Uniform Military and Overseas Voters Act (UMOVA)

Military personnel and overseas civilians face a variety of challenges to their participation as voters in U.S. elections, despite repeated congressional and state efforts to facilitate their ability to vote. These include difficulty in registering abroad, frequent address changes, slow mail delivery or ballots and ballot applications that never arrive, difficulty in obtaining information about candidates or issues, the inability to comply with notarization or verification procedures, or the voter’s failure to properly comply with non-essential requirements for absentee materials. The federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), as well as the various state efforts, have not been wholly effective in overcoming difficulties that these voters face. The federal laws do not encompass state and local elections. Further, American elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and many are conducted independent of the federal elections to which UOCAVA and the MOVE Act do apply. This lack of uniformity, and lack of application of the federal statutes to state and local elections, complicates efforts to more fully enfranchise these voters.

At its 2010 Annual Meeting, the national Uniform Law Commission promulgated the Uniform Military and Overseas Voters Act (UMOVA) to address these issues. UMOVA extends to state elections the assistance and protections for military and overseas voters currently found in federal law. It seeks greater harmony for the military and overseas voting process for all covered elections, over which the states will continue to have primary administrative responsibility.

The Act simplifies and expands, in common sense fashion, the class of covered voters and covered elections. “Uniformed service” includes the U.S. Army, Navy, Air Force, Marine Corp, Coast Guard, Merchant Marine, commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration of the U.S., National Guard and state militia units, and the spouses and dependents of these voters. The definition of “covered voter” is expanded from federal usage in the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. § 1973ff, to include overseas citizens who do not have a specifically established residence in the U.S. but who have demonstrable ties to a certain state; this includes U.S. citizens born abroad if their parents are eligible to vote in that state. Absent other existing law, the Act makes no distinction between overseas voters merely traveling abroad, voters temporarily living overseas, and voters permanently residing overseas, although some states have chosen to do so. The Act applies to primary, general, special, and runoff elections, or their equivalent, at the federal, state, and local levels for elected candidates and ballot issues; UOCAVA extends only to federal elections.

The Act establishes reasonable, standard timetables for application, registration, and provision of ballots and election information for covered voters. Importantly, the Act requires transmission of ballots and balloting materials to all covered voters who have applied no later than 45 days prior to the election, unless the state has received a waiver under the federal MOVE Act. A ballot is timely cast by the voter if received by the local election official before the close of polls on Election Day, or submitted for mailing or transmission no later than 12:01 AM on the date of the election. Requiring that the ballot be completed by 12:01 a.m. local time on Election Day ensures that covered voters will not be able to cast a vote with knowledge of the election night returns of the jurisdiction whose ballot the voter is voting. A ballot must be counted if it is delivered to the appropriate state or local election official by the close of business on the business day before the final deadline for completing the canvass or other tabulation to finalize election results. Allowing a valid ballot to be received by local officials through the close of the
polls and up until the day before canvassing will increase the time available to receive voted ballots where facsimile or electronic transmission of voted ballots is not permitted.

The Act precludes rejecting a military-overseas ballot for lack of a postmark (or for a late postmark), if the voter has declared under penalty of perjury that the ballot was timely submitted. Many pieces of military mail enter the postal system through delivery to a mail clerk in a remote location without a postmark, and are only postmarked some days later when they reach a more established facility. A declaration made under Section 13 should be structured as an affirmation that plainly subjects a covered voter to the perjury laws of the enacting state. Enacting states will need to ensure that the perjury laws of the enacting state cover a declaration or affirmation made by the voter under Section 13. Further, the Act requires votes to be counted where non-essential requirements are not complied with, and obviates any notarization and witnessing requirements.

The Act expands use of the Federal Post Card Application (FPCA) and Federal Write-In Absentee Ballot (FWAB) for registration and voting purposes in covered elections. Section 6 and Section 7 of the Act are designed to encourage the use of the FPCA, but they also allow military and overseas voters to use a state’s pre-existing voter forms and permit states to develop alternative forms. They do not require revision of forms, or preparation of new forms for voters covered under this Act. Instead, to the extent that a state’s existing forms do not collect sufficient information to properly classify overseas and military voters, Section 7(e) requires voters who use the state forms to affirmatively indicate their status as a covered voter. States that choose to revise their forms for whatever reason should ensure that the revised forms facilitate voting under this Act.

The Act allows voters to make use of electronic transmission methods for applications and receipt of registration and balloting materials, and tracking the status of applications. Allowance of electronic submission of voted ballots is left to existing state law. The “electronic equivalent” of privacy envelopes and transmission envelopes means at a minimum a template or instructions to accompany the electronic delivery of an unvoted ballot that assist the voter to prepare and use appropriate envelopes to return the voter’s marked ballot. The electronic transmission method established under subsection (c) of Section 4 of the Act should be designed to protect the integrity of the transmission and the privacy of the voter’s personal data contained in the transmission. To a similar end, the recent amendments to UOCAVA include provisions requiring that “to the extent practicable,” electronic transmission methods “shall ensure that the privacy of the identity and other personal data of an absent uniformed services voter or overseas voter is protected” and also shall “protect the security and integrity of the transmission.”

The Act defines the obligations of the state’s primary election authority with regard to providing information on voting registration procedures, ballot casting procedures, and the form and content of necessary declarations to accompany such, for covered voters. If provided, a voter’s e-mail address may not be disclosed to third parties, and may only be used by the election authority for communications about the voting process, transmission of ballots and materials, and necessary verifications related to the Act. The Act later ties a voter’s ability to make a standing request for a military-absentee ballot to the voter’s provision of an e-mail address. This approach is intended to reduce the large quantity of election material that was returned as undeliverable when sent out in hardcopy to an outdated physical address under the now repealed UOCAVA provision that had permitted voters to make a standing request for absentee ballots for two federal election cycles. In most states, the implementing authority specified in subsection (a) of Section 4 of this Act presumably already has authority to promulgate rules according to the existing rulemaking procedures of the state. States in which this rulemaking authority is not already established may wish to include additional language establishing authority to make rules to implement this Act.
This Act provides for the determination of the address that should be used for active-duty military and overseas voters. An eligible voter’s voting address shall be the last residential address in the enacting state, or that of the eligible voter’s parent or legal guardian for citizens born outside of the U.S. that have not established residency. If the address is no longer residential, then the voter must be assigned an address. When election officials must assign a voter a non-standard address, where possible they should place the voter in the same precinct or district as the last place of residence, were it still a recognized residential address.

The Act, in Section 16, ensures that election jurisdictions facilitate voting first by making readily available to overseas and military voters a list of the offices and issues to be contested at an upcoming election, and later by also making candidate names readily and quickly available to these voters, thereby permitting voters who have not received the printed ballot to make the most effective use of the federal write-in absentee ballot. The bracketed language “[ballot styles are certified]” in subsection (c) of Section 16 is intended to cover the event when the final ballot for candidates (and issues, when applicable) is available.

In addition to providing an enforcement mechanism for other provisions of this Act, Section 18 of the Act would also empower courts to adopt emergency rules or procedures in the event that exigent circumstances otherwise make compliance with the Act impossible or impracticable.

The new UMOVA uses and builds upon the key requirements of UOCAVA and MOVE, and extends the important protections and benefits of these Acts to voting in covered state and local elections. UMOVA will help to facilitate compliance with the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), and help to more fully and effectively enfranchise our military personnel and overseas civilians.

In December 2010, The Council of State Governments adopted a resolution urging “all member states consider and enact the 2010 Uniform Military and Overseas Voters Act (UMOVA), to help states comply with the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), and to extend the application of, and broaden the coverage of, the important principles of these laws with regard to state and local elections, for the benefit and enfranchisement of our military personnel and overseas civilians.”

Submitted as: Uniform Law by the National Conference of Commissioners on Uniform State Laws
Status: As of December 2011, Colorado, Nevada, North Carolina, North Dakota, Oklahoma, and Utah have enacted a version of this Uniform Military and Overseas Voters Act.

**Suggested State Legislation**

(Title, enacting clause, etc.)

Section 1. [Short Title.] This [Act] may be cited as the “Uniform Military and Overseas Voters Act.”

Section 2. [Definitions.] In this [Act]:

(1) “Covered voter” means:

(A) a uniformed-service voter or an overseas voter who is registered to vote in this state;
(B) a uniformed-service voter defined in paragraph (9)(A) whose voting residence
is in this state and who otherwise satisfies this state’s voter eligibility requirements;
(C) 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;
(D) 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
(E) an overseas voter who was born outside the United States, is not described in
subparagraph (C) or (D), and, except for a state residency requirement, otherwise satisfies this
state’s voter eligibility requirements, if:
   (i) 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
   (ii) the voter has not previously registered to vote in any other state.
(2) “Dependent” means an individual recognized as a dependent by a uniformed service.
(3) “Federal postcard application” means the application prescribed under Section
101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section
1973ff(b)(2).
(4) “Federal write-in absentee ballot” means the ballot described in Section 103 of the
(5) “Military-overseas ballot” means:
   (A) a federal write-in absentee ballot;
   (B) a ballot specifically prepared or distributed for use by a covered voter in
   accordance with this [Act]; or
   (C) a ballot cast by a covered voter in accordance with this [Act].
(6) “Overseas voter” means a United States citizen who is outside the United States.
(7) “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.
(8) “Uniformed service” means:
   (A) active and reserve components of the Army, Navy, Air Force, Marine Corps,
or Coast Guard of the United States;
   (B) 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; or
   (C) the National Guard and state militia.
(9) “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 on activated status of the National Guard or state militia; or
   (D) a spouse or dependent of a member referred to in this paragraph.
(10) “United States”, used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Section 3. [Elections Covered.] The voting procedures in this [Act] apply to:

(1) a general, special, [presidential preference,] [or] primary [, or runoff] election for federal office;

(2) a general, special, [recall,] [or] primary [, or runoff] election for statewide or state legislative office or state ballot measure; and

(3) a general, special, [recall,] [or] primary [, or runoff] election for local government office or local ballot measure conducted under [insert relevant state law] [for which absentee voting or voting by mail is available for other voters].

Section 4. [Role of [Secretary of State].]

(a) The [Secretary of State] is the state official responsible for implementing this [Act] and the state’s responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff et seq.

(b) The [Secretary of State] shall make available to covered voters information regarding voter registration procedures for covered voters and procedures for casting military-overseas ballots. The [Secretary of State] may delegate the responsibility under this subsection only to the state office designated in compliance with Section 102(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff-1(b)(1).

(c) The [Secretary of State] shall establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information under this [Act].

(d) The [Secretary of State] shall:

(1) develop standardized absentee-voting materials, including privacy and transmission envelopes and their 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

(2) to the extent reasonably possible, coordinate with other states to carry out this subsection.

(e) 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, as modified to be consistent with this [Act]. 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.

Section 5. [Overseas Voter’s Registration Address.] In registering to vote, an overseas voter who is eligible to vote in this state shall use and must be assigned to the voting [precinct] [district] of the address of the last place of residence of the voter in this state, or, in the case of a voter described by Section 2(1)(E), the address of the last place of residence in this state of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter must be assigned an address for voting purposes.

Section 6. [Methods of Registering to Vote.]
(a) To apply to register to vote, in addition to any other approved method, a covered voter may use a federal postcard application, or the application’s electronic equivalent.

(b) A covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot[, if the declaration is received by [insert this state’s voter registration deadline for that election]]. [If the declaration is received after that date, it must be treated as an application to register to vote for subsequent elections.]

(c) The [Secretary of State] shall ensure that the electronic transmission system described in Section 4(c) is capable of accepting both a federal postcard application and any other approved electronic registration application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to register to vote.

Section 7. [Methods of Applying for Military-Overseas Ballot.]

(a) A covered voter who is registered to vote in this state may apply for a military-overseas ballot using either the regular [absentee ballot] application in use in the voter’s jurisdiction under [reference state law on regular absentee ballots] or the federal postcard application or the application’s electronic equivalent.

(b) A covered voter who is not registered to vote in this state may use a federal postcard application or the application’s electronic equivalent to apply simultaneously to register to vote under Section 6 and for a military-overseas ballot.

(c) The [Secretary of State] shall ensure that the electronic transmission system described in Section 4(c) 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 approved method to apply for a military-overseas ballot.

(d) A covered voter may use the declaration accompanying a federal write-in absentee ballot 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 [insert the later of the fifth day before the election or the last day for other voters in this state to apply for [an absentee ballot] for that election].

(e) To receive the benefits of this [Act], 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:

   (1) the use of a federal postcard application or federal write-in absentee ballot;
   (2) the use of an overseas address on an approved voter registration application or ballot application; and
   (3) the inclusion on an approved voter registration application or ballot application of other information sufficient to identify the voter as a covered voter.

   [(f) This [Act] does not preclude a covered voter from voting under [insert state law on regular absentee voting].]

Section 8. [Timeliness and Scope of Application for Military-Overseas Ballot.] An application for a military-overseas ballot is timely if received by [insert the later of the fifth day before the election or the last day for other voters in this state to apply for [an absentee ballot] for that 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. [An application for a military-overseas ballot is effective for a runoff election necessary to conclude the election for which the application was submitted.]
Section 9. [Transmission of Unvoted Ballots.]

(a) For an election described in Section 3 for which this state has not received a waiver pursuant to Section 579 of the Military and Overseas Voter Empowerment Act, 42 U.S.C. 1973ff-1(g)(2), not later than 45 days before the election or, if the 45th day before the election is a weekend or holiday, not later than the business day preceding the 45th day, the election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit a ballot and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application.

(b) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or, if offered by the voter’s jurisdiction, Internet delivery. The election official in each jurisdiction 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.

(c) If a ballot application from a covered voter arrives after the jurisdiction begins transmitting ballots and balloting materials to voters, the official charged with distributing a ballot and balloting materials shall transmit them to the voter not later than two business days after the application arrives.

Section 10. [Timely Casting of Ballot.] To be valid, a military-overseas ballot must be received by the appropriate local election official not later than the close of the polls, or the voter must submit the ballot for mailing[, electronic transmission,] or other authorized means of delivery not later than 12:01 a.m., at the place where the voter completes the ballot, on the date of the election.

Section 11. [Federal Write-In Absentee Ballot.] A covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in Section 3.

Section 12. [Receipt of Voted Ballot.]

(a) A valid military-overseas ballot cast in accordance with Section 10 must be counted if it is delivered by the end of business on the business day before [the latest deadline for completing the county canvass or other local tabulation used to determine the final official results] to the address that the appropriate state or local election office has specified.

(b) If, at the time of completing a military-overseas ballot and balloting materials, the voter has declared under penalty of perjury 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.

Section 13. [Declaration.] A military-overseas ballot must include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or this state.

Section 14. [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 whether:

(1) the voter’s federal postcard application or other registration or 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.

2012 Suggested State Legislation 251
Section 15. [Use of Voter’s Electronic-Mail Address.]

(a) The local election official shall request an electronic-mail address from each covered voter who registers to vote after [the effective date of this [Act]]. An electronic-mail address provided by a covered voter may not be made available to the public or any individual or organization other than an authorized agent of the local election official and is exempt from disclosure under [the public records laws of this state]. The address may be used only for official communication 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. The request for an electronic-mail address must describe the purposes for which the electronic-mail address may be used and include a statement that any other use or disclosure of the electronic-mail address is prohibited.

(b) A covered voter who provides an electronic-mail address 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 31 of the year following the calendar year of the date of the application or another shorter period the voter specifies[, including for any runoff elections that occur as a result of such elections]. An election official shall provide a military-overseas ballot to a voter who makes a standing request for each election to which the request is applicable. A covered voter who is entitled to receive a military-overseas ballot for a primary election under this subsection is entitled to receive a military-overseas ballot for the general election.

Section 16. [Publication of Election Notice.]

(a) At least 100 days before a regularly scheduled election and as soon as practicable before an election not regularly scheduled, an official in each jurisdiction charged with printing and distributing ballots and balloting material shall prepare an election notice for that jurisdiction, to be used in conjunction with a federal write-in absentee ballot. 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 official expects 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.

(b) A covered voter may request a copy of an election notice. The official charged with preparing the election notice shall send the notice to the voter by facsimile, electronic mail, or regular mail, as the voter requests.

(c) As soon as [ballot styles are certified], and not later than the date ballots are required to be transmitted to voters under [insert state law on regular absentee voter authorization], the official charged with preparing the election notice under subsection (a) shall update the notice with the certified candidates for each office and ballot measure questions and make the updated notice publicly available.

(d) A local election jurisdiction that maintains an Internet website shall make the election notice prepared under subsection (a) and updated versions of the election notice regularly available on the website.

Section 17. [Prohibition of Nonsubstantive Requirements.]

(a) If a voter’s mistake or omission in the completion of a document under this [Act] 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 nonsubstantive requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted under this [Act]. In a write-in ballot authorized by this [Act] [or in a vote for a write-in candidate on a regular ballot], if the intention of the voter is discernable under this state’s uniform definition of
what constitutes a vote, 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.

(b) Notarization is not required for the execution of a document under this [Act]. An
authentication, other than the declaration specified in Section 13 or the declaration on the federal
postcard application and federal write-in absentee ballot, is not required for execution of a
document under this [Act]. The declaration and any information in the declaration may be
compared with information on file to ascertain the validity of the document.

Section 18. [Equitable Relief.] A court may issue an injunction or grant other equitable
relief appropriate to ensure substantial compliance with, or enforce, this [Act] on application by:
(1) a covered voter alleging a grievance under this [Act]; or
(2) an election official in this state.

Section 19. [Uniformity of Application and Construction.] In applying and construing this
Uniform Act, consideration must be given to the need to promote uniformity of the law with
respect to its subject matter among states that enact it.

Section 20. [Relation to Electronic Signatures in Global and National Commerce Act.] This [Act] modifies, limits, and supersedes the Electronic Signatures in Global and National
Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section
101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the
notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b).

[Section 21. Repeals. The following are repealed:
(1) ........................................
(2) ........................................
(3) ........................................]

Section 22. [Effective Date.] This [Act] takes effect . . .