cadman, King K., Shaffer B.

AN ACT

CONCERNING VOTING BY MEMBERS OF THE ARMED FORCES SERVING OUTSIDE THE UNITED STATES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 1-2-217.5 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

1-2-217.5. Change in residence before close of registration - emergency registration at office of county clerk and recorder. (2) The elector shall declare under oath in the emergency registration affidavit that the elector wishes to register to vote in the election in the precinct and county for which the registration books are closed and that:

(e) THE ELECTOR IS A RESIDENT OF THIS STATE WHO WAS AN ABSENT UNIFORMED SERVICES ELECTOR SERVING OUTSIDE THE UNITED STATES AND WAS DISCHARGED FROM ACTIVE DUTY OR SERVICE WITHIN TWENTY-NINE DAYS PRIOR TO THE ELECTION, MOVED TO A NEW COUNTY OF RESIDENCE AFTER THE CLOSE OF THE REGISTRATION BOOKS, AND HAS NOT AND WILL NOT CAST A VOTE IN THE ELECTION IN ANY OTHER COUNTY OR STATE.

SECTION 2. Title 1, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 5.5
Internet-Based Voting Pilot Program for
Absent Uniformed Services Electors

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

1-5.5-101. Pilot program - internet voting system - absent uniformed services elector - secretary of state - fund - rules. (1) SUBJECT TO THE AVAILABILITY OF FUNDS PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE SECRETARY OF STATE, IN COORDINATION WITH THE COUNTY CLERK AND RECORDERS, SHALL DEVELOP AN INTERNET-BASED VOTING PILOT PROGRAM TO FACILITATE VOTING BY ABSENT UNIFORMED SERVICES ELECTORS SERVING OUTSIDE THE UNITED STATES COMMENCING WITH THE GENERAL ELECTION HELD IN 2012. THE SECRETARY OF STATE SHALL SELECT ONE OR MORE POLITICAL SUBDIVISIONS TO PARTICIPATE IN THE PILOT PROGRAM. THE INTERNET-BASED VOTING SYSTEM DEVELOPED FOR USE BY POLITICAL SUBDIVISIONS THAT PARTICIPATE IN THE PILOT PROGRAM SHALL:

(a) TRANSMIT ENCRYPTED INFORMATION OVER A SECURE NETWORK;

(b) PROVIDE FOR SECURE IDENTIFICATION AND AUTHENTICATION OF:

(I) ANY INFORMATION TRANSMITTED ON THE SYSTEM; AND

(II) EACH DESIGNATED OR COORDINATED ELECTION OFFICIAL OF A COUNTY OR POLITICAL SUBDIVISION AND THE SERVERS OF SUCH OFFICIALS AND ALL OTHER RELATED ELECTRONIC EQUIPMENT BEING USED BY THE SECRETARY OF STATE AND EACH OFFICIAL IN THE CONDUCT OF ELECTIONS VIA THE INTERNET;

(c) PROTECT THE PRIVACY, ANONYMITY, AND INTEGRITY OF EACH ELECTOR'S BALLOT;

(d) PREVENT THE CASTING OF MULTIPLE BALLOTS VIA THE INTERNET IN AN ELECTION BY EACH ELECTOR;

(e) PROVIDE PROTECTION AGAINST ABUSE, INCLUDING TAMPERING, FRAUDULENT USE, AND ILLEGAL MANIPULATION BY ELECTORS, ELECTION OFFICIALS, OR ANY OTHER INDIVIDUAL OR GROUP; AND

(f) PROVIDE UNINTERRUPTED AND RELIABLE INTERNET AVAILABILITY FOR THE PURPOSE OF CASTING VOTES VIA THE INTERNET BY THE ELECTORS.

(2) THE SECRETARY OF STATE SHALL IMPLEMENT THE INTERNET-BASED VOTING SYSTEM SO THAT EACH DESIGNATED OR COORDINATED ELECTION OFFICIAL OF A COUNTY OR OTHER POLITICAL SUBDIVISION PARTICIPATING IN THE PILOT PROGRAM SHALL:

(a) ASSURE THAT EACH ABSENT UNIFORMED SERVICES ELECTOR SERVING OUTSIDE THE UNITED STATES WHO LOGS IN TO VOTE VIA THE INTERNET IS ELIGIBLE AND REGISTERED TO VOTE;

(b) VERIFY THAT EACH ELECTOR WHO LOGS IN TO VOTE VIA THE INTERNET IS THE SAME PERSON WHO IS REGISTERED AND QUALIFIED TO VOTE;

(c) VERIFY THAT THE VOTES OF THE ELECTORS TRANSMITTED TO THE ELECTION OFFICIALS VIA THE INTERNET ARE PRIVATE AND SECURE AND HAVE NOT BEEN VIEWED OR ALTERED BY SITES THAT LIE BETWEEN THE VOTING LOCATION AND THE VOTE-COUNTING DESTINATION;

(d) VERIFY THAT ALL VOTES CAST VIA THE INTERNET BY ELECTORS WERE CAST BY 7 P.M. MOUNTAIN STANDARD TIME ON THE DAY OF THE ELECTION; AND

(e) VERIFY THAT ALL VOTES CAST VIA THE INTERNET BY ELECTORS WERE INDEED COUNTED AND ATTRIBUTED CORRECTLY TO THE ELECTOR WHO CAST THE VOTE.

(3) THE SECRETARY OF STATE MAY BY RULE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., ESTABLISH PROCEDURES NECESSARY TO IMPLEMENT THIS ARTICLE.

(4) THERE IS HEREBY CREATED IN THE STATE TREASURY THE INTERNET-BASED VOTING PILOT PROGRAM FUND TO PROVIDE FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH IMPLEMENTING THIS ARTICLE. THE FUND SHALL CONSIST OF GIFTS, GRANTS, AND DONATIONS TO THE FUND FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS ARTICLE. ALL PRIVATE AND PUBLIC FUNDS RECEIVED THROUGH GIFTS, GRANTS, AND DONATIONS SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND. MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF STATE FOR THE PURPOSES SPECIFIED IN THIS ARTICLE. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF ANY FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

(5) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1), (2), AND (3) OF THIS SECTION, THE DEPARTMENT OF STATE SHALL NOT IMPLEMENT THE INTERNET-BASED VOTING SYSTEM UNTIL SUFFICIENT GIFTS, GRANTS, AND DONATIONS ARE OBTAINED TO COVER THE COSTS OF IMPLEMENTING THE SYSTEM.

SECTION 3. 1-8-103.5 (1) and (2) (a), Colorado Revised Statutes, are amended to read:

1-8-103.5. Voting by persons residing overseas and military personnel - definitions. (1) (a) The designated or coordinated election official of a county or other political subdivision that meets the requirements of the rules promulgated by the secretary of state pursuant to subsection (3) of this section shall provide a mail-in ballot by electronic means to an eligible elector who is an absent uniformed services elector, a nonresident overseas elector, or a resident overseas elector, as defined in section 1-2-208 (2.5), if the elector timely filed a mail-in ballot application with the designated or coordinated election official requesting that the mail-in ballot be sent by electronic means.

(b) A MAIL-IN BALLOT SHALL BE PROVIDED BY THE SAME ELECTRONIC MEANS AVAILABLE UNDER PARAGRAPH (a) OF THIS SUBSECTION (1) TO AN ABSENT UNIFORMED SERVICES ELECTOR SERVING OUTSIDE THE UNITED STATES NOT LATER THAN THIRTY DAYS BEFORE THE ELECTION IF THE ELECTOR:

(I) FILED A MAIL-IN BALLOT APPLICATION OR HAS BEEN PLACED ON THE PERMANENT MAIL-IN VOTER LIST PURSUANT TO SECTION 1-8-104.5 (2) NOT LATER THAN THIRTY-FIVE DAYS BEFORE SUCH ELECTION; AND

(II) REQUESTED THAT THE MAIL-IN BALLOT BE SENT BY ELECTRONIC MEANS.

(2) (a) The eligible elector may return the voted ballot to the designated or coordinated election official by electronic means. The returned ballot shall be counted if it arrives in the office of the designated or coordinated election official ~~by 7 p.m. on election day~~ NO LATER THAN THE CLOSE OF BUSINESS ON THE EIGHTH DAY FOLLOWING THE DAY OF THE ELECTION, SO LONG AS THE BALLOT IS TRANSMITTED BY ELECTRONIC MEANS BY 7 P.M. MOUNTAIN STANDARD TIME ON THE DAY OF THE ELECTION. When the ballot is received by the designated or coordinated election official, a bipartisan team of judges shall duplicate the ballot, and the ballot shall be counted as all other mail-in ballots. The judges who duplicate the ballot shall not reveal to any other person how the elector has cast his or her ballot.

SECTION 4. 1-8-111 (1), Colorado Revised Statutes, is amended to read:

1-8-111. Delivery of mail-in ballot and replacement mail-in ballots.

(1) (a) The mail-in ballot and other materials shall be delivered or mailed to the elector within seventy-two hours after the receipt of the application, if the official ballots are then printed, or, if not then printed, within seventy-two hours after the printed ballots are delivered to the designated election official. If the mail-in ballot and other materials are mailed, the envelope shall be marked "DO NOT FORWARD" or by any other similar statement that is in accordance with United States postal service regulations.

(b) A MAIL-IN BALLOT SHALL BE DELIVERED OR MAILED TO AN ABSENT UNIFORMED SERVICES ELECTOR SERVING OUTSIDE THE UNITED STATES NOT LATER THAN THIRTY DAYS BEFORE THE ELECTION IF THE ELECTOR HAS APPLIED FOR A MAIL-IN BALLOT OR HAS BEEN PLACED ON THE PERMANENT MAIL-IN VOTER LIST PURSUANT TO SECTION 1-8-104.5 (2) NOT LATER THAN THIRTY-FIVE DAYS BEFORE SUCH ELECTION.

SECTION 5. 1-8-113 (1) (a), Colorado Revised Statutes, is amended to read:

1-8-113. Manner of mail-in voting - first-time voters casting a mail-in ballot after having registered by mail to vote. (1) (a) (I) Any eligible elector applying for and receiving a mail-in ballot, in casting the ballot, shall make and subscribe to the self-affirmation on the return envelope. The elector shall then mark the ballot, fold the ballot or insert the ballot card in the special envelope provided for the purpose so as to conceal the marking, deposit it in the return envelope, enclose identification if required by subsection (3) of this section, and seal the envelope securely. The envelope may be delivered personally or mailed by the elector to the designated election official issuing the ballot or delivered personally by the elector during the time early voting is made available pursuant to section 1-8-202 or on election day to an early voters' polling place in the county in which the elector is registered to vote. Alternatively, an elector may deliver the ballot to any person of the elector's own choice or to any duly authorized agent of the designated election official for mailing or personal delivery to the designated election official; except that no one person other than a duly authorized agent of the designated election official may receive more than five mail-in ballots in any election for mailing or delivery to the designated election official. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), all envelopes containing mail-in ballots shall be in the hands of the designated election official no later than 7 p.m. on the day of the election. Mail-in envelopes received after 7 p.m. on the day of the election but

postmarked on or before the day of the election will remain sealed and uncounted, but the elector's registration record will not be canceled for failure to vote in a general election.

(II) ALL ENVELOPES CONTAINING MAIL-IN BALLOTS CAST BY 7 P.M. MOUNTAIN STANDARD TIME ON THE DAY OF THE ELECTION BY ABSENT UNIFORMED SERVICES ELECTORS SERVING OUTSIDE THE UNITED STATES SHALL BE IN THE HANDS OF THE DESIGNATED ELECTION OFFICIAL NO LATER THAN THE CLOSE OF BUSINESS ON THE EIGHTH DAY FOLLOWING THE DAY OF THE ELECTION.

SECTION 6. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: June 2, 2009