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*Beaudry* BILL NO. 311 *Josh*

INTRODUCED BY *Ben McElroy Harrington Juliee Beck*

*Arland Menahan Brady Lynch Chris Johnson*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SECRECY FOR ABSENTEE BALLOTS; AND AMENDING SECTIONS 13-13-201, 13-13-214, 13-13-221, 13-13-225, 13-13-229, 13-13-231, 13-13-232,

13-13-241, AND 13-15-201, MCA." *Billings - M Jeff Augerson* THOMAS *Tom McWilliam*

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

**Section 1.** Section 13-13-201, MCA, is amended to read:

"13-13-201. **Voting by absentee ballot -- qualifications -- procedures.** (1) A qualified registered elector is entitled to vote by absentee ballot, as provided in this part, if the elector:

~~(1)(a)~~ (a) expects to be absent from the county or precinct and unable to vote in person at the time of holding the election;

~~(2)(b)~~ (b) is physically incapacitated and unable to go to the polls on election day;

~~(3)(c)~~ (c) suffers from chronic illness or general ill health; or

~~(4)(d)~~ (d) is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day. ~~Such~~ The health emergency must arise from unforeseen circumstances that require the elector to seek health care or medical assistance.

(2) The elector may vote by:

(a) marking the ballot in the manner specified;

(b) removing the stub end;

(c) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(d) placing the stub and the secrecy envelope containing one ballot for each election being held in the return and verification envelope;

(e) executing the affidavit printed on the return and verification envelope; and

(f) returning the return and verification envelope with the stub and the secrecy envelope containing the ballot or ballots enclosed, as provided in 13-13-221."

**Section 2.** Section 13-13-214, MCA, is amended to read:



1           **"13-13-214. Mailing ballot to elector.** (1) (a) Except as provided in 13-13-213 and in subsection  
2 (1)(b) of this section, as soon as the official ballots are printed, the election administrator shall send by mail,  
3 postage prepaid, to each elector from whom the election administrator has received a valid application  
4 whatever official ballots are necessary. Ballots must be sent immediately to electors submitting valid  
5 requests after the official ballots are printed.

6           (b) The election administrator may deliver a ballot in person to an individual other than the elector  
7 if:

8           (i) the elector has designated the individual, either by a signed letter or by making the designation  
9 on the application form in a manner prescribed by the secretary of state;

10          (ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt  
11 of the ballot;

12          (iii) the election administrator believes that the individual receiving the ballot is the designated  
13 person; and

14          (iv) the designated person has not previously picked up ballots for four other electors..

15          (2) The election administrator shall enclose with the ballots;

16           (a) a secrecy envelope, free of any marks that would identify the voter; and

17           (b) a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed  
18 by the secretary of state must be printed on the back of the envelope.

19          (3) The election administrator shall stamp the ballots provided to an absentee elector as provided  
20 in 13-13-116.

21          (4) Both the envelope in which the ballot is mailed to an elector in the United States service and  
22 the return envelope must have printed across the face the information and graphics and be of the color  
23 prescribed by the secretary of state consistent with the regulations established by the federal election  
24 commission, the U.S. postal service, or other federal agency.

25          (5) If the ballots sent to the elector are for a primary election, the election administrator shall  
26 enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or  
27 marked in any way so that it can be identified as being used by any one elector.

28          (6) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must  
29 include use of the envelope for unvoted ballots. The instructions must include information concerning the  
30 type or types of writing instruments that may be used to mark the absentee ballot. The instructions must

1 include information regarding use of the secrecy envelope, use of the return and verification envelope, and  
 2 detaching the stub and returning it in the return and verification envelope with the secrecy envelope. The  
 3 election administrator shall include a voter information pamphlet with the instructions if:

- 4 (a) a statewide ballot issue appears on the ballot mailed to the elector;  
 5 (b) the elector is out of the state or will be out of the state at the time of the election; and  
 6 (c) the elector requests a voter information pamphlet.  
 7 (7) The return envelope must be self-addressed to the election administrator."  
 8

9 **Section 3.** Section 13-13-221, MCA, is amended to read:

10 **"13-13-221. Marking and affirming ballot -- use of secrecy and return envelopes.** (1) After the  
 11 elector marks ~~his~~ the elector's ballots, ~~he~~ the elector shall fold them so that the vote is concealed and so  
 12 that the official stamp is visible and place the ballots in the secrecy envelope.

13 (2) The stubs ~~shall~~ may be left attached and the ballots ~~should be~~ folded so that the stubs can be  
 14 detached without revealing the vote, and the elector shall place the ballots in the return envelope, or the  
 15 elector may detach the stubs and place the ballots in the secrecy envelope and place the stubs and the  
 16 secrecy envelope in the return verification envelope.

17 ~~(2)(3)~~ (3) The elector shall place the ballots with the stubs attached in the return envelope or place  
 18 the stubs and the secrecy envelope in the return envelope addressed to the election administrator and seal  
 19 it securely. If the ballots are for a primary election, the party ballot or ballots not voted ~~shall~~ must be placed  
 20 in the envelope marked for that purpose and enclosed in the outer return envelope with the voted ballots  
 21 as provided in subsection (2).

22 ~~(3)(4)~~ (4) The elector shall complete and sign the affirmation on the envelope.

23 ~~(4)(5)~~ (5) The elector shall mail the envelope, postage prepaid, or deliver it to the election administrator  
 24 or the special absentee election board."  
 25

26 **Section 4.** Section 13-13-225, MCA, is amended to read:

27 **"13-13-225. Special absentee election boards -- members -- appointment.** (1) The election  
 28 administrator shall designate and appoint a number of special absentee election boards as needed to serve  
 29 in various places to deliver ballots to electors who are entitled to vote by absentee ballot as a result of  
 30 illness or health emergency under 13-13-201~~(4)~~.

1 (2) In a partisan election, each special absentee election board shall consist of two members, one  
 2 from each of the two political parties receiving the highest votes in the state during the last preceding  
 3 general election. Board members ~~must~~ shall reside in the county in which they serve.

4 (3) ~~No~~ A member of a special absentee election board may not be a candidate or a spouse,  
 5 ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any  
 6 one of these if the candidate's name appears on a ballot in the county."

7  
 8 **Section 5.** Section 13-13-229, MCA, is amended to read:

9 "**13-13-229. Voting performed before the special absentee election board.** (1) As provided in  
 10 13-13-201~~4~~, a qualified elector who becomes ill or is prevented from voting at the polls because of a  
 11 health emergency may vote by absentee ballot. Pursuant to 13-13-212(3), ~~such~~ the elector may request  
 12 that a special absentee election board personally deliver a ballot to ~~him~~ the elector.

13 (2) The manner and procedure of voting by use of an absentee ballot under this section must be  
 14 the same as provided in 13-13-221, except that the elector ~~must~~ shall hand the marked ballot in the sealed  
 15 return envelope to the special absentee election board, and the board ~~must~~ shall deliver the sealed return  
 16 envelope to the election administrator or to the election judges of the precinct in which the elector is  
 17 registered.

18 (3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by  
 19 the election administrator if the ballot was in the possession of the board before the time designated for  
 20 the closing of the polls.

21 (4) An elector who needs assistance in marking ~~his~~ the elector's ballot because of physical  
 22 incapacity or inability to read or write may receive assistance from the special absentee election board  
 23 appointed to personally deliver the ballot. Any ~~such~~ assistance given an elector pursuant to this section  
 24 must be provided in substantially the same manner as required in 13-13-119."

25  
 26 **Section 6.** Section 13-13-231, MCA, is amended to read:

27 "**13-13-231. Disposition of marked ballot upon receipt by election administrator.** (1) Upon receipt  
 28 of the voted absentee ballot, the election administrator shall immediately attach the elector's application  
 29 to the unopened return envelope and mark the precinct number for delivery.

30 (2) The election administrator shall safely keep the absentee ballots in ~~his~~ the election

1 administrator's office until delivered by him the election administrator to the election judges."

2

3 **Section 7.** Section 13-13-232, MCA, is amended to read:

4 **"13-13-232. Delivery of ballots, secrecy envelopes, and return envelopes to election judges --**  
 5 **ballots to be rejected.** (1) If the absentee ballot is received prior to delivery of the official ballots to the  
 6 election judges, the election administrator shall deliver the unopened return envelope to the judges at the  
 7 same time that the ballots are delivered. The return envelopes must be opened and the ballots processed  
 8 according to the procedures described in 13-13-241.

9 (2) If absentee ballots are received after the ballots are delivered to the election judges but prior  
 10 to the close of the polls, the election administrator shall immediately deliver the unopened return envelopes  
 11 to the judges. The return envelopes must be opened and the ballots processed according to the procedures  
 12 described in 13-13-241.

13 (3) If the election administrator receives an absentee ballot for which an application or request was  
 14 not received as required by 13-13-211, or if an absentee ballot is received by the election administrator  
 15 after the close of the polls and was not issued to an elector pursuant to 13-13-201~~(4)~~(1)(d), the election  
 16 administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words  
 17 "to be rejected". Absentee ballots ~~are~~ endorsed ~~shall~~ in this manner must be retained by the election  
 18 administrator and placed with the proper records when they are returned to ~~him~~ the election administrator."

19

20 **Section 8.** Section 13-13-241, MCA, is amended to read:

21 **"13-13-241. Examination of absentee ballot return envelopes and affirmations while polls open**  
 22 **-- deposit of absentee and unvoted ballots.** (1) While the polls are open, the election judges may compare  
 23 the signature of the elector on the absentee ballot request and affirmation. If they find that the signatures  
 24 correspond, that the affirmation is sufficient, and that the absentee elector is qualified, they may open the  
 25 absentee ballot return envelope.

26 (2) If the absentee ballot does not meet the requirements specified in subsection (1), it must be  
 27 rejected. The election judges, without opening the absentee ballot return envelope, shall mark across it the  
 28 reason for rejection and a majority of the judges shall sign their initials. Unopened rejected absentee ballot  
 29 return envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.

30 (3) After opening the absentee ballot return envelope and without opening the secrecy envelope

1 and permitting the ballot to be examined, the election judges shall ascertain whether the stubs are enclosed  
 2 in the return envelope and whether the numbers correspond to the numbers in the certificate of the election  
 3 administrator. If so, they shall deposit the stubs in the proper box and place the secrecy envelope in the  
 4 proper ballot box. In a primary election, the unvoted ballots must be deposited in the unvoted ballot box  
 5 without being removed from their enclosure envelopes.

6 ~~(3)(4)~~ After opening the absentee ballot return envelope and if the ballot has not been placed in  
 7 the secrecy envelope, without unfolding the ~~ballots~~ ballot or permitting ~~them~~ it to be examined, the election  
 8 judges shall ascertain whether the stubs are attached or enclosed and whether the numbers correspond to  
 9 the numbers in the certificate of the election administrator. If so, they shall detach the stubs and deposit  
 10 the stubs ~~and ballots in the proper ballot boxes. In a primary election, the unvoted ballots must be~~  
 11 ~~deposited in the unvoted ballot box without being removed from their enclosure envelope.~~ in the proper  
 12 box. The election judge shall place the ballot in the secrecy envelope and place the secrecy envelope in  
 13 the proper ballot box.

14 ~~(4)(5)~~ If upon opening the absentee ballot return envelope it is found that the number does not  
 15 correspond to the number on the certificate of the election administrator or that the stub is not enclosed  
 16 in the return envelope or is not attached to a ballot that was not placed in the secrecy envelope, the ballot  
 17 must be rejected. The reason for rejection must be marked on the back of the ballot or ballots, and the  
 18 statement must be initialed by a majority of the election judges."  
 19

20 **Section 9.** Section 13-15-201, MCA, is amended to read:

21 **"13-15-201. Preparation for count.** (1) To begin the count after the close of the polls, the election  
 22 judges shall take ballots out of the box unopened to determine whether each ballot is single. The election  
 23 judges shall remove each absentee ballot secrecy envelope and open it to determine whether the ballot for  
 24 each election is single.

25 (2) They shall count the ballots to ensure that the number of ballots corresponds with the number  
 26 of names on the pollbook.

27 (3) If they cannot reconcile the total number of ballots with the pollbook, they ~~must~~ shall submit  
 28 a written report stating how many ballots were missing or in excess and any reason of which they are  
 29 aware for the discrepancy. All judges ~~must~~ shall sign the report.

30 (4) A ballot ~~which~~ that is not endorsed by the official stamp is void and may not be counted unless

1 the judges agree that the stamp is missing because of their error. ~~Such~~ The ballot ~~shall~~ must be marked  
2 "unstamped by error" on the back and must be initialed by all judges.

3 (5) If two or more ballots are folded together to look like a single ballot, they ~~shall~~ must be laid  
4 aside until the count is complete. The election judges shall compare the count with the pollbooks, and if  
5 a majority believes that the ballots folded together were voted by one elector, they must be rejected;  
6 otherwise they must be counted."

7 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0311, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act providing for secrecy for absentee ballots.

ASSUMPTIONS:

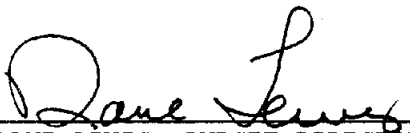
1. The office of the Secretary of State anticipates no fiscal impact from SB 311.

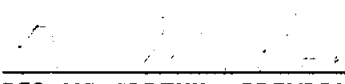
FISCAL IMPACT:

None

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Additional costs associated with the implementation of SB 311 will vary from county to county depending upon the number of ballots mailed out and type of voting system used. The size and cost of the additional envelope will vary substantially depending upon whether the ballots are paper, optic scan or punch card. The estimated cost for absentee voters in a primary election is between \$1,000 and \$2,000 and between \$1,100 and \$5,000 for a general election. Other factors affecting the cost are increased processing time which will result in overtime for the clerk and recorder staff on duty on election night and computer count center judges. It is assumed a large number of ballots may not be counted because the voter will not follow the instructions concerning the correct way to return the ballot.

 2-14-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2/15/97  
BEA MC CARTHY, PRIMARY SPONSOR      DATE

Fiscal Note for SB0311, as introduced

**SB 311**



## SENATE BILL NO. 311

INTRODUCED BY MCCARTHY, HARRINGTON, QUILICI, BECK, BEAUDRY, PAVLOVICH, MENAHAN,  
LYNCH, TASH, TUSS, MAHLUM, J. JOHNSON, GALVIN, JERGESON, HERTEL, BOHLINGER,  
M. TAYLOR, SWYSGOOD, THOMAS, GRADY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SECRECY FOR ABSENTEE BALLOTS; AND  
AMENDING SECTIONS 13-13-201, 13-13-214, 13-13-221, 13-13-225, 13-13-229, 13-13-231, 13-13-232,  
13-13-241, AND 13-15-201, MCA."

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

**Section 1.** Section 13-13-201, MCA, is amended to read:

"13-13-201. **Voting by absentee ballot -- qualifications -- procedures.** (1) A qualified registered  
elector is entitled to vote by absentee ballot, as provided in this part, if the elector:

~~(1)(a)~~ expects to be absent from the county or precinct and unable to vote in person at the time  
of holding the election;

~~(2)(b)~~ is physically incapacitated and unable to go to the polls on election day;

~~(3)(c)~~ suffers from chronic illness or general ill health; or

~~(4)(d)~~ is prevented from voting at the polls as a result of an illness or health emergency occurring  
between 5 p.m. on the Friday preceding the election and noon on election day. ~~Such~~ The health emergency  
must arise from unforeseen circumstances that require the elector to seek health care or medical assistance.

(2) The elector may vote by:

(a) marking the ballot in the manner specified;

~~(b) removing the stub end;~~

~~(c)(B)~~ placing the marked ballot in the secrecy envelope, free of any identifying marks;

~~(d)(C)~~ placing the stub and the secrecy envelope containing one ballot for each election being held  
in the return and verification envelope;

~~(e)(D)~~ executing the affidavit printed on the return and verification envelope; and

~~(f)(E)~~ returning the return and verification envelope with the stub and the secrecy envelope  
containing the ballot or ballots enclosed, as provided in 13-13-221."

SECOND READING

1           **Section 2.** Section 13-13-214, MCA, is amended to read:

2           "13-13-214. **Mailing ballot to elector.** (1) (a) Except as provided in 13-13-213 and in subsection  
3 (1)(b) of this section, as soon as the official ballots are printed, the election administrator shall send by mail,  
4 postage prepaid, to each elector from whom the election administrator has received a valid application  
5 whatever official ballots are necessary. Ballots must be sent immediately to electors submitting valid  
6 requests after the official ballots are printed.

7           (b) The election administrator may deliver a ballot in person to an individual other than the elector  
8 if:

9           (i) the elector has designated the individual, either by a signed letter or by making the designation  
10 on the application form in a manner prescribed by the secretary of state;

11           (ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt  
12 of the ballot;

13           (iii) the election administrator believes that the individual receiving the ballot is the designated  
14 person; and

15           (iv) the designated person has not previously picked up ballots for four other electors.

16           (2) The election administrator shall enclose with the ballots:

17           (a) a secrecy envelope, free of any marks that would identify the voter; and

18           (b) a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed  
19 by the secretary of state must be printed on the back of the envelope.

20           (3) The election administrator shall stamp the ballots provided to an absentee elector as provided  
21 in 13-13-116 AND REMOVE THE STUBS FROM THE BALLOTS, ATTACHING THE STUBS TO THE  
22 ELECTOR'S ABSENTEE BALLOT APPLICATION.

23           (4) Both the envelope in which the ballot is mailed to an elector in the United States service and  
24 the return envelope must have printed across the face the information and graphics and be of the color  
25 prescribed by the secretary of state consistent with the regulations established by the federal election  
26 commission, the U.S. postal service, or other federal agency.

27           (5) If the ballots sent to the elector are for a primary election, the election administrator shall  
28 enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or  
29 marked in any way so that it can be identified as being used by any one elector.

30           (6) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must

1 include use of the envelope for unvoted ballots. The instructions must include information concerning the  
 2 type or types of writing instruments that may be used to mark the absentee ballot. The instructions must  
 3 include information regarding use of the secrecy envelope, AND use of the return and verification envelope,  
 4 and detaching the stub and returning it in the return and verification envelope with the secrecy envelope.

5 The election administrator shall include a voter information pamphlet with the instructions if:

- 6 (a) a statewide ballot issue appears on the ballot mailed to the elector;
  - 7 (b) the elector is out of the state or will be out of the state at the time of the election; and
  - 8 (c) the elector requests a voter information pamphlet.
- 9 (7) The return envelope must be self-addressed to the election administrator."

10

11 **Section 3.** Section 13-13-221, MCA, is amended to read:

12 "**13-13-221. Marking and affirming ballot -- use of secrecy and return envelopes.** (1) After the  
 13 elector marks his the elector's ballots, ~~he~~ the elector shall fold them so that the vote is concealed and so  
 14 that the official stamp is visible and place the ballots in the secrecy envelope.

15 ~~(2) The stubs shall may be left attached and the ballots should be folded so that the stubs can be~~  
 16 ~~detached without revealing the vote, and the elector shall place the ballots in the return envelope, or the~~  
 17 ~~elector may detach the stubs and place the ballots in the secrecy envelope and place the stubs and the~~  
 18 ~~secrecy envelope in the return verification envelope.~~

19 ~~(2)(3)(2)~~ The elector shall place the ballots with the stubs attached in the return envelope or place  
 20 the stubs and IN the secrecy envelope AND PLACE THE SEALED SECRECY ENVELOPE in the return  
 21 envelope addressed to the election administrator and seal it securely. If the ballots are for a primary  
 22 election, the party ballot or ballots not voted shall must be placed in the envelope marked for that purpose  
 23 and enclosed in the outer return envelope with the voted ballots as provided in subsection (2).

24 ~~(3)(4)(3)~~ The elector shall complete and sign the affirmation on the envelope.

25 ~~(4)(5)(4)~~ The elector shall mail the envelope, postage prepaid, or deliver it to the election  
 26 administrator or the special absentee election board."

27

28 **Section 4.** Section 13-13-225, MCA, is amended to read:

29 "**13-13-225. Special absentee election boards -- members -- appointment.** (1) The election  
 30 administrator shall designate and appoint a number of special absentee election boards as needed to serve

1 in various places to deliver ballots to electors who are entitled to vote by absentee ballot as a result of  
 2 illness or health emergency under 13-13-201(4).

3 (2) In a partisan election, each special absentee election board shall consist of two members, one  
 4 from each of the two political parties receiving the highest votes in the state during the last preceding  
 5 general election. Board members ~~must~~ shall reside in the county in which they serve.

6 (3) ~~No~~ A member of a special absentee election board may not be a candidate or a spouse,  
 7 ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any  
 8 one of these if the candidate's name appears on a ballot in the county."

9

10 **Section 5.** Section 13-13-229, MCA, is amended to read:

11 "**13-13-229. Voting performed before the special absentee election board.** (1) As provided in  
 12 13-13-201(4), a qualified elector who becomes ill or is prevented from voting at the polls because of a  
 13 health emergency may vote by absentee ballot. Pursuant to 13-13-212(3), ~~such~~ the elector may request  
 14 that a special absentee election board personally deliver a ballot to ~~him~~ the elector.

15 (2) The manner and procedure of voting by use of an absentee ballot under this section must be  
 16 the same as provided in 13-13-221, except that the elector ~~must~~ shall hand the marked ballot in the sealed  
 17 return envelope to the special absentee election board, and the board ~~must~~ shall deliver the sealed return  
 18 envelope to the election administrator or to the election judges of the precinct in which the elector is  
 19 registered.

20 (3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by  
 21 the election administrator if the ballot was in the possession of the board before the time designated for  
 22 the closing of the polls.

23 (4) An elector who needs assistance in marking ~~his~~ the elector's ballot because of physical  
 24 incapacity or inability to read or write may receive assistance from the special absentee election board  
 25 appointed to personally deliver the ballot. Any ~~such~~ assistance given an elector pursuant to this section  
 26 must be provided in substantially the same manner as required in 13-13-119."

27

28 **Section 6.** Section 13-13-231, MCA, is amended to read:

29 "**13-13-231. Disposition of marked ballot upon receipt by election administrator.** (1) Upon receipt  
 30 of the voted absentee ballot, the election administrator shall immediately attach the elector's application

1 to the unopened return envelope and mark the precinct number for delivery.

2 (2) The election administrator shall safely keep the absentee ballots in ~~his~~ the election  
3 administrator's office until delivered by ~~him~~ the election administrator to the election judges."

4  
5 **Section 7.** Section 13-13-232, MCA, is amended to read:

6 "**13-13-232. Delivery of ballots, secrecy envelopes, and return envelopes to election judges --**  
7 **ballots to be rejected.** (1) If the absentee ballot is received prior to delivery of the official ballots to the  
8 election judges, the election administrator shall deliver the unopened return envelope to the judges at the  
9 same time that the ballots are delivered. The return envelopes must be opened and the ballots processed  
10 according to the procedures described in 13-13-241.

11 (2) If absentee ballots are received after the ballots are delivered to the election judges but prior  
12 to the close of the polls, the election administrator shall immediately deliver the unopened return envelopes  
13 to the judges. The return envelopes must be opened and the ballots processed according to the procedures  
14 described in 13-13-241.

15 (3) If the election administrator receives an absentee ballot for which an application or request was  
16 not received as required by 13-13-211<sup>7</sup>, or if an absentee ballot is received by the election administrator  
17 after the close of the polls and was not issued to an elector pursuant to 13-13-201~~(4)~~(1)(d), the election  
18 administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words  
19 "to be rejected". Absentee ballots ~~so~~ endorsed ~~shall~~ in this manner must be retained by the election  
20 administrator and placed with the proper records when they are returned to ~~him~~ the election administrator."

21  
22 **Section 8.** Section 13-13-241, MCA, is amended to read:

23 "**13-13-241. Examination of absentee ballot return envelopes and affirmations while polls open**  
24 **-- deposit of absentee and unvoted ballots.** (1) While the polls are open, the election judges may compare  
25 the signature of the elector on the absentee ballot request and affirmation. If they find that the signatures  
26 correspond, that the affirmation is sufficient, and that the absentee elector is qualified, they may open the  
27 absentee ballot return envelope.

28 (2) If the absentee ballot does not meet the requirements specified in subsection (1), it must be  
29 rejected. The election judges, without opening the absentee ballot return envelope, shall mark across it the  
30 reason for rejection and a majority of the judges shall sign their initials. Unopened rejected absentee ballot

1 return envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.

2 (3) After opening the absentee ballot return envelope and without opening the secrecy envelope  
 3 and permitting the ballot to be examined, the election judges shall ascertain whether the stubs are enclosed  
 4 in the return envelope and whether the numbers correspond to the numbers in the certificate of the election  
 5 administrator. If so, they shall deposit the stubs in the proper box and place the secrecy envelope in the  
 6 proper ballot box. In a primary election, the unvoted ballots must be deposited in the unvoted ballot box  
 7 without being removed from their enclosure envelopes.

8 ~~(3)~~(4) After opening the absentee ballot return envelope and if the ballot has not been placed in  
 9 the secrecy envelope, without unfolding the ~~ballots~~ ballot or permitting ~~them~~ it to be examined, the election  
 10 judges shall ~~ascertain whether the stubs are attached or enclosed and whether the numbers correspond to~~  
 11 ~~the numbers in the certificate of the election administrator. If so, they shall detach the stubs and deposit~~  
 12 ~~the stubs and ballots in the proper ballot boxes. In a primary election, the unvoted ballots must be~~  
 13 ~~deposited in the unvoted ballot box without being removed from their enclosure envelope. in the proper~~  
 14 ~~box. The election judge shall place the ballot in the secrecy envelope and place the secrecy envelope in~~  
 15 the proper ballot box.

16 ~~(4)~~(5) ~~If upon opening the absentee ballot return envelope it is found that the number does not~~  
 17 ~~correspond to the number on the certificate of the election administrator or that the stub is not enclosed~~  
 18 ~~in the return envelope or is not attached to a ballot that was not placed in the secrecy envelope, the ballot~~  
 19 ~~must be rejected. The reason for rejection must be marked on the back of the ballot or ballots, and the~~  
 20 ~~statement must be initialed by a majority of the election judges."~~

21

22 **Section 9.** Section 13-15-201, MCA, is amended to read:

23 **"13-15-201. Preparation for count.** (1) To begin the count after the close of the polls, the election  
 24 judges shall take ballots out of the box unopened to determine whether each ballot is single. The election  
 25 judges shall remove each absentee ballot secrecy envelope and open it to determine whether the ballot for  
 26 each election is single. A BALLOT MUST BE REJECTED IF IN THE ENVELOPE THERE IS MORE THAN ONE  
 27 BALLOT FOR EACH ELECTION.

28 (2) They shall count the ballots to ensure that the number of ballots corresponds with the number  
 29 of names on the pollbook.

30 (3) If they cannot reconcile the total number of ballots with the pollbook, they ~~must~~ shall submit

1 a written report stating how many ballots were missing or in excess and any reason of which they are  
2 aware for the discrepancy. All judges ~~must~~ shall sign the report.

3 (4) A ballot ~~which~~ that is not endorsed by the official stamp is void and may not be counted unless  
4 the judges agree that the stamp is missing because of their error. ~~Such~~ The ballot ~~shall~~ must be marked  
5 "unstamped by error" on the back and must be initialed by all judges.

6 (5) If two or more ballots are folded together to look like a single ballot, they ~~shall~~ must be laid  
7 aside until the count is complete. The election judges shall compare the count with the pollbooks, and if  
8 a majority believes that the ballots folded together were voted by one elector, they must be rejected;  
9 otherwise they must be counted."

10

-END-

## 1 SENATE BILL NO. 311

2 INTRODUCED BY MCCARTHY, HARRINGTON, QUILICI, BECK, BEAUDRY, PAVLOVICH, MENAHAN,  
3 LYNCH, TASH, TUSS, MAHLUM, J. JOHNSON, GALVIN, JERGESON, HERTEL, BOHLINGER,  
4 M. TAYLOR, SWYSGOOD, THOMAS, GRADY

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SECRECY FOR ABSENTEE BALLOTS; AND  
7 AMENDING SECTIONS 13-13-201, 13-13-214, 13-13-221, 13-13-225, 13-13-229, 13-13-231, 13-13-232,  
8 13-13-241, AND 13-15-201, MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE  
REPRINTED. PLEASE REFER TO SECOND READING COPY  
(YELLOW) FOR COMPLETE TEXT.**

THIRD READING



APPROVED BY COM ON  
STATE ADMINISTRATION

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## SENATE BILL NO. 311

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 LYNCH, TASH, TUSS, MAHLUM, J. JOHNSON, GALVIN, JERGESON, HERTEL, BOHLINGER,  
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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SECRECY FOR ABSENTEE BALLOTS; AND  
 AMENDING SECTIONS 13-13-201, 13-13-214, 13-13-221, 13-13-225, 13-13-229, 13-13-231, 13-13-232,  
 13-13-241, AND 13-15-201, MCA."

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

**Section 1.** Section 13-13-201, MCA, is amended to read:

"13-13-201. **Voting by absentee ballot -- qualifications -- procedures.** (1) A qualified registered  
 elector is entitled to vote by absentee ballot, as provided in this part, if the elector:

~~(1)(a)~~ expects to be absent from the county or precinct and unable to vote in person at the time  
 of holding the election;

~~(2)(b)~~ is physically incapacitated and unable to go to the polls on election day;

~~(3)(c)~~ suffers from chronic illness or general ill health; or

~~(4)(d)~~ is prevented from voting at the polls as a result of an illness or health emergency occurring  
 between 5 p.m. on the Friday preceding the election and noon on election day. ~~Such~~ The health emergency  
 must arise from unforeseen circumstances that require the elector to seek health care or medical assistance.

(2) The elector may vote by:

(a) marking the ballot in the manner specified;

~~(b) removing the stub end;~~

~~(c)(B)~~ placing the marked ballot in the secrecy envelope, free of any identifying marks;

~~(d)(C)~~ placing the stub and the secrecy envelope containing one ballot for each election being held  
 in the return and verification envelope;

~~(e)(D)~~ executing the affidavit printed on the return and verification envelope; and

~~(f)(E)~~ returning the return and verification envelope with the stub and the secrecy envelope  
 containing the ballot or ballots enclosed, as provided in 13-13-221."

1           **Section 2.** Section 13-13-214, MCA, is amended to read:

2           **"13-13-214. Mailing ballot to elector.** (1) (a) Except as provided in 13-13-213 and in subsection  
3 (1)(b) of this section, as soon as the official ballots are printed, the election administrator shall send by mail,  
4 postage prepaid, to each elector from whom the election administrator has received a valid application  
5 whatever official ballots are necessary. Ballots must be sent immediately to electors submitting valid  
6 requests after the official ballots are printed.

7           (b) The election administrator may deliver a ballot in person to an individual other than the elector  
8 if:

9           (i) the elector has designated the individual, either by a signed letter or by making the designation  
10 on the application form in a manner prescribed by the secretary of state;

11           (ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt  
12 of the ballot;

13           (iii) the election administrator believes that the individual receiving the ballot is the designated  
14 person; and

15           (iv) the designated person has not previously picked up ballots for four other electors.

16           (2) The election administrator shall enclose with the ballots;

17           (a) a secrecy envelope, free of any marks that would identify the voter; and

18           (b) a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed  
19 by the secretary of state must be printed on the back of the envelope.

20           (3) The election administrator shall stamp the ballots provided to an absentee elector as provided  
21 in 13-13-116 AND REMOVE THE STUBS FROM THE BALLOTS, ATTACHING THE STUBS TO THE  
22 ELECTOR'S ABSENTEE BALLOT APPLICATION.

23           (4) Both the envelope in which the ballot is mailed to an elector in the United States service and  
24 the return envelope must have printed across the face the information and graphics and be of the color  
25 prescribed by the secretary of state consistent with the regulations established by the federal election  
26 commission, the U.S. postal service, or other federal agency.

27           (5) If the ballots sent to the elector are for a primary election, the election administrator shall  
28 enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or  
29 marked in any way so that it can be identified as being used by any one elector.

30           (6) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must

1 include use of the envelope for unvoted ballots. The instructions must include information concerning the  
 2 type or types of writing instruments that may be used to mark the absentee ballot. The instructions must  
 3 include information regarding use of the secrecy envelope, AND use of the return and verification envelope,  
 4 and detaching the stub and returning it in the return and verification envelope with the secrecy envelope.

5 The election administrator shall include a voter information pamphlet with the instructions if:

- 6 (a) a statewide ballot issue appears on the ballot mailed to the elector;
- 7 (b) the elector is out of the state or will be out of the state at the time of the election; and
- 8 (c) the elector requests a voter information pamphlet.
- 9 (7) The return envelope must be self-addressed to the election administrator."

10  
 11 **Section 3.** Section 13-13-221, MCA, is amended to read:

12 "**13-13-221. Marking and affirming ballot -- use of secrecy and return envelopes.** (1) After the  
 13 elector marks ~~his~~ the elector's ballots, ~~he~~ the elector shall fold them so that the vote is concealed and so  
 14 that the official stamp is visible and place the ballots in the secrecy envelope.

15 ~~(2) The stubs shall may be left attached and the ballots should be folded so that the stubs can be~~  
 16 ~~detached without revealing the vote, and the elector shall place the ballots in the return envelope, or the~~  
 17 ~~elector may detach the stubs and place the ballots in the secrecy envelope and place the stubs and the~~  
 18 ~~secrecy envelope in the return verification envelope.~~

19 ~~(2)(3)(2)~~ The elector shall place the ballots ~~with the stubs attached in the return envelope or place~~  
 20 ~~the stubs and~~ IN the secrecy envelope AND PLACE THE SEALED SECRECY ENVELOPE in the return  
 21 envelope addressed to the election administrator and seal it securely. If the ballots are for a primary  
 22 election, the party ballot or ballots not voted shall must be placed in the envelope marked for that purpose  
 23 and enclosed in the outer return envelope with the voted ballots as provided in subsection (2).

24 ~~(3)(4)(3)~~ The elector shall complete and sign the affirmation on the envelope.

25 ~~(4)(5)(4)~~ The elector shall mail the envelope, postage prepaid, or deliver it to the election  
 26 administrator or the special absentee election board."

27  
 28 **Section 4.** Section 13-13-225, MCA, is amended to read:

29 "**13-13-225. Special absentee election boards -- members -- appointment.** (1) The election  
 30 administrator shall designate and appoint a number of special absentee election boards as needed to serve

1 in various places to deliver ballots to electors who are entitled to vote by absentee ballot as a result of  
 2 illness or health emergency under 13-13-201(4).

3 (2) In a partisan election, each special absentee election board shall consist of two members, one  
 4 from each of the two political parties receiving the highest votes in the state during the last preceding  
 5 general election. Board members ~~must~~ shall reside in the county in which they serve.

6 (3) ~~No~~ A member of a special absentee election board may not be a candidate or a spouse,  
 7 ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any  
 8 one of these if the candidate's name appears on a ballot in the county."

9

10 **Section 5.** Section 13-13-229, MCA, is amended to read:

11 **"13-13-229. Voting performed before the special absentee election board.** (1) As provided in  
 12 13-13-201(4), a qualified elector who becomes ill or is prevented from voting at the polls because of a  
 13 health emergency may vote by absentee ballot. Pursuant to 13-13-212(3), ~~such~~ the elector may request  
 14 that a special absentee election board personally deliver a ballot to ~~him~~ the elector.

15 (2) The manner and procedure of voting by use of an absentee ballot under this section must be  
 16 the same as provided in 13-13-221, except that the elector ~~must~~ shall hand the marked ballot in the sealed  
 17 return envelope to the special absentee election board, and the board ~~must~~ shall deliver the sealed return  
 18 envelope to the election administrator or to the election judges of the precinct in which the elector is  
 19 registered.

20 (3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by  
 21 the election administrator if the ballot was in the possession of the board before the time designated for  
 22 the closing of the polls.

23 (4) An elector who ~~needs~~ needs assistance in marking ~~his~~ the elector's ballot because of physical  
 24 incapacity or inability to read or write may receive assistance from the special absentee election board  
 25 appointed to personally deliver the ballot. Any ~~such~~ such assistance given an elector pursuant to this section  
 26 must be provided in substantially the same manner as required in 13-13-119."

27

28 **Section 6.** Section 13-13-231, MCA, is amended to read:

29 **"13-13-231. Disposition of marked ballot upon receipt by election administrator.** (1) Upon receipt  
 30 of the voted absentee ballot, the election administrator shall immediately attach the elector's application

1 to the unopened return envelope and mark the precinct number for delivery.

2 (2) The election administrator shall safely keep the absentee ballots in ~~his~~ the election  
3 administrator's office until delivered by ~~him~~ the election administrator to the election judges."

4

5 Section 7. Section 13-13-232, MCA, is amended to read:

6 "13-13-232. Delivery of ballots, secrecy envelopes, and return envelopes to election judges --  
7 ballots to be rejected. (1) If the absentee ballot is received prior to delivery of the official ballots to the  
8 election judges, the election administrator shall deliver the unopened return envelope to the judges at the  
9 same time that the ballots are delivered. The return envelopes must be opened and the ballots processed  
10 according to the procedures described in 13-13-241.

11 (2) If absentee ballots are received after the ballots are delivered to the election judges but prior  
12 to the close of the polls, the election administrator shall immediately deliver the unopened return envelopes  
13 to the judges. The return envelopes must be opened and the ballots processed according to the procedures  
14 described in 13-13-241.

15 (3) If the election administrator receives an absentee ballot for which an application or request was  
16 not received as required by 13-13-211, or if an absentee ballot is received by the election administrator  
17 after the close of the polls and was not issued to an elector pursuant to 13-13-201(4)(1)(d), the election  
18 administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words  
19 "to be rejected". Absentee ballots ~~se~~ endorsed ~~shall~~ in this manner must be retained by the election  
20 administrator and placed with the proper records when they are returned to ~~him~~ the election administrator."

21

22 Section 8. Section 13-13-241, MCA, is amended to read:

23 "13-13-241. Examination of absentee ballot return envelopes and affirmations while polls open  
24 -- deposit of absentee and unvoted ballots. (1) While the polls are open, the election judges may compare  
25 the signature of the elector on the absentee ballot request and affirmation. If they find that the signatures  
26 correspond, that the affirmation is sufficient, and that the absentee elector is qualified, they may open the  
27 absentee ballot return envelope.

28 (2) If the absentee ballot does not meet the requirements specified in subsection (1), it must be  
29 rejected. The election judges, without opening the absentee ballot return envelope, shall mark across it the  
30 reason for rejection and a majority of the judges shall sign their initials. Unopened rejected absentee ballot

1 return envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.

2 ~~(3) After opening the absentee ballot return envelope and without opening the secrecy envelope~~  
 3 ~~and permitting the ballot to be examined, the election judges shall ascertain whether the stubs are enclosed~~  
 4 ~~in the return envelope and whether the numbers correspond to the numbers in the certificate of the election~~  
 5 ~~administrator. If so, they shall deposit the stubs in the proper box and place the secrecy envelope in the~~  
 6 ~~proper ballot box. In a primary election, the unvoted ballots must be deposited in the unvoted ballot box~~  
 7 ~~without being removed from their enclosure envelopes.~~

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 9 ~~the secrecy envelope, without unfolding the ballots ballot or permitting them it to be examined, the election~~  
 10 ~~judges shall ascertain whether the stubs are attached or enclosed and whether the numbers correspond to~~  
 11 ~~the numbers in the certificate of the election administrator. If so, they shall detach the stubs and deposit~~  
 12 ~~the stubs and ballots in the proper ballot boxes. In a primary election, the unvoted ballots must be~~  
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 14 ~~box. The election judge shall place the ballot in the secrecy envelope and place the secrecy envelope in~~  
 15 ~~the proper ballot box.~~

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 17 ~~correspond to the number on the certificate of the election administrator or that the stub is not enclosed~~  
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 20 ~~statement must be initialed by a majority of the election judges."~~

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23 **"13-15-201. Preparation for count.** (1) To begin the count after the close of the polls, the election  
 24 judges shall take ballots out of the box unopened to determine whether each ballot is single. The election  
 25 judges shall remove each absentee ballot secrecy envelope and open it to determine whether the ballot for  
 26 each election is single. A BALLOT MUST BE REJECTED IF IN THE ENVELOPE THERE IS MORE THAN ONE  
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 29 of names on the pollbook.

30 (3) If they cannot reconcile the total number of ballots with the pollbook, they ~~must~~ shall submit

1 a written report stating how many ballots were missing or in excess and any reason of which they are  
2 aware for the discrepancy. All judges ~~must~~ shall sign the report.

3 (4) A ballot ~~which~~ that is not endorsed by the official stamp is void and may not be counted unless  
4 the judges agree that the stamp is missing because of their error. ~~Such~~ The ballot ~~shall~~ must be marked  
5 "unstamped by error" on the back and must be initialed by all judges.

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7 aside until the count is complete. The election judges shall compare the count with the pollbooks, and if  
8 a majority believes that the ballots folded together were voted by one elector, they must be rejected;  
9 otherwise they must be counted."

10

-END-