
By: **Senator Stone (Chairman, Ethics and Election Law Subcommittee)**

Introduced and read first time: January 31, 2003

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Election Law - Compliance With Federal "Help America Vote Act"**

3 FOR the purpose of altering provisions of the Election Law to comply with the
4 requirements of the federal "Help America Vote Act of 2002"; establishing a
5 procedure for the casting and canvassing of provisional ballots; altering certain
6 procedures when an individual's right to vote is challenged; requiring that
7 certain information be made available; altering certain polling place procedures;
8 repealing provisions relating to a temporary certificate of registration; altering a
9 certain definition; defining a certain term; and generally relating to provisional
10 ballots and compliance with mandatory provisions of federal law.

11 BY renumbering

12 Article - Election Law
13 Section 1-101(vv) through (zz), respectively
14 to be Section 1-101(ww) through (aaa), respectively
15 Annotated Code of Maryland
16 (2003 Volume)

17 BY repealing and reenacting, with amendments,

18 Article - Election Law
19 Section 1-101(ll), 9-403, 9-404, 9-405, 10-306, 10-310(a), 10-311(b), 10-312,
20 10-315, 11-101(c) and (f), 11-303, and 16-304
21 Annotated Code of Maryland
22 (2003 Volume)

23 BY adding to

24 Article - Election Law
25 Section 1-101(vv) and 11-305
26 Annotated Code of Maryland
27 (2003 Volume)

28 BY repealing

29 Article - Election Law

1 Section 3-601 and 11-305
2 Annotated Code of Maryland
3 (2003 Volume)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That Section(s) 1-101(vv) through (zz), respectively, of Article -
6 Election Law of the Annotated Code of Maryland be renumbered to be Section(s)
7 1-101(ww) through (aaa), respectively.

8 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
9 read as follows:

10 **Article - Election Law**

11 1-101.

12 (ll) "Provisional ballot" means a ballot [distributed to an individual after the
13 individual has completed a temporary certificate of registration] THAT IS CAST BY AN
14 INDIVIDUAL BUT NOT COUNTED UNTIL THE INDIVIDUAL'S QUALIFICATIONS TO VOTE
15 HAVE BEEN CONFIRMED BY THE LOCAL BOARD.

16 (VV) "VOTE" MEANS TO CAST A BALLOT THAT IS COUNTED.

17 [3-601.

18 (a) An individual whose voter registration information is not included in the
19 precinct register shall be allowed to vote by a provisional ballot upon receiving and
20 completing a temporary certificate of registration.

21 (b) (1) A temporary certificate of registration shall be issued in accordance
22 with the provisions of paragraph (2) of this subsection only by:

23 (i) an election judge at the precinct on election day; or

24 (ii) the election director at the local board office on election day or
25 during the period before election day when voter registration is closed.

26 (2) A temporary certificate of registration shall be issued if the
27 individual:

28 (i) provides proof of identity, as prescribed by the State Board by
29 regulation; and

30 (ii) completes an application for a temporary certificate of
31 registration in accordance with the provisions of subsection (c) of this section.

32 (c) An application for a temporary certificate of registration shall be in writing
33 and signed under penalty of perjury, contain the information required by subsection

34 (d) of this section, and require the applicant to affirm:

1 (1) the applicant's current address and telephone number;

2 (2) that the applicant:

3 (i) has not voted in the current election in any other precinct in the
4 State or in any other state;

5 (ii) is a current resident of the precinct and county in which the
6 applicant seeks to vote; and

7 (iii) meets the qualifications to register to vote; and

8 (3) that the applicant meets one of the following conditions:

9 (i) the applicant is currently registered in another county in the
10 State but has moved to a new county where the applicant seeks to vote; or

11 (ii) the applicant has, within the last 2 years made a timely effort to
12 register to vote or update a voter registration record and, following the transaction,
13 believed in good faith that, without further action on the part of the applicant, the
14 requirements for registration or for updating the registration record had been
15 satisfactorily completed.

16 (d) In support of the assertion required by subsection (c)(3) of this section, the
17 applicant shall:

18 (1) if the applicant is currently registered to vote in the State, identify
19 the county where the applicant is registered; or

20 (2) if the applicant has attempted to register or update a voter
21 registration record, provide:

22 (i) except as provided under subsection (e) of this section, the name
23 and location of the voter registration agency where the transaction occurred;

24 (ii) the approximate date of the transaction; and

25 (iii) any additional information required by the State Board.

26 (e) An applicant for a temporary certificate of registration is not required to
27 provide the name and location of a voter registration agency that is designated under
28 § 3-204(a)(2)(i) or (ii) of this title.]

29 9-403.

30 (a) The State Board shall establish guidelines for the administration of
31 provisional ballot voting by the local boards.

32 (b) The guidelines shall provide for:

- 1 (1) the [temporary certificate registration] PROVISIONAL BALLOT
2 APPLICATION process;
- 3 (2) ballot security, including storage of returned ballots;
- 4 (3) the canvass process;
- 5 (4) notice of the canvass to candidates, political parties, campaign
6 organizations, news media, and the general public;
- 7 (5) observers of the process;
- 8 (6) review of [voted] ballots and envelopes SUBMITTED for compliance
9 with the law and for machine tabulation acceptability;
- 10 (7) standards for disallowance of ballots during the canvass; [and]
- 11 (8) storage and retention of ballots following canvass and certification;
12 AND
- 13 (9) THE FREE ACCESS SYSTEM REQUIRED UNDER § 11-303(E) OF THIS
14 ARTICLE.
- 15 (c) The State Board shall:
- 16 (1) in consultation with the local boards, assess the guidelines before
17 each primary election; and
- 18 (2) revise the guidelines if indicated.
- 19 9-404.
- 20 (A) [An] IF AN INDIVIDUAL IS ELIGIBLE UNDER SUBSECTION (B) OF THIS
21 SECTION, THE individual [may vote using a provisional ballot on election day if the
22 individual meets the requirements for a temporary certificate of registration set forth
23 under § 3-601 of this article] SHALL BE ISSUED AND MAY CAST A PROVISIONAL
24 BALLOT:
- 25 (1) AT A POLLING PLACE ON ELECTION DAY; OR
- 26 (2) AT THE LOCAL BOARD OFFICE IN THE COUNTY WHERE THE
27 INDIVIDUAL RESIDES AFTER THE CLOSE OF REGISTRATION AND BEFORE THE
28 CLOSING OF THE POLLS ON ELECTION DAY.
- 29 (B) AN INDIVIDUAL IS ELIGIBLE TO CAST A PROVISIONAL BALLOT IF:
- 30 (1) THE INDIVIDUAL DECLARES IN A WRITTEN AFFIRMATION
31 SUBMITTED WITH THE PROVISIONAL BALLOT THAT THE INDIVIDUAL IS A
32 REGISTERED VOTER IN THE STATE AND IS ELIGIBLE TO VOTE IN THAT ELECTION;

1 (2) (I) THE INDIVIDUAL'S NAME DOES NOT APPEAR ON THE PRECINCT
2 REGISTER; OR

3 (II) AN ELECTION OFFICIAL ASSERTS THAT THE INDIVIDUAL IS
4 NOT ELIGIBLE TO VOTE; OR

5 (3) THE INDIVIDUAL DOES NOT HAVE THE NECESSARY
6 IDENTIFICATION.

7 (C) IN ADDITION TO THE INDIVIDUALS WHO CAST PROVISIONAL BALLOTS
8 UNDER SUBSECTIONS (A) AND (B) OF THIS SECTION, ANY INDIVIDUAL WHO APPEARS
9 TO VOTE DURING A PERIOD COVERED BY A COURT ORDER OR OTHER ORDER
10 EXTENDING THE TIME FOR CLOSING THE POLLS SHALL CAST A PROVISIONAL
11 BALLOT. A PROVISIONAL BALLOT CAST UNDER OF THIS SUBSECTION SHALL BE
12 SEPARATED AND HELD APART FROM OTHER PROVISIONAL BALLOTS CAST BY THOSE
13 NOT AFFECTED BY THE ORDER.

14 9-405.

15 [An individual requesting a provisional ballot] BEFORE AN INDIVIDUAL CASTS
16 A PROVISIONAL BALLOT:

17 (1) THE INDIVIDUAL shall complete and sign [a temporary certificate of
18 registration as provided under § 3-601 of this article] THE PROVISIONAL BALLOT
19 APPLICATION PRESCRIBED BY THE STATE BOARD; AND

20 (2) THE ELECTION OFFICIAL ISSUING THE BALLOT SHALL GIVE THE
21 INDIVIDUAL WRITTEN INFORMATION ADVISING THE INDIVIDUAL THAT, AND
22 DESCRIBING HOW, THE INDIVIDUAL WILL BE ABLE TO ASCERTAIN WHETHER THE
23 VOTE WAS COUNTED AND, IF IT WAS NOT COUNTED, THE REASON IT WAS NOT.

24 10-306.

25 (a) (1) The State Board, in consultation with the election directors of the
26 local boards, shall specify and produce THE FOLLOWING informational materials to be
27 posted in each polling place:

28 (I) A SPECIMEN BALLOT FOR THAT PRECINCT;

29 (II) INSTRUCTIONS RELATING TO THE AVAILABILITY OF
30 ASSISTANCE TO ELDERLY AND DISABLED VOTERS;

31 (III) INFORMATION REGARDING THE DATE OF THE ELECTION AND
32 THE HOURS DURING WHICH THE POLLING PLACES WILL BE OPEN;

33 (IV) INSTRUCTIONS ON HOW TO VOTE, INCLUDING HOW TO CAST A
34 VOTE;

35 (V) INSTRUCTIONS FOR MAIL-IN REGISTRANTS AND FIRST-TIME
36 VOTERS;

1 (VI) GENERAL INFORMATION ON VOTING RIGHTS UNDER
2 APPLICABLE FEDERAL AND STATE LAWS AND INSTRUCTIONS ON HOW TO CONTACT
3 THE APPROPRIATE LOCAL BOARD IF THESE RIGHTS ARE ALLEGED TO HAVE BEEN
4 VIOLATED;

5 (VII) INFORMATION REGARDING PROVISIONAL VOTING, INCLUDING:

6 1. INFORMATION ON THE RIGHT OF AN INDIVIDUAL TO CAST
7 A PROVISIONAL BALLOT;

8 2. HOW TO FILL OUT THE PROVISIONAL BALLOT
9 APPLICATION AND CAST THE PROVISIONAL BALLOT; AND

10 3. THE STANDARDS THAT WILL BE APPLIED IN
11 DETERMINING WHETHER A PROVISIONAL BALLOT WILL BE COUNTED; AND

12 (VIII) GENERAL INFORMATION ON FEDERAL AND STATE LAWS
13 REGARDING PROHIBITIONS ON ACTS OF FRAUD AND MISREPRESENTATION.

14 (2) A local board may produce other materials appropriate for the polling
15 places in the county.

16 (b) Before the polls open, the election judges for each precinct shall post ALL
17 INFORMATION SPECIFIED UNDER SUBSECTION (A) OF THIS SECTION [in the voting
18 room:

19 (1) the specimen ballot for the precinct;

20 (2) instructions relating to the availability of assistance to elderly and
21 disabled voters; and

22 (3) any other informational material to assist voters on election day, as
23 directed by the election director].

24 10-310.

25 (a) [In] FOR EACH INDIVIDUAL WHO SEEKS TO VOTE, AN ELECTION JUDGE,
26 IN accordance with instructions provided by the local board, [an election judge shall
27 qualify a voter by] SHALL:

28 (1) [locating] LOCATE the [voter's] INDIVIDUAL'S name in the precinct
29 register and [locating] LOCATE the preprinted voting authority card AND THEN
30 AUTHORIZE THE INDIVIDUAL TO VOTE A REGULAR BALLOT;

31 (2) (i) if the [voter's] INDIVIDUAL'S name is not found on the precinct
32 register, [searching] SEARCH the inactive list and if the name is found, [qualifying
33 the voter for voting] AUTHORIZE THE INDIVIDUAL TO VOTE A REGULAR BALLOT [as
34 instructed]; or

35 (ii) if the [voter's] INDIVIDUAL'S name is not on the inactive list,
36 [contacting the local board office and, if authorized, issuing a temporary certificate of

1 registration, as provided in § 3-601] REFER THE INDIVIDUAL FOR PROVISIONAL
2 BALLOT VOTING UNDER § 9-404 of this article;

3 (3) establishing the identity of the voter by requesting the voter to state
4 the month and day of the voter's birth and comparing the response to the information
5 listed in the precinct register;

6 (4) verifying the address of the voter's residence;

7 (5) if any changes to the voting authority card are indicated by a voter,
8 making the appropriate changes in information on the card or other appropriate form;
9 and

10 (6) having the voter sign the voting authority card and either issuing the
11 voter a ballot or sending the voter to a machine to vote.

12 10-311.

13 (b) Except as provided in § 10-303(d)(2) of this subtitle and subsection (d) of
14 this section, a challenger or watcher has the right to:

15 (1) enter the polling place one-half hour before the polls open;

16 (2) enter or be present at the polling place at any time when the polls are
17 open;

18 (3) remain in the polling place until the completion of all tasks
19 associated with the close of the polls under § 10-314 of this subtitle and the election
20 judges leave the polling place;

21 (4) maintain a list of registered voters who have voted, OR INDIVIDUALS
22 WHO HAVE CAST PROVISIONAL BALLOTS, and take the list outside of the polling
23 place; and

24 (5) enter and leave a polling place for the purpose of taking outside of the
25 polling place information that identifies registered voters who have cast ballots OR
26 INDIVIDUALS WHO HAVE CAST PROVISIONAL BALLOTS.

27 10-312.

28 (a) The right of an individual to vote may be challenged at the polls only on
29 the grounds of identity.

30 (b) [(1)] A challenge to an [applicant's] INDIVIDUAL'S right to vote shall be[:

31 (i)] made before [a voter] THE INDIVIDUAL is issued a ballot or a
32 voting authority card[; and

33 (ii)] decided before the applicant enters the voting booth].

1 [(2) (i) An individual who challenges an applicant's right to vote shall
2 provide the reason for the challenge under an oath administered by an election judge.

3 (ii) An election judge shall question the challenged voter under
4 oath about the reason for the challenge.

5 (3) (i) If a majority of the election judges believes the applicant to be
6 the individual registered, the applicant shall be permitted to vote.

7 (ii) If a majority of the election judges believes the applicant to be a
8 person other than the individual registered, the applicant may not vote and the word
9 "rejected" shall be written on the applicant's voting authority card.

10 (4) If an applicant is denied the right to vote under paragraph (3)(ii) of
11 this subsection, the applicant has the right to appeal the decision to the local board.]

12 (C) IF A CHALLENGE IS MADE, THE ELECTION JUDGE RECEIVING THE
13 CHALLENGE SHALL:

14 (1) REQUIRE THE CHALLENGER TO PROVIDE IN WRITING, UNDER
15 PENALTY OF PERJURY, THE REASONS FOR THE CHALLENGE;

16 (2) OFFER THE CHALLENGED INDIVIDUAL THE OPPORTUNITY TO:

17 (I) CAST A PROVISIONAL BALLOT; AND

18 (II) SUBMIT AN ATTESTATION, WITNESSED BY THE ELECTION
19 JUDGE, OF THE INDIVIDUAL'S IDENTITY; AND

20 (3) SUBMIT THE PROVISIONAL BALLOT AND OTHER MATERIALS
21 RELATED TO THE CHALLENGE TO THE LOCAL BOARD.

22 (D) DURING THE CANVASS OF PROVISIONAL BALLOTS, THE LOCAL BOARD
23 SHALL DETERMINE, BASED ON THE INFORMATION SUBMITTED BY THE CHALLENGER
24 AND THE CHALLENGED INDIVIDUAL, WHETHER THE CHALLENGED INDIVIDUAL IS:

25 (1) THE REGISTERED VOTER HE OR SHE CLAIMS TO BE; AND

26 (2) OTHERWISE QUALIFIED TO VOTE.

27 10-315.

28 (a) Every employer in the State shall permit any employee who [is] CLAIMS
29 TO BE a registered voter in the State a period not to exceed 2 hours absence from work
30 on election day in order to CAST A vote if the employee does not have 2 hours of
31 continuous off-duty during the time that the polls are open.

32 (b) The employer shall pay the employee for the 2 hours absence from work.

33 (c) (1) Each employee shall furnish to the employer proof that the employee
34 has voted OR ATTEMPTED TO VOTE.

1 (2) The proof that an employee has voted OR ATTEMPTED TO VOTE shall
2 be on a form prescribed by the State Board.

3 11-101.

4 (c) (1) "Canvass" means the entire process of vote tallying, vote tabulation,
5 and vote verification or audit, culminating in the production and certification of the
6 official election results.

7 (2) For absentee ballots, the "canvass" includes the opening of any
8 envelope accompanying an absentee ballot and the assembly and review of absentee
9 ballots in preparation for vote tallying.

10 (3) FOR PROVISIONAL BALLOTS, THE "CANVASS" INCLUDES THE REVIEW
11 OF THE PROVISIONAL BALLOT APPLICATIONS DESCRIBED IN § 11-303 OF THIS TITLE
12 AND THE ASSEMBLY AND REVIEW OF PROVISIONAL BALLOTS IN PREPARATION FOR
13 VOTE TALLYING.

14 (f) (1) "Unofficial returns" means a vote tabulation reported on election
15 night after the polls close.

16 (2) "Unofficial returns" does not include the absentee ballot count OR
17 THE PROVISIONAL BALLOT COUNT.

18 11-303.

19 (a) Following an election, each local board shall meet at its designated
20 counting center to canvass the provisional ballots [submitted] CAST in that election
21 in accordance with the regulations and guidelines established by the State Board.

22 (b) A local board may not open an envelope of a provisional ballot until the
23 local board has approved the [temporary certificate] PROVISIONAL BALLOT
24 APPLICATION.

25 (c) The State Board shall adopt regulations to implement this section.

26 (d) (1) A local board may not reject a provisional ballot except by unanimous
27 vote and in accordance with regulations of the State Board.

28 (2) The local board shall reject a provisional ballot if:

29 (i) pursuant to paragraph (4) of this subsection, the local board
30 determines that the individual who [submitted] CAST the provisional ballot is not [a
31 registered voter] QUALIFIED TO VOTE THAT PROVISIONAL BALLOT;

32 (ii) the individual failed to sign the oath on the [temporary
33 certificate of registration] PROVISIONAL BALLOT APPLICATION;

34 (iii) the individual [received] CAST more than one ballot for the
35 same election; or

1 (iv) the local board determines that a provisional ballot is
2 intentionally marked with an identifying mark that is clearly evident and placed on
3 the ballot for the purpose of identifying the ballot.

4 (3) If the intent of the voter WITH RESPECT TO A PARTICULAR CONTEST
5 is not clearly demonstrated, the local board shall reject only the vote for that [office or
6 question] CONTEST.

7 (4) For the purposes of this section, an individual is [a registered voter]
8 QUALIFIED TO VOTE THE PROVISIONAL BALLOT CAST [if] IF:

9 (I) the local board determines:

10 [(i)] 1. [that the voter's name is on its list of registered voters; or]
11 THE INDIVIDUAL IS REGISTERED IN THE STATE; AND

12 [(ii)] 2. [pursuant to paragraph (5) of this subsection, that the
13 voter submitted a temporary certificate of registration that contains the affirmations
14 required by, and otherwise complies fully with, the requirements of § 3-601 of this
15 article.] BASED ON THE ADDRESS GIVEN ON THE PROVISIONAL BALLOT
16 APPLICATION, THE INDIVIDUAL RESIDES IN THE PRECINCT IN WHICH THE
17 INDIVIDUAL SEEKS TO VOTE; OR

18 (II) IN CASES WHERE THE PROVISIONAL BALLOT WAS CAST
19 BECAUSE THE VOTER FAILED TO PROVIDE IDENTIFICATION, THE LOCAL BOARD
20 DETERMINES THAT THE INDIVIDUAL WHO CAST THE PROVISIONAL BALLOT HAS MET
21 THE IDENTIFICATION REQUIREMENTS ESTABLISHED BY THE STATE BOARD.

22 [(5) In determining under paragraph (4) of this subsection, whether an
23 application for a temporary certificate of registration complies with § 3-601 of this
24 article, a local board shall examine the contents and execution of the application but
25 may not challenge the accuracy of an assertion in the application unless that
26 assertion relates to one or more actions of the local board.

27 (e) (1) Within 10 days after any election, an individual who voted by
28 provisional ballot may request confirmation from the local election board that the
29 ballot submitted by the individual is either accepted or rejected by the local election
30 board.

31 (2) Upon receiving a request under paragraph (1) of this subsection, the
32 local election board is required to provide confirmation that the individual's ballot is
33 either accepted or rejected.

34 (3) If the ballot is rejected, at the request of the individual the local
35 election board shall state in writing the basis for rejecting the ballot.]

36 (E) (1) EACH LOCAL BOARD SHALL ENSURE THE ESTABLISHMENT OF A
37 SYSTEM THAT ANY INDIVIDUAL WHO CASTS A PROVISIONAL BALLOT MAY ACCESS
38 WITHOUT COST TO DISCOVER WHETHER THE BALLOT WAS COUNTED AND, IF NOT
39 COUNTED, THE REASON IT WAS NOT.

1 (2) THE SYSTEM ESTABLISHED UNDER PARAGRAPH (1) OF THIS
2 SUBSECTION SHALL ENSURE THE CONFIDENTIALITY OF THE INDIVIDUAL WHO
3 ACCESSES THE SYSTEM AND THE SECRECY OF EACH BALLOT.

4 [11-305.

5 (a) A candidate or individual who voted using a provisional ballot aggrieved by
6 the decision of a local board to reject, or not to reject, a provisional ballot shall have
7 the right of appeal to the circuit court for the county.

8 (b) The appeal must be filed within 5 days from the date of the completion of
9 the official canvass by the board of all the votes cast at the election.

10 (c) The appeal shall be heard de novo, without a jury, as soon as possible.

11 (d) (1) The decision of the circuit court may be appealed to the Court of
12 Special Appeals, provided the appeal is taken within 48 hours from the entry of the
13 decision of the circuit court.

14 (2) The appeal shall be heard and decided on the original papers,
15 including a written transcript of the testimony taken in the case.

16 (3) The original papers and the transcript shall be transmitted to the
17 Court of Special Appeals within 5 days from the taking of the appeal, and the appeal
18 shall be heard as soon as possible.]

19 11-305.

20 ANY PERSON WHO ASSERTS THAT AN ELECTION OFFICIAL HAS VIOLATED THE
21 PROVISIONS OF THIS ARTICLE RELATING TO PROVISIONAL BALLOTS MAY FILE AN
22 ADMINISTRATIVE COMPLAINT UNDER PROCEDURES ESTABLISHED BY THE STATE
23 BOARD.

24 16-304.

25 (a) In a polling place on election day, an election judge may not willfully and
26 knowingly:

27 (1) permit a ballot or ballots to be placed into a ballot box prior to the
28 time for voting; or

29 (2) place a ballot in a ballot box unless the ballot is offered by a properly
30 registered voter OR IS A PROVISIONAL BALLOT PLACED WITH OTHER PROVISIONAL
31 BALLOTS OF THE SAME CHARACTER.

32 (b) A person may not:

33 (1) cause or permit a [vote] BALLOT, INCLUDING A PROVISIONAL
34 BALLOT, to be cast or [a ballot to be] deposited in a ballot [box or a] BOX, voting
35 device, OR OTHER RECEPTACLE DESIGNED FOR THE COLLECTION OF BALLOTS other

1 than by a person [properly qualified] ENTITLED UNDER THIS ARTICLE to cast a
2 ballot; or

3 (2) substitute, alter, add, or remove a [voted] SUBMITTED ballot from a
4 ballot [box or a] BOX, voting device, OR OTHER RECEPTACLE DESIGNED FOR THE
5 COLLECTION OF BALLOTS, except when instructed to do so by the election director.

6 (c) A person who violates this section is guilty of a felony and is subject to
7 imprisonment for not less than 1 year nor more than 5 years.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2003.