

**CHAPTER 16.1-07**  
**ABSENT VOTERS' BALLOTS AND ABSENTEE VOTING**

**16.1-07-01. Absent voter.**

Any qualified elector of this state may vote an absent voter's ballot at any general, special, or primary state election, any county election, or any city or school district election. An elector who votes by absentee ballot may not vote in person at the same election.

**16.1-07-02. Elector may vote before leaving - No voting in person upon return.**

Repealed by S.L. 1997, ch. 192, § 5.

**16.1-07-03. Preparation and printing of ballots.**

Repealed by S.L. 2011, ch. 154, § 19.

**16.1-07-04. When ballots furnished proper officials.**

The county auditor, or any other officer required by law to prepare any general, special, or primary state election ballots or any county election ballots, shall prepare, have printed, and deliver to the county auditor at least forty days before the holding of any general, special, or primary state election a sufficient number of absent voter ballots for the use of all voters likely to require such ballots for that election. In city or school elections, the auditor or clerk of the city, the business manager of the school district, or any other officer required by law to prepare city or school election ballots shall prepare and have printed and available for distribution to the public at least forty days before the holding of any city or school election a sufficient number of absent voter's ballots for the use of all voters likely to require such ballots for that election. Officers authorized to distribute absent voter's ballots under this chapter shall ensure all ballots used as absent voter's ballots are secure at all times and accessible only to those persons under the officer's supervision for distribution. If an election official personally distributes and collects an absent voter's ballot outside the election official's office, appointed election judges from an election board shall accompany the election official along with the ballot to and from the voter's location and be present while the voter is marking the ballot.

**16.1-07-05. Time for applying for ballot - Emergency situations - Sufficient time for application and ballot return.**

1. At any time in an election year, any qualified elector may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, by personal delivery, facsimile, electronic mail or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form approved by the secretary of state, for an absent voter's ballot for a general, special, primary, county, city, or school election from the secretary of state, a county or city auditor, a candidate, a political party, or a political committee. The application form must provide the applicant the ability to indicate which elections in the calendar year the applicant wishes to vote by absentee ballot.
2. No auditor or clerk may issue ballots for absentee voters on the day of the election except to individuals prevented from voting in person on the day of the election due to an emergency. An individual requesting an absentee ballot on the day of the election due to an emergency must do so through an agent as set forth in this chapter. An agent may represent only one individual. The absentee ballot must be returned to the county auditor's office by four p.m. on the day of the election.
3. A completed application must be submitted to the appropriate election official in a timely manner so as to allow the applicant to receive, complete, and mail the absent voter's ballot before the day of the election.

**16.1-07-06. Application form.**

1. Application for an absent voter's or mail ballot must be made on a form, prescribed by the secretary of state, to be furnished by the proper officer of the county, city, or school

district in which the applicant is an elector, or any form, approved by the secretary of state, containing the following:

- a. The applicant's name.
  - b. The applicant's current or most recent North Dakota residential address.
  - c. The applicant's mailing address.
  - d. The applicant's current contact telephone number, if available.
  - e. The election for which the ballot is being requested.
  - f. The date of the request.
  - g. An affirmation that the applicant has resided, or will reside, in the precinct for at least thirty days next preceding the election and will be a qualified elector of the precinct.
  - h. The applicant's signature, a notification the signature on this affidavit will be compared to the signature on the affidavit on the envelope in which the absentee ballot must be placed.
  - i. The designation of the individual's status as a citizen of this country and resident of this state living outside the United States, a uniformed service member living away from the individual's North Dakota residence, or an immediate family member of the uniformed service member living away from the individual's North Dakota residence.
  - j. The applicant's date of birth.
  - k. The identification number from one of the applicant's valid forms of identification, a copy of the applicant's long-term care certificate, and, if necessary, a copy of the applicant's supplemental identification under section 16.1-01-04.1.
2. If the applicant is unable to sign the applicant's name to the application, the applicant shall mark (X) or use the applicant's signature stamp on the application in the presence of a disinterested individual. The disinterested individual shall print the name of the individual marking the X or using the signature stamp below the X or signature stamp and shall sign the disinterested individual's own name following the printed name together with the notation "witness to the mark".
  3. If the applicant does not possess or cannot secure an approved form of identification as provided for under section 16.1-01-04.1 due to a disability with which the individual lives and which prevents the individual from traveling to obtain, the application also must be signed by another qualified elector who, by signing, certifies that the applicant is a qualified elector. The secretary of state shall prescribe the form of the certification required under this subsection. An individual may not certify the qualifications of more than four applicants in an election.
  4. The application must include the following additional information if the individual desires to access the ballot by electronic means:
    - a. Facsimile telephone number; or
    - b. Electronic mail address.
  5. An incomplete application must be returned to the applicant for completion and resubmission.
  6. Except for the applicant's date of birth, identification card number, and any supplemental documentation provided under section 16.1-01-04.1, the application is an open record under section 44-04-18.

**16.1-07-07. Delivering application form for ballot.**

The officers specified in section 16.1-07-05, upon request, shall provide an application form for an absent voter's ballot to the voter or may deliver the application form to the voter upon a personal application made at the officer's office. The officers may also make available or distribute the applications, prescribed by the secretary of state, to the public without any specific request being made for the applications.

**16.1-07-08. Delivering ballots - Envelopes accompanying - Affidavit on envelope - Challenging electors voting by absentee ballot - Inability of elector to sign name.**

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon after receipt of the application as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, city auditor, or business manager of the school district, as the case may be, shall send to the absent voter by mail or secure electronic delivery, if the secretary of state determines the necessary technology is available and according to the choice made by the voter on the application for the ballot, at the expense of the political subdivision conducting the election, one official ballot, or personally deliver the ballot to the applicant or the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent shall sign the agent's name before receiving the ballot and deposit with the auditor or business manager of the school district, as the case may be, authorization in writing from the applicant to receive the ballot or according to requirements set forth for signature by mark. The auditor or business manager of the school district, as the case may be, may not provide an absent voter's ballot to an individual acting as an agent who cannot provide a signed, written authorization from an applicant. A person may not receive compensation, including money, goods, or services, for acting as an agent for an elector, and a person may not act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.
2. With the exception provided in section 16.1-07-24 for secure remote electronic casting of a ballot granted to a covered voter, the absent voter marking the ballot by electronic means shall return the instrument containing the vote selections made by the voter to the assigned polling place where, after being recorded in the pollbook by a poll clerk, the choices listed in the instrument will be converted into the official ballot. Upon confirmation by the voter the vote selections marked by the ballot marking device are correct, the voter shall cast the ballot in the tabulation device.
3. Any qualified elector living with a disability that prevents the elector from reading or marking the ballot without assistance and who wishes to cast an absentee ballot may mark the electronic ballot by electronic means. The voter then shall deposit the ballot electronically on the secure server that is used by covered voters as defined in section 16.1-07-18. Upon system notification that a ballot has been left by a qualified voter, an election official shall print the ballot, place the ballot in a secrecy envelope, attach the absent voter's application for the ballot, and securely store the enveloped ballot and the application with all the other absentee ballots. When the absentee ballot election board meets to process and count absentee ballots, the ballot from the covered voter must be transferred onto a paper ballot and tabulated with all the other valid absent voters' ballots.
4. If there is more than one ballot to be voted by an elector of the precinct and the voting system will be unable to tabulate one or more of the ballots, one of each kind must be included and a secrecy envelope and a return envelope must be enclosed with the ballot or ballots. The front of the return envelope must bear the official title and post-office address of the officer supplying the voter with the ballot and upon the other side a printed voter's affidavit in substantially the following form:

Precinct \_\_\_\_\_  
Name \_\_\_\_\_  
Residential Address \_\_\_\_\_  
City \_\_\_\_\_ ND Zip Code \_\_\_\_\_  
Under penalty of possible criminal prosecution for making a false statement, I swear that I reside at the residential address provided above, that I have resided in my precinct for at least thirty days next preceding the election, and this is the only ballot I will cast in this election.  
Applicant's Signature \_\_\_\_\_

Date \_\_\_\_\_

The signature on this affidavit will be compared to the signature on the affidavit included in the application for the absentee ballot.

5. If the absent voter is unable to sign the voter's name on the affidavit required under this section, the voter shall mark (X) or use the applicant's signature stamp on the affidavit in the presence of a disinterested individual. The disinterested individual shall print the name of the individual marking the X or using the signature stamp below the X or signature stamp and shall sign the disinterested individual's own name following the printed name together with the notation "witness to the mark".
6. Each individual requesting an absent voter's ballot under this chapter must be provided a set of instructions, prescribed by the secretary of state, sufficient to describe the process of voting by absent voter's ballot. The voting instructions must contain a statement informing the individual that the individual is entitled to complete the absent voter's ballot in secrecy.
7. Each individual requesting an absent voter's ballot by mail under this chapter who cannot read the English language or lives with a disability preventing the individual from marking the voter's ballot may receive, upon request, the assistance of any individual of the voter's choice, other than the voter's employer, an officer or agent of the voter's union, a candidate running in that election, or a relative of a candidate as described in subsection 2 of section 16.1-05-02, in marking the voter's ballot.
8. An election official shall deliver an absentee ballot to a qualified elector only upon receipt of an application meeting the requirements of section 16.1-07-06 from the elector.

**16.1-07-08.1. Procedures for voting with special write-in or federal write-in absentee ballot.**

Repealed by S.L. 2011, ch. 154, § 19.

**16.1-07-09. Canvassing of mailed absent voter's ballot received late.**

In congressional, state, county, city, or school district elections, if an envelope postmarked or otherwise officially marked by the United States postal service or other mail delivery system before the date of election and containing an absent voter's ballot is received by the officer after election day, the ballot must be tallied by the canvassing board of the county, the governing body of the city, or the school board of the school district, as the case may be, at the time the returns are canvassed. Any envelope without a postmark or other official marking by the United States postal service or other mail delivery system or with an illegible postmark or other official marking and containing an absentee voter's ballot must be received by mail by the proper officer prior to the meeting of the canvassing board. An absent voter may personally deliver the absent voter's ballot to the appropriate officer's office at any time before five p.m. on the day before the election. Any envelope containing an absent voter's ballot with a postmark or official date stamp on the day of election or thereafter may not be tallied with the ballots timely submitted for the election. Before forwarding any ballot to a canvassing board pursuant to this section, the officer forwarding the ballot shall print the date of receipt on the envelope. Upon receipt, the canvassing board shall determine that the elector was qualified to vote in that precinct, that the elector did not previously vote in that precinct on the date of the election, and that the signatures on the absentee ballot application and the voter's affidavit were signed by the same individual before allowing the ballot to be tallied.

**16.1-07-10. Care and custody of ballot - Submitted ballot may not be returned.**

Upon receipt of an envelope containing the absent voter's ballot, the proper officer immediately shall attach the application of the absent voter and file the ballot with other absentee ballots from the same precinct. If the election official has reason to suspect the signature on the application was made by a different individual than the individual who signed the affidavit on the return ballot envelope, the election official shall attempt to contact the absent voter as soon as practicable to provide an opportunity to validate the signatures. Contact shall

first be attempted by phone if the absent voter provided a phone number on the submitted application. If the election official is unable to speak with the absent voter, the election official shall mail a notice informing the absent voter the absentee ballot has been identified as having a signature mismatch and will be rejected if not verified. After submission to the appropriate election officer, a marked absent voter's ballot may not be returned to the voter for any reason other than to complete any missing information required on the affidavit on the back of the return envelope. Before delivering the absentee ballots to the absentee ballot precinct, the proper officer shall package the ballots in a manner so the ballots are sealed securely. The package must be endorsed with the name of the proper voting precinct, the name and official title of the officer, and the words "This package contains an absent voter's ballot and must be opened only according to the processing provisions of section 16.1-07-12." The officer shall keep the package safely in the officer's office until the package is delivered by the officer as provided in this chapter.

**16.1-07-11. Submitting ballot to inspector of elections.**

Repealed by S.L. 2021, ch. 164, § 114.

**16.1-07-12. Opening ballot - Voting or rejecting - Depositing in ballot box - Preserving.**

1. At any time beginning three business days before election day and ending when the polls close on election day, the election clerks and board members of the relevant polling place first shall compare the signature on the application for an absent voter's ballot with the signature on the voter's affidavit provided for in section 16.1-07-08 to ensure the signatures correspond. If the applicant is then a duly qualified elector of the precinct and has not voted at the election, an election clerk or board member shall open the absent voter's envelope in a manner as not to destroy the affidavit on the envelope. The election clerk or board member shall take out the secrecy envelope with the ballot inside without unfolding the ballot, or permitting the ballot to be opened or examined, and indicate in the pollbook of the election the elector has voted. The election board members not participating in the comparing of signatures and entering voters into the pollbook shall remove the ballot from the secrecy envelope, unfold and initial the ballot, and deposit the ballot in the proper ballot box for tabulation. The votes from the ballots may not be tallied and the tabulation reports may not be generated until the polls have closed on election day.
2. If the affidavit on the outer envelope of a returned absentee ballot is found to be insufficient, or the signatures on the application and affidavit do not correspond, or the applicant is not then a duly qualified elector of the precinct, the vote may not be allowed, and without opening the absent voter's envelope, the election inspector or election judge shall mark across the face of the ballot "rejected as defective" or "rejected as not an elector", as the case may be. The ballots rejected under this subsection then are turned over to the county canvassing board for final determination of eligibility. The subsequent death of an absentee voter after voting by absentee ballot is not grounds for rejecting the ballot.

**16.1-07-12.1. Absentee ballot precinct - Election board appointment - Ballot counting.**

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners shall create a special precinct, known as an absentee ballot precinct, to count all absentee ballots cast in an election in that county. The election board of the absentee ballot precinct must be known as the absentee ballot counting board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.
2. If the board of county commissioners chooses to establish an absentee ballot precinct according to this section, the following provisions apply:
  - a. The county auditor shall appoint the absentee ballot counting board that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the

county, as set forth in section 16.1-05-01, to act as judges. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.

- b. The county auditor shall have the absentee ballots delivered to the inspector of the absentee ballot counting board with the election supplies, or if received later, then prior to the closing of the polls.
- c. The absentee ballot counting board shall occupy a location designated by the county auditor which must be open to any individual for the purpose of observing the counting process.
- d. The absentee ballots must be opened and handled as required in section 16.1-07-12. The county auditor shall designate a location for the closing, counting, and canvassing process under chapter 16.1-15, which location must be open to any person for the purpose of observing. The board shall comply with the requirements of sections 16.1-15-04 through 16.1-15-12, as applicable.

**16.1-07-13. Registration of absent voters' ballots on electronic voting systems.**

Repealed by S.L. 2021, ch. 164, § 114.

**16.1-07-13.1. Signature mismatch - Verification of signatures.**

1. If an election official, absentee ballot precinct election board, or the canvassing board has reason to suspect the absent voter's signatures on the application and the affidavit on the returned ballot envelope do not match, the election official shall notify the absent voter the signatures do not appear to match. The notification must include instructions by which the absent voter may confirm the validity of the signatures, a statement that verification is required before the ballot can be counted, the date and time of the canvassing board meeting, and a statement that verification must be completed by the absent voter before close of the meeting of the canvassing board occurring thirteen days after the election.
2. The absent voter may confirm the validity of the signatures by written communication or personal visit to the office of the election official administering the election. If the voter confirms by written communication, the written communication must include a copy of the identification used when applying for the ballot. If the voter confirms through a personal visit to the election official, the voter must show the identification used when applying for the ballot. The election official shall make a copy of the identification shown, and the copy must be included with the application and ballot when provided to the election board or canvassing board, whichever would be appropriate based on when the voter verified the signatures. The canvassing board shall include in the final tally the ballot from an absent voter who has completed the verification process and was eligible to vote the returned ballot.
3. An individual contacted regarding the mismatch of signatures may deny making the application or returning the ballot. The election official receiving the denial shall turn the application and uncounted ballot over to the county state's attorney for investigation of attempted voter fraud.
4. The election official shall record in the minutes of the county canvassing board the manner and number of attempts made to contact an absent voter for signature verification, the number of ballots included in the tally because the signatures were verified, and the number of ballots ultimately rejected by the canvassing board along with the reasons for the rejections.
5. After the meeting of the canvassing board, the election official shall send a written notice to each absent voter whose ballot was rejected and not counted because of signature mismatch.

**16.1-07-14. Penalty.**

Any person who violates any of the provisions of this chapter is guilty of a class A misdemeanor.

**16.1-07-15. Early voting precinct - Election board appointment - Closing and canvassing.**

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners may, before the sixty-fourth day before the day of the election, create a special precinct, known as an early voting precinct, to facilitate the conduct of early voting in that county according to this title. At the determination of the county auditor, more than one polling place may be utilized for the purposes of operating the early voting precinct. The election board of the early voting precinct must be known as the early voting precinct election board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.
2. If the board of county commissioners establishes an early voting precinct according to this section, the following provisions apply:
  - a. Early voting must be authorized during the fifteen days immediately before the day of the election. The county auditor shall designate the business days and times during which the early voting election precinct will be open and publish notice of the early voting center locations, dates, and times in the official county newspaper once each week for three consecutive weeks immediately before the day of the election.
  - b. The county auditor shall appoint the early voting precinct election board for each early voting polling place that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the county, as set out in section 16.1-05-01, to act as judges. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.
  - c. The county auditor, with the consent of the board of county commissioners, shall designate each early voting polling place in a public facility, accessible to the elderly and the physically disabled as provided in section 16.1-04-02. With respect to polling places at early voting precincts, "election day" as used in sections 16.1-10-03 and 16.1-10-06.2 includes any time an early voting precinct polling place is open.
  - d. At the close of each day of early voting, the inspector, along with a judge from each political party represented on the board, shall secure all election-related materials, including:
    - (1) The pollbooks and access to any electronically maintained pollbooks.
    - (2) The ballot boxes containing voted ballots.
    - (3) Any void, spoiled, and unvoted ballots.
  - e. Ballot boxes containing ballots cast at an early voting polling place may not be opened until the day of the election except as may be necessary to clear a ballot jam or to move voted ballots to a separate locked ballot box in order to make room for additional ballots.
  - f. Each early voting polling place may be closed, as provided in chapter 16.1-15, at the end of the last day designated for early voting in the county. Results from the early voting precinct may be counted, canvassed, or released under chapter 16.1-15 as soon as any precinct within the county, city, or legislative district closes its polls on the day of the election. The county auditor shall designate a location for the closing, counting, and canvassing process under chapter 16.1-15, which location must be open to any person for the purpose of observing.
  - g. The early voting precinct election board shall comply with the requirements of chapters 16.1-05, 16.1-06, 16.1-11, 16.1-11.1, 16.1-13, and 16.1-15, as applicable.

**16.1-07-16. Secretary of state to provide information regarding absentee voting for military and overseas voters.**

The secretary of state is designated as the official responsible for providing information regarding absentee voting by military and overseas citizens eligible to vote in the state according to section 702 of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666;

42 U.S.C. 1973ff-1]. The secretary of state shall develop and provide uniform procedures for county auditors to follow when transmitting and receiving applications for absentee ballots to and from military and overseas voters.

**16.1-07-17. Notification of rejected absentee ballots cast by military and overseas voters.**

The secretary of state shall establish a uniform procedure for county auditors to follow when notifying a military or overseas voter that the voter's absentee ballot was rejected. The procedure must provide that the notice include the reason why the voter's absentee ballot was rejected as provided by section 707 of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 1973ff-1].

**16.1-07-18. Definitions.**

In sections 16.1-07-18 through 16.1-07-33:

1. "Covered voter" means:
  - a. A uniformed-service voter whose voting residence is in this state;
  - b. An overseas voter who, before leaving the United States, was last eligible to vote in this state and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements;
  - c. An overseas voter who, before leaving the United States, would have been last eligible to vote in this state had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements; or
  - d. Any other overseas voter who was born outside the United States and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements, if:
    - (1) The last place where a parent or legal guardian of the voter was, or under this Act would have been, eligible to vote before leaving the United States is within this state; and
    - (2) The voter has not previously registered to vote or voted in any other state.
2. "Dependent" means an individual recognized as a dependent by the applicable uniformed service.
3. "Military-overseas ballot" means:
  - a. A federal write-in absentee ballot described in the Uniformed and Overseas Citizens Absentee Voting Act [103, 42 U.S.C. 1973ff-2];
  - b. A ballot specifically prepared or distributed for use by a covered voter in accordance with sections 16.1-07-19 through 16.1-07-33; or
  - c. A ballot cast by a covered voter in accordance with sections 16.1-07-19 through 16.1-07-33.
4. "Overseas voter" means a United States citizen who is outside the United States.
5. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
6. "Uniformed service" means:
  - a. Active and reserve components of the army, navy, air force, marine corps, and coast guard of the United States;
  - b. The merchant marine, the commissioned corps of the public health service, and the commissioned corps of the national oceanic and atmospheric administration of the United States; and
  - c. The national guard and state militia units.
7. "Uniformed-service voter" means an individual who is qualified to vote and is:
  - a. A member of the active or reserve components of the army, navy, air force, marine corps, or coast guard of the United States who is on active duty;
  - b. A member of the merchant marine, the commissioned corps of the public health service, or the commissioned corps of the national oceanic and atmospheric administration of the United States;

- c. A member of the national guard or state militia unit who is on activated status; or
- d. A spouse or dependent of a member referred to in this subsection.

**16.1-07-19. Elections covered.**

The voting procedures in sections 16.1-07-18 through 16.1-07-33 apply to:

- 1. A general, special, or primary election for federal office.
- 2. A general, special, or primary election for statewide or state legislative office or state ballot measure.
- 3. A general, special, or primary election for political subdivision office or political subdivision ballot measure.

**16.1-07-20. Role of secretary of state.**

- 1. The secretary of state is responsible for implementing sections 16.1-07-18 through 16.1-07-33 and the state's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.].
- 2. The secretary of state shall make available to covered voters information regarding procedures for casting military-overseas ballots.
- 3. The secretary of state shall establish an electronic transmission system through which covered voters may apply for and receive documents and other information under sections 16.1-07-18 through 16.1-07-33.
- 4. The secretary of state shall develop standardized absentee-voting materials, including privacy and transmission envelopes and electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this state and, to the extent reasonably possible, shall do so in coordination with other states.
- 5. The secretary of state shall prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot. The declaration must be based on the declaration prescribed to accompany a federal write-in absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act [103, 42 U.S.C. 1973ff-2], as modified to be consistent with sections 16.1-07-18 through 16.1-07-33. The secretary of state shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required.

**16.1-07-21. Methods of applying for military-overseas ballot.**

- 1. A covered voter may apply for a military-overseas ballot using either the absentee ballot application under this chapter or the federal postcard application, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff (b) (2)] or the application's electronic equivalent if approved under guidelines established by the secretary of state.
- 2. The secretary of state shall ensure that the electronic transmission system described in section 16.1-07-20 is capable of accepting the submission of both a federal postcard application and any other approved electronic military-overseas ballot application sent to the appropriate election official. The voter may use the electronic transmission system or any other method approved under guidelines established by the secretary of state to apply for a military-overseas ballot.
- 3. A covered voter may use the declaration accompanying the federal write-in absentee ballot, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff-2] as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by midnight on the day before the election.

4. To receive the benefits of sections 16.1-07-18 through 16.1-07-33, a covered voter must inform the appropriate election official that the voter is a covered voter. Methods of informing the appropriate election official that a voter is a covered voter include:
  - a. The use of a federal postcard application or federal write-in absentee ballot;
  - b. The use of an overseas address on a ballot application; and
  - c. The inclusion on a ballot application of other information sufficient to identify the voter as a covered voter.

**16.1-07-22. Timeliness and scope of application for military-overseas ballot.**

An application for a military-overseas ballot is timely if received by the appropriate election official before the close of business on the day before the election. An application for a military-overseas ballot for a primary election, whether or not timely, is effective as an application for a military-overseas ballot for the general election.

**16.1-07-23. Transmission of unvoted ballots.**

1. For all covered elections for which this state has not received a waiver under the Military and Overseas Voter Empowerment Act [42 U.S.C. 1973ff-1(g)(2)] not later than forty-five days before the election or, if the forty-fifth day before the election is a weekend or holiday, not later than the business day preceding the forty-fifth day, the appropriate election official shall transmit ballots and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application.
2. A covered voter who requests a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission, electronic mail, or other electronic delivery approved by the secretary of state. The election official charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.
3. If a ballot application from a covered voter arrives after the election official begins transmitting ballots and balloting materials to voters, the official shall transmit them to the voter not later than two business days after the application arrives.

**16.1-07-24. Timely casting of ballot.**

To be valid, a military-overseas ballot must be submitted for mailing or other authorized means of delivery not later than 11:59 p.m. on the day before the election at the place where the voter completes the ballot. A military-overseas ballot must be received by the appropriate election official before the canvassing board meeting.

**16.1-07-25. Federal write-in absentee ballot.**

A covered voter may use the federal write-in absentee ballot, in accordance with the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff-2], to vote for all offices and ballot measures in a covered election.

**16.1-07-26. Receipt of voted ballot.**

1. A valid military-overseas ballot cast in accordance with section 16.1-07-24 must be counted if it is delivered before the canvassing board meets to canvas the returns.
2. If, at the time of completing a military-overseas ballot and balloting materials, the voter has affirmed under penalty of perjury under section 16.1-07-27 that the ballot was timely submitted, the ballot may not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark.

**16.1-07-27. Declaration.**

Each military-overseas ballot must include or be accompanied by a declaration signed by the voter declaring that a material misstatement of fact in completing the document may be grounds for a conviction of perjury under the laws of the United States or this state.

**16.1-07-28. Confirmation of receipt of application and voted ballot.**

The secretary of state, in coordination with local election officials, shall implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or internet access whether:

1. The voter's military-overseas ballot application has been received and accepted; and
2. The voter's military-overseas ballot has been received and the current status of the ballot.

**16.1-07-29. Use of voter's electronic mail address.**

1. A covered voter who provides an electronic mail address to a local election official may request that the voter's application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December thirty-first of the year following the calendar year of the date of the application or another shorter period the voter specifies. An election official shall provide a military-overseas ballot to a voter who makes a request for each election to which the request is applicable. A covered voter entitled to receive a military-overseas ballot for a primary election under this subsection also is entitled to receive a military-overseas ballot for the general election.
2. An electronic mail address provided by a covered voter is a confidential record. An election official may use the address only to communicate with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission, and verifying the voter's mailing address and physical location, as needed.

**16.1-07-30. Publication of election notice.**

1. Not later than one hundred days before a regularly scheduled election to which sections 16.1-07-18 through 16.1-07-33 apply, and as soon as practicable in the case of a special election, the secretary of state and each local election official charged with printing and distributing ballots and balloting materials for that election shall prepare an election notice, to be used in conjunction with the federal write-in absentee ballot described in section 16.1-07-25. The election notice must contain a list of all of the ballot measures and federal, state, and local offices that as of that date the secretary of state and the local election official expect to be on the ballot on the date of the election. The notice also must contain specific instructions for how a voter is to indicate on the federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot measure to be contested. Upon publication of the election notice, the secretary of state shall provide the local election officials of the state with the location of the notice on the secretary of state's website.
2. A covered voter may request a copy of an election notice. The officials charged with preparing the election notice shall send the notice to the voter by facsimile, electronic mail, or regular mail, as the voter requests if the voter is not able to obtain that same notice from the secretary of state's website.
3. At least fifty-five days before an election, the officials charged with preparing the election notice shall update the notice with the certified candidates for each office and ballot measure questions and make the updated notice publicly available.
4. A local election official who maintains an internet website shall make updated versions of its election notices regularly available on the website.

**16.1-07-31. Prohibition of nonessential requirements.**

1. If a voter's mistake or omission in the completion of a document under sections 16.1-07-18 through 16.1-07-33 does not prevent determining whether a covered voter is eligible to vote, the mistake or omission does not invalidate the document. Failure to satisfy a nonessential requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted under this chapter. In any write-in ballot authorized by law, if the intention of the voter is discernable, as provided

under the Help America Vote Act [42 U.S.C. 15481(a)(6)], an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party must be accepted as a valid vote.

2. Notarization is not required for the execution of a document under sections 16.1-07-18 through 16.1-07-33. An authentication, other than the declaration specified in section 16.1-07-27 or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under sections 16.1-07-18 through 16.1-07-33. The declaration and any information in the declaration may be compared against information on file to ascertain the validity of the document.

**16.1-07-32. Issuance of injunction or other equitable relief.**

A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, sections 16.1-07-18 through 16.1-07-33 on application by:

1. A covered voter alleging a grievance under sections 16.1-07-18 through 16.1-07-33; or
2. An election official in this state.

**16.1-07-33. Relation to Electronic Signatures in Global and National Commerce Act.**

Sections 16.1-07-18 through 16.1-07-33 modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but do not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorized electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

**16.1-07-34. Emergency procedures to facilitate absentee voting.**

If an international, national, state, or local disaster or emergency or other situation arises which makes substantial compliance with the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.] impossible or impracticable, as confirmed by the existence of armed conflict involving the armed forces of the United States or the mobilization of those forces, including national guard and reserve component members of this state, by the occurrence of a natural disaster or the existence of a state of emergency, civil unrest, war, or other exigency in a foreign country, or by an official declaration by the governor that a state of disaster or emergency exists, the secretary of state may prescribe special procedures or requirements as may be necessary to facilitate absentee voting by those absent uniformed services voters or overseas voters directly affected and who are eligible to vote in this state.