

**CHAPTER 15 [OLD]
VOTING MACHINES**

REPEALED. L 1970, c 26, §3.

**CHAPTER 15 [OLD]
ABSENTEE VOTING**

REPEALED. L 1975, c 36, pt of §3.

**CHAPTER 15
ABSENTEE VOTING**

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Case Notes

Hawaiian absentee ballot statute and regulations adequately protect the secrecy and integrity of the ballot process. 849 F.2d 1176.

" **§15-1 Definitions.** As used in this chapter, unless the context otherwise requires:

"Absentee ballot" means a ballot as defined in section 11-1 used in absentee voting.

"Absentee polling place" means an office or other suitable facility designated by the respective clerks for the conduct of absentee voting and the processing of absentee ballots.

"Electronic transmission" means the transmission of a blank or voted ballot by facsimile, electronic mail delivery, or the utilization of an online absentee ballot delivery and return system that may include the ability to mark the ballot.

"Invalid ballot" means any absentee ballot which does not meet the requirements for a ballot to be counted as listed in section 15-9.

"Voter in a remote area" means any registered voter who resides ten miles or more from the voter's designated polling place by the most direct route for public travel. [L 1975, c 36, pt of §3; am L 1976, c 106, §4(1); gen ch 1985; am L 2016 c 168, §1]

" **§15-2 Who may vote by absentee ballot.** Any person registered to vote may cast an absentee ballot in the manner provided in this chapter and rules adopted by the chief election officer. [L 1975, c 36, pt of §3; am L 1980, c 248, §1(a); am L 1981, c 29, §1(1); am L 1984, c 149, §1; gen ch 1985; am L 1993, c 230, §2]

Case Notes

Section not unconstitutional. 623 F. Supp. 657.

" **[\$15-2.5] Absentee voting in precinct affected by natural disasters.** (a) If the chief election officer and clerk of a county affected as a result of a natural disaster determine that the opening of a designated polling place will adversely affect the health and safety of voters or precinct officials, the chief election officer and county clerk, by written order, may require the registered voters of any precinct to vote by absentee ballot; provided that if there are not enough absentee ballots for all voters of the precinct, the chief election officer or

the clerk shall use other official ballots to make up the difference.

(b) Within thirty days after the issuance of such an order, the chief election officer and county clerk shall notify all registered voters in the affected precinct of the issuance of the order.

(c) Within ten days after the printed official absentee ballots are available for the designated precinct affected by this section, the clerk shall deliver, or cause to be delivered, by hand or mail, an absentee ballot, a return envelope, and any other appropriate material to each registered voter in the affected precinct.

(d) The chief election officer shall adopt rules pursuant to chapter 91 to implement this section. [L 1996, c 215, §1]

" **§15-3 Absentee ballot for presidential election.** If ineligible to qualify as a voter in the state to which the voter has moved, any former registered voter of Hawaii may vote an absentee ballot in any presidential election occurring within twenty-four months after leaving Hawaii by requesting an application form and returning it properly executed to the county of the voter's prior Hawaii residence. When requesting an application form for an absentee ballot, the applicant shall specify the applicant's eligibility for only the presidential ballot, and the fact of applicant's ineligibility to vote at the applicant's new place of residence verified by the voter registrar or the registrar's authorized representative in the jurisdiction of the applicant's new residence. The application must be received in sufficient time for ballots to be mailed and returned prior to any presidential election at which the applicant wishes to vote. All required information pursuant to the rules promulgated by the chief election officer shall be completed in full. [L 1975, c 36, pt of §3; gen ch 1985]

" **§15-3.5 REPEALED.** L 2012, c 226, §3.

" **§15-4 Request for absentee ballot.** (a) Any person registered to vote may request an absentee ballot or permanent absentee ballot in person or in writing from the clerk at any time but not later than 4:30 p.m. on the seventh day prior to the election. Any mailed requests for an absentee ballot or permanent absentee ballot shall be mailed by the person directly to the clerk. The clerk may waive any or all of the foregoing requirements in special cases as provided in the rules adopted by the chief election officer.

The request shall include information such as the person's social security number, date of birth, and the address under

which the person is registered to vote. The request shall also include the address to which the person wishes the requested ballot to be forwarded. The request, when made for any primary or special primary election, may include an additional request for an absentee ballot to be voted at any election immediately following the primary or special primary; provided the person so indicates in the person's request.

Subsequent to the closing of registration for each election, the clerk may mail a request form for an absentee ballot and permanent absentee ballot to each voter in a remote area who has not already made such a request. The request form shall be accompanied by:

- (1) A stamped, self-addressed envelope; and
- (2) Instructions regarding the manner of completing and returning the request form.

(b) Notwithstanding subsection (a), the respective clerk shall be allowed to conduct an absentee ballot-only election and may mail an absentee ballot for each primary, special primary, special, general, and special general election to each registered voter who resides in the county of Kalawao or on any island of a county with a population of less than one hundred eighty thousand, except for the island where the county seat of government is located. The chief election officer may adopt rules to carry out this subsection.

(c) Notwithstanding any law to the contrary, in the event there are fewer than five hundred registered voters as of the preceding general election in an area covered by a unique ballot type, the clerk shall mail an absentee ballot to each registered voter who resides in such an area, if the chief election officer, or the clerk in a county only election, determines that an election day polling place will not be established for such voters.

(d) For the purposes of this section, "ballot type" means the unique ballot containing the contests, questions, or issues that will be used by the voters of a specific area.

(e) When a registered voter requests an absentee ballot, the voter also may include an additional request to receive absentee ballots permanently. After receiving a request for permanent absentee voter status, the clerk shall mail to the voter who requested permanent absentee voter status an absentee ballot for all subsequent elections conducted in that precinct. The forwarding address for absentee ballots to be permanently mailed shall be the in-state mailing address contained in the voter's registration record. Subject to the conditions of subsection (a), a permanent absentee voter may also request from the clerk that the voter's ballot be forwarded temporarily to an address other than the permanent absentee mailing address

originally requested, either in or outside of the State, for a single election or for a primary or special primary election and the election immediately following the primary or special primary election. A permanent absentee voter's request for a ballot to be forwarded temporarily shall not serve as a cancellation of the voter's permanent absentee status or as a change to the voter's permanent absentee mailing address. Upon the completion of the election or elections covered by the permanent absentee voter's temporary request under this subsection, the clerk shall resume mailing the voter's ballots to the permanent absentee mailing address originally requested under subsection (a).

(f) The chief election officer shall inform voters of the option of applying for permanent absentee voter status and shall provide any necessary form to request the permanent absentee ballot option to any registered voter requesting an absentee ballot and any person applying to register to vote.

(g) A permanent absentee voter shall be responsible for informing the clerk of any changes to personal information, including changes to the voter's forwarding address.

(h) Except as provided in subsection (c), a voter's permanent absentee voter status shall be terminated if any of the following conditions apply:

- (1) The voter requests in writing that such status be terminated;
- (2) The voter dies, loses voting rights, registers to vote in another jurisdiction, or is otherwise disqualified from voting;
- (3) The voter's absentee ballot, voter notification postcard, or any other election mail is returned to the clerk as undeliverable for any reason; or
- (4) The voter does not return a voter ballot by 6:00 p.m. on election day in both the primary and general election of an election year.

(i) If a voter's permanent absentee voter status has been terminated due to one or more of the conditions specified in subsection (h), the voter shall be responsible for again requesting permanent absentee status as specified in subsection (e). [L 1975, c 36, pt of §3; am L 1980, c 248, §1(b); am L 1981, c 29, §1(2); gen ch 1985; am L 1986, c 305, §5; am L 2004, c 100, §2; am L Sp 2008, c 4, §1; am L 2011, c 142, §3; am L 2012, c 100, §2 and c 104, §2; am L 2015, c 174, §1; am L 2016, c 168, §§2, 3]

" **§15-5 Delivery of ballots.** (a) Immediately upon receipt of a request for absentee ballot within the time limit specified in section 15-4, the clerk shall examine the records to

ascertain whether the voter is lawfully entitled to vote as requested. If the clerk ascertains that the voter is lawfully entitled to vote as requested, no earlier than thirty days before the election, the clerk shall mail in a forwarding envelope, or deliver in person if the voter appears at the office of the clerk, an official ballot and other materials prescribed in section 15-6, except that an incapacitated voter may send a representative to obtain the voter's ballots pursuant to the rules adopted by the chief election officer; provided that official ballots and other materials prescribed in section 15-6 shall be mailed or delivered:

- (1) To uniform military and overseas voters pursuant to section 15D-9; and
- (2) No later than twenty-four hours after receipt of the request for absentee ballot for requests received on the last day specified in section 15-4.

(b) If absentee ballots requested under section 15-4 are not received by a voter within five days of an election, if a voter requires a replacement ballot within five days of an election, or if a voter would otherwise not be able to return a properly issued ballot by the close of polls, then a voter may request that absentee ballots be forwarded by electronic transmission. Upon receipt of such a request and confirmation that proper application was made, the clerk may transmit appropriate ballots, together with a form requiring the affirmations and information required by section 15-6, and a form containing a waiver of the right to secrecy, as provided by section 11-137. The voter may return the voted ballots and executed forms by electronic transmission or mail; provided that they are received by the issuing clerk no later than the close of polls on election day. Upon receipt, the clerk shall verify compliance with the requirements of section 15-9(c) and prepare the ballots for counting pursuant to section 15-10; provided that if the voter returns multiple voted absentee ballots for the same election, the clerk shall, for purposes of counting ballots, prepare only the first absentee ballot returned that is not spoiled. [L 1975, c 36, pt of §3; am L 1980, c 248, §1(c); gen ch 1985; am L 1993, c 304, §8; am L 2012, c 226, §2; am L 2015, c 173, §3; am L 2016, c 168, §4]

" **§15-6 Return envelope, ballot envelope; instructions.** The clerk shall provide the absentee voter with the ballots, ballot envelopes, and a return envelope that shall contain a statement to be subscribed to by the voter that affirms the fact that the voter is the person voting and that the voter's employer or agent of the employer, agent of the voter's labor union, or any candidate listed on the ballot did not assist the voter, as

described in section 11-139, along with the instruction that the voter's ballot will be valid only if the affirmation statement is signed, materials summarizing the provisions in sections 19-3, 19-3.5, 19-4, and 19-6, and any other information prescribed by the rules promulgated by the chief election officer. [L 1975, c 36, pt of §3; am L 1980, c 248, §1(d); gen ch 1985; am L 2013, c 235, §3]

" **[§15-6.5] Absentee postage.** The mailed distribution and return of absentee ballots shall be at no cost to the voter. The State and counties shall share in the cost of all postage associated with the distribution and return of absentee ballots pursuant to sections 11-182, 11-183, and 11-184, if the costs are not covered by the federal government. [L 1993, c 304, §2]

" **§15-7 Absentee polling place; registration at absentee polling place.** (a) Absentee polling places shall be established at the office of the respective clerks, and may be established at other sites as may be designated by the clerk under the provisions prescribed in the rules adopted by the chief election officer. Section 11-21 relating to changes and transfers of registration shall apply to the absentee polling place as though it were the precinct at which a person's name properly appears on the list of registered voters.

(b) The absentee polling places shall be open no later than ten working days before election day, and all Saturdays falling within that time period, or as soon thereafter as ballots are available; provided that all absentee polling places shall be open on the same date statewide, as determined by the chief election officer.

(c) A person who is eligible to vote but is not registered to vote may register by appearing in person at the absentee polling place for the county in which the person maintains residence.

(d) The county clerk shall designate a registration clerk, who may be an election official, at each of the absentee polling places established in the county.

(e) The registration clerk shall process applications for any person not registered to vote who submits a signed affidavit in accordance with section 11-15, which shall include a sworn affirmation:

- (1) Of the person's qualification to vote;
- (2) Acknowledging that the person has not voted and will not vote at any other polling place for that election and has not cast and will not cast any absentee ballot pursuant to chapter 15 for that election; and

(3) Acknowledging that providing false information may result in a class C felony, punishable by a fine not exceeding \$1,000 or imprisonment not exceeding five years, or both.

(f) The registration clerk may accept, as prima facie evidence, the allegation of the person in the application regarding the person's residence in accordance with section 11-15(b), unless the allegation is contested by a qualified voter. The registration clerk may demand that the person furnish substantiating evidence to the other allegations of the person's application in accordance with section 11-15(b).

(g) Registration may be challenged in accordance with section 11-25.

(h) Notwithstanding subsection (c), registration pursuant to this section may be used by a person who is registered to vote but whose name cannot be found on the precinct list for the polling place associated with the person's residence.

(i) The clerk of each county shall add persons who properly register at an absentee polling place to the respective general county register. Within thirty days of registration at an absentee polling place, the county clerk shall mail to the person a notice including the person's name, current street address, district and precinct, and date of registration. A notice mailed pursuant to this subsection shall serve as prima facie evidence that the person is a registered voter as of the date of registration. [L 1975, c 36, pt of §3; am L 1976, c 106, §4(2); am L 1992, c 129, §6; am L 1993, c 230, §3 and c 304, §9; am L 1998, c 55, §1; am L 2014, c 166, §3]

" **§15-8 Absentee ballot box.** An absentee ballot box or boxes shall be provided in the absentee polling place for the purpose of depositing the return envelopes and the ballot envelopes of those who vote in person at the absentee polling place. The ballot box shall be secured in accordance with rules promulgated by the chief election officer.

Tampering with the ballot box or opening it before the time prescribed in section 15-9 shall be an election offense under section 19-6. [L 1975, c 36, pt of §3; am L 1976, c 106, §4(3); am L 1980, c 248, §1(e)]

" **§15-9 Return and receipt of absentee ballots.** (a) The return envelope shall be:

- (1) Mailed and must be received by the clerk issuing the absentee ballot not later than the closing of the polls on any election day;
- (2) Delivered other than by mail to the clerk issuing the absentee ballot, or another election official

designated by the clerk to act on the clerk's behalf, not later than the closing of polls on any election day; or

- (3) Delivered other than by mail to any polling place within the county in which the voter is registered and deposited by a precinct official in the ballot box before the closing of the polls on any election day.

(b) Upon receipt of the return envelope from any person voting under this chapter, the clerk may prepare the ballots for counting pursuant to this section and section 15-10.

(c) Prior to opening the return and ballot envelopes and counting the ballots, the return envelopes shall be checked for the following:

- (1) Signature on the affirmation statement;
- (2) Whether the signature corresponds with the absentee request or register as prescribed in the rules adopted by the chief election officer; and
- (3) Whether the person is a registered voter and has complied with the requirements of sections 11-15 and 11-16.

(d) If any of the above requirements is not met or if the return or ballot envelope appears to be tampered with, the clerk or the absentee ballot team official shall mark across the face of the envelope "invalid" and it shall be kept in the custody of the clerk and disposed of as prescribed for ballots in section 11-154.

(e) If an absentee polling place is established at the clerk's office prior to election day, the officials of the absentee polling place shall check the return or ballot envelopes for the above requirements prior to depositing them in the correct absentee ballot box. [L 1975, c 36, pt of §3; am L 1976, c 106, §4(4); am L 1979, c 133, §8; am L 1980, c 248, §1(f); am L 1983, c 34, §22; am L 1985, c 203, §8; am L 1993, c 304, §10]

" **§15-10 Counting of absentee ballots.** If the requirements in section 15-9 are met, the return and ballot envelopes may be opened and the ballot counted as prescribed by law for the voting system in use.

In those absentee polling places using paper ballots, counting of the absentee ballots may begin after noon of election day.

In those absentee polling places using the electronic voting system, the absentee ballots shall be transported to the counting center in a manner and by a schedule as provided in the rules promulgated by the chief election officer. In no case,

however, shall the results of the absentee count become publicly known before the polls have officially closed.

Any person violating this section shall be guilty of an election offense under section 19-6. [L 1975, c 36, pt of §3; am L 1976, c 106, §4(5); am L 1980, c 248, §1(g)]

" **§15-11 Voting by absentee voter at polls prohibited.** Any person having voted an absentee ballot pursuant to this chapter shall not be entitled to cast a ballot at the polls on election day. An absentee voter who does cast a ballot at the polls shall be guilty of an election offense under section 19-3(5). [L 1975, c 36, pt of §3 ; am L Sp 2008, c 4, §2]

" **§15-12 Receipt and disposition of late absentee ballots.** For any election all return envelopes containing absentee ballots received by the clerk after the deadline for receipt stated in section 15-9 shall be kept unopened and disposed of pursuant to section 11-154. [L 1975, c 36, pt of §3; am L 1980, c 248, §1(h)]

" **§15-13 Death of voter prior to opening of polls.** Whenever sufficient proof is shown to the clerk that an absentee voter who has returned the voter's return envelope has died prior to the opening of the polls on the date of election, the voter's ballot shall be deemed invalid and disposed of pursuant to section 11-154. The casting of any such ballot shall not invalidate the election. [L 1975, c 36, pt of §3; am L 1976, c 106, §4(6); am L 1980, c 248, §1(i); gen ch 1985]

" **§15-14 Ballots; where voting machines are used.** In all precincts in which voting machines are used sections 15-1 to 15-13 shall apply provided that the number and type of absentee ballots to be printed shall be determined at the discretion of the officer charged with printing and furnishing them. The officer may use reasonable facsimiles of the sample ballot used in voting machine precincts. [L 1975, c 36, pt of §3]