

HOUSE BILL NO. 411

Introduced: 01/19/83

Referred to Committee on State Administration: 01/19/83

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Report: 02/02/83, Do Not Pass, As Amended

Bill Killed: 02/03/83

1 *House* BILL NO. *411*
 2 INTRODUCED BY *Ally Hunted, Williams*
 3 *Baranone*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A
 5 CRITERION FOR THE PRIVILEGE OF VOTING IN A POLITICAL PARTY'S
 6 PRIMARY ELECTION; AUTHORIZING CHALLENGES OF PROSPECTIVE
 7 VOTERS; PROVIDING CHANGES IN PARTY PRIMARY ELECTION BALLOTS;
 8 PROVIDING CHANGES IN PRIMARY ELECTION PROCEDURES AND VOTING;
 9 REQUIRING RECORDING OF PARTY AFFILIATION; CHANGING OPERATION
 10 OF VOTING MACHINES; PROVIDING NONPARTISAN PRIMARY AND BALLOT
 11 ISSUE BALLOTS; AMENDING SECTIONS 13-10-209, 13-10-301,
 12 13-12-202, 13-13-301, 13-13-306, 13-14-115, AND 13-17-103,
 13 MCA."

14
 15 WHEREAS, Montana law requires no declaration of party
 16 affiliation and allows an elector to vote any one of several
 17 ballots in a primary election; and

18 WHEREAS, the purpose of a primary election is to select
 19 candidates for established political parties.

20 THEREFORE, the enactment of this bill or of its
 21 alternative, ___Bill No. ___ [LC 484], is intended to clarify
 22 Montana law by providing either a true closed primary or a
 23 completely open primary election.

24
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 NEW SECTION. Section 1. Qualification by prior vote --
 2 intention of new elector. Each registered elector who voted
 3 at the last preceding general election for a majority of the
 4 regularly nominated candidates of the party holding the
 5 primary election or who did not vote in the last preceding
 6 general election, but intends to vote at the next general
 7 election for a majority of the regularly nominated
 8 candidates of the party holding the election is entitled to
 9 vote in the party's primary election.

10 Section 2. Section 13-10-209, MCA, is amended to read:
 11 "13-10-209. Arrangement of ballots. (1) Ballots for a
 12 primary election shall be arranged and printed in the same
 13 manner and--number as provided in chapter 12 for general
 14 election ballots, except there shall be separate ballots for
 15 each political party entitled to participate and separate
 16 nonpartisan and ballot issue ballots if necessary. The name
 17 of the political party shall be printed at the top of the
 18 separate ballot for that party and need not be printed
 19 opposite each candidate's name.

20 (2) The number of primary election ballots printed for
 21 each party shall be equal to 125% of the number of votes
 22 cast by the party in each precinct at the last preceding
 23 general election. The ballots for each party shall be
 24 numbered consecutively, beginning with 1.

25 ~~(2)(3)~~ It is not necessary to print a primary ballot

for a political party which does not have candidates for more than half of the offices on the ballot in even-year elections if no more than one candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify or instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

~~(3)(4)~~ The separate ballots for each party shall be the same size and of uniform size but of different color for each party, and no two parties may be furnished or use ballots of the same color. The stubs of each set of party ballots shall bear the same numbers. The nonpartisan ballot shall be a different size or color than the party ballots, but and the stubs shall be numbered ~~in the same order as the party ballots~~ consecutively, beginning with 1.

~~(4)(5)~~ If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may be a different size and color than the other ballots in the election, but and the stubs shall be numbered ~~in the same order~~ consecutively, beginning with 1.

~~(6)~~ The number of nonpartisan and ballot issue ballots furnished each precinct shall be determined according to

~~13-12-210.~~

~~(5)(7)~~ Each elector shall receive a ~~set of party ballots and a~~ nonpartisan and a ballot issue ballot if such ballots are printed, and if he qualifies under [section 11] he shall receive the primary ballot of the party with which he is affiliated."

Section 3. Section 13-10-301, MCA, is amended to read:

"13-10-301. Casting of ballot. (1) Unless otherwise provided by law, the conduct of the primary election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies, the canvass of votes, the certification and notification of nominees, recounts, procedures upon tie votes, and any other necessary election procedures shall be at the same times and in the same manner as provided for in the laws for the general election.

(2) At a primary election, the elector shall mark the ballot of only one of the set of party ballots. After marking any other ballots received other than the party ~~ballots~~ ballot, the elector shall fold the ~~marked and unmarked~~ ballots separately in a manner so that the marks cannot be seen, the official stamp is visible on each ballot, and all stubs can be detached by an election judge.

(3) The elector shall hand the ~~marked and unmarked~~ ballots separately to the election judge, ~~identifying them~~

1 ~~as-marked-and-unmarked-if-the-judge-determines-the--ballots~~
 2 ~~may--be-voted-by-he who~~ shall, in the presence of the elector:

- 3 (a) remove the stubs from all the ballots;
- 4 (b) deposit the ~~unmarked-ballot-or-ballots-and-all-the~~
 5 stubs in the stub ~~and-unmarked-ballot~~ box;
- 6 (c) and deposit the marked ballots in the voted ballot
 7 box."

8 **NEW SECTION.** Section 4. Recording party affiliation
 9 -- party identification cards used with voting machines. (1)
 10 In conformance with 13-13-115, the party affiliation of the
 11 elector must be recorded in addition to other required
 12 information.

13 (2) In any precinct where voting machines are being
 14 used, after complying with 13-13-115, an elector who is
 15 entitled to vote under this title shall receive from an
 16 election judge a printed party identification card
 17 corresponding to the party with which he declared
 18 affiliation. Before entering the voting machine booth, the
 19 elector shall give the judge his party identification card,
 20 and the judge shall set the voting machine to allow the
 21 elector to vote only for the candidates of his party. The
 22 judge shall then deposit the party identification card in a
 23 sealed container, and after the polls have closed the cards
 24 shall be counted and compared with the total number of
 25 votes. All party identification cards must be of durable

1 quality and of the same color, irrespective of the political
 2 party designated thereon.

3 Section 5. Section 13-12-202, MCA, is amended to read:
 4 "13-12-202. Ballot form and uniformity. (1) The
 5 secretary of state shall prescribe the ballot form for all
 6 types of ballots used in this state.

7 (2) The names of all candidates printed upon the
 8 ballots shall be in type of the same size and character.

9 (3) When the stubs are detached, it must be impossible
 10 to distinguish any one of the ballots from another ballot
 11 for the same office or issue or, in a primary election, for
 12 the same party.

13 (4) The ballots must contain the name of every
 14 candidate whose nomination is certified under law for an
 15 office and no other names, except that the names of
 16 candidates for president and vice president of the United
 17 States shall appear on the ballot as provided in
 18 13-25-101(2)."

19 Section 6. Section 13-13-301, MCA, is amended to read:
 20 "13-13-301. Challenges on election day. (1) An
 21 elector's right to vote may be challenged on election day by
 22 any registered elector by orally stating to the election
 23 judges the grounds of the challenge.

24 (2) An individual offering to vote may be orally
 25 challenged by any elector of the county upon the following

1 grounds:

2 (a) that he is not the individual whose name appears
3 on the register;

4 (b) that he does not reside at the residence listed
5 unless the elector is voting under the provisions of
6 13-2-512 and 13-2-514;

7 (c) that he is of unsound mind, as determined by a
8 court;

9 (d) that he has voted before in that election; or

10 (e) that he has been convicted of a felony and is
11 serving a sentence in a penal institution.

12 ~~(3) An individual offering to vote in a political~~
13 ~~party's primary election may be challenged by any member of~~
14 ~~that party who is an elector of the county on the ground~~
15 ~~that the individual is not affiliated with that party."~~

16 Section 7. Section 13-13-306, MCA, is amended to read:

17 "13-13-306. Proceedings pursuant to challenges --
18 oaths. (1) If the challenge is on the ground that the
19 individual is not the elector whose name appears on the
20 official register, the election judges shall administer the
21 following oath: "I, (name of elector), do swear (or
22 affirm) that I am the individual whose name is entered on
23 the official register and precinct list."

24 (2) If the challenge is on the ground that the
25 individual does not reside at the residence listed, the

1 judges shall administer this oath: "I, (name of
2 elector), do swear (or affirm) that I reside at
3 (state precise address), which is the address listed on the
4 official register."

5 (3) If the challenge is on the ground that the
6 individual has voted before in that election, the judges
7 shall administer this oath: "I, (name of elector), do
8 swear (or affirm) that I have not voted before in this
9 election."

10 (4) If the challenge is on the ground that the
11 individual has been convicted of a felony and is serving a
12 sentence in a penal institution, the judges shall administer
13 the following oath: "I, (name of elector), do swear
14 (or affirm) either that I have not been convicted of a
15 felony or that, if I have been convicted of a felony, I am
16 not serving a sentence in a penal institution."

17 ~~(5) If the challenge at a primary election is on the~~
18 ~~ground that the individual is not affiliated with the party~~
19 ~~in whose primary he proposes to vote:~~

20 ~~(a) the judges shall administer the following oath:~~
21 ~~"I, (name of elector), do swear (or affirm) that at~~
22 ~~the general election of 19.... I voted for a majority of the~~
23 ~~regular nominees of the (name of party) party and~~
24 ~~that I intend to support and vote for the regular nominees~~
25 ~~of the (name of party) party at the coming~~

1 ~~election. "i. or~~

2 ~~(b) if the individual did not vote in the last~~
 3 ~~preceding general election, the judges shall administer the~~
 4 ~~following oath: "I, _____ (name of elector), do swear (or~~
 5 ~~affirm) that I intend to vote at the general election of~~
 6 ~~19___ for a majority of the regular nominees of the _____~~
 7 ~~(name of party) party."~~

8 ~~(5)(6) The election judges may administer any other~~
 9 ~~oath relating to the individual's qualification to vote that~~
 10 ~~they feel necessary."~~

11 Section 8. Section 13-14-115, MCA, is amended to read:

12 "13-14-115. Preparation and distribution of
 13 nonpartisan primary ballots. (1) The election administrators
 14 shall arrange, prepare, and distribute primary ballots for
 15 nonpartisan offices, designated "nonpartisan primary
 16 ballots". They shall be arranged as other primary ballots
 17 and be without political designation.

18 (2) The number of nonpartisan primary ballots and
 19 sample ballots furnished shall be the same as other primary
 20 ballots determined according to 13-12-210.

21 (3) In a political subdivision with a population of
 22 10,000 or less, the governing body may determine that a
 23 primary need not be held if:

24 (a) the number of candidates for an office exceeds
 25 twice the number to be elected to that office in no more

1 than one-half of the offices on the ballot;

2 (b) the number of candidates in excess of twice the
 3 number to be elected is not more than one for any office on
 4 the ballot; and

5 (c) the governing body passes a resolution not more
 6 than 7 days after the close of filing by candidates for
 7 election stating that a primary election need not be held."

8 Section 9. Section 13-17-103, MCA, is amended to read:

9 "13-17-103. Required specifications for equipment. A
 10 voting machine or device may not be approved unless:

11 (1) an elector can vote in secrecy;

12 (2) an elector is prevented from voting for any
 13 candidate or upon any ballot issue more than once and is
 14 also prevented from voting on any office or ballot issue for
 15 which he is not entitled to vote;

16 (3) ~~an elector can secretly select the party for which~~
 17 ~~he wishes to vote~~ election judge can set the voting machine
 18 or device to allow an elector to vote only for the
 19 candidates of the party with which the elector has declared
 20 his affiliation under (section 1) In a primary election and
 21 the machine or device will count only votes for the
 22 candidates of that party by the elector in the primary
 23 election;

24 (4) an elector can vote a split ticket in a general
 25 election if he desires;

1 (5) every valid vote cast is registered and recorded;
 2 (6) the machine or device is constructed so that it
 3 cannot be tampered with for a fraudulent purpose and is also
 4 constructed so that during the progress of the voting no
 5 individual can see or know the number of votes registered
 6 for any candidate or on any ballot issue;
 7 (7) it allows write-in voting; and
 8 (8) a guarantee to provide training and assistance to
 9 election officials will be included in each contract for
 10 purchase of the machine or device."

11 NEW SECTION. Section 10. Codification Instruction.
 12 Section 1 is intended to be codified as an integral part of
 13 Title 13, chapter 1, part 1, and section 4 is intended to be
 14 codified as an integral part of Title 13, chapter 10, part
 15 3, and the provisions of Title 13 apply to sections 1 and 4.

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