

ELECTRONIC OVERSEAS VOTING FOR MILITARY SPOUSES

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House Bill 4210 (H-1) as amended
Sponsor: Rep. Carol Glanville
Committee: Elections
Complete to 6-27-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4210 would amend the Michigan Election Law to allow the spouse of an overseas active duty service member to vote electronically.

Under current law, beginning January 1, 2024, a member of a uniformed service on active duty or a member of the merchant marine who, because of active duty or service, is absent from the U.S. and does not expect to return to the residence where they are otherwise qualified to vote before an election can electronically return a voted ballot to the appropriate city or township clerk to be counted under rules developed by the secretary of state (SOS).

The SOS is required to do all of the following:

- Promulgate rules that establish policies and procedures for the electronic return of voted ballots by *eligible members* (defined as members of the military on active duty or members of the merchant marine).
- In promulgating rules, require the eligible member to use a U.S. Department of Defense verified electronic signature,¹ so that the identity of the eligible member can be verified. (A member who is unwilling to provide the Department of Defense verified signature is ineligible to vote electronically.)
- Take reasonable efforts to ensure the integrity and secrecy of those ballots.
- By January 1, 2024, promulgate rules to implement these requirements, in accordance with the Administrative Procedures Act.
- By the 2024 statewide presidential primary election, allow for the electronic return of voted ballots by eligible members.

The SOS can develop and maintain a secure web portal on the SOS website to facilitate the electronic return. Only the SOS or the SOS's duly authorized agent, city and township clerks or deputy clerks, and sworn members of a clerk's staff are authorized to access the portal.

Additionally, absentee ballots must be sent to military and overseas voters at least 45 days before an election. If a city or township clerk transmits an absentee ballot to a voter after this deadline, the voter is granted an extension equaling the number of days beyond the deadline that the ballot was transmitted, and ballots received during the extension period must be counted and tabulated for the final results of the election if they were completed and sent by the close of the polls on election day.

¹ Section 18a of the Michigan Election Law defines a *U.S. Department of Defense verified signature*, for purposes of the act, as the certificate-based digital identification code issued to qualified personnel by the U.S. Department of Defense as part of the Common Access Card (CAC), or its successor. House Bill 4210 would repeal this section.

House Bill 4210 would allow *absent uniformed services voters*, rather than eligible members, to vote electronically beginning August 1, 2025. Instead of using a Department of Defense verified signature, the signature on an absent uniformed services voter's electronically returned ballot would have to match their signature in the qualified voter file (QVF).

An *absent uniformed services voter* is defined under the Michigan Election Law as a member of a uniformed service on active duty or a member of the merchant marine, *or a spouse or dependent of those members*, who is absent from the residence where they are otherwise qualified to vote due to that duty or service.

Instead of the requirements listed above, the SOS would have to promulgate rules by August 1, 2025, that establish policies and procedures that ensure the following:

- The signature on an electronically returned ballot sufficiently matches the absent uniformed services voter's signature on file.
- The absent uniformed services voter is absent from the United States.
- A county, city or township clerk is responsible for sending and receiving electronic ballots.
- An absentee ballot voted by an absent uniformed services voter is considered received on election day if it is electronically returned to the appropriate city or township clerk and received by that clerk by 8:00 p.m. on election day.²
- City and township clerks provide the appropriate county clerk with a list of all absentee ballots that were received electronically by 8:00 p.m. on election day,³ in addition to all other returns and records required to be provided to county clerks.

These policies and procedures would have to include any additional security features that the SOS considers appropriate for ensuring and verifying the integrity and secrecy of electronically returned ballots. The SOS would remain authorized to develop and maintain a secure web portal for electronic ballot returns, but the bill would remove the provisions that limit who can access the portal.

The bill would provide that the extension for an AV ballot that was transmitted after the 45-day deadline would apply beyond the six-day extension granted to military and overseas voters to return their ballots after election day only if the ballots were transmitted more than six days beyond the 45-day deadline.

Finally, the bill would provide that an election could be formally certified before the end of the six-day extension if the number of outstanding AV ballots would not alter the outcome of the election.

MCL 168.759a (amended) and 168.18a (repealed)

² With the passage of Ballot Proposal 22-2, the state constitution requires military and overseas voter absentee ballots to be counted if they are postmarked on or before election day and received within six days of the election (see **Background**, below).

³ See **Background**, below.

BACKGROUND:

Currently, federal⁴ and state⁵ law require that ballots must be electronically transmitted or mailed to active duty members of the military at least 45 days before an election. Thirty-one other states, in addition to the District of Columbia and the U.S. Virgin Islands, allow some voters to return their ballots electronically through fax, email, or an online portal.⁶

Public Acts 196 and 197 of 2022 authorized electronic voting in Michigan for overseas active-duty military members with the use of a Department of Defense verified signature.⁷ Under current law, electronic voting does not begin until 2024.

Additionally, Ballot Proposal 22-2 amended the state constitution to grant military and overseas voters, including the spouses of uniformed service members and members of the merchant marine, the right to have their absentee ballots counted if the ballot was postmarked on or before election day and received by the appropriate election official within six days of election day. This change was incorporated into the Michigan Election Law by 2023 PA 25.⁸

FISCAL IMPACT:

The bill would have no fiscal impact on the state or local units of government.

POSITIONS:

Representatives of the following entities testified in support of the bill:

- Michigan Secretary of State (6-20-23)
- American Legion Post 46 (5-9-23)
- Michigan Association of Municipal Clerks (5-9-23)
- Secure Democracy (5-9-23)

The following entities indicated support for the bill:

- American Association of University Women Michigan (6-20-23)
- Michigan Association of County Clerks (5-9-23)
- Michigan Democratic Party (5-9-23)
- Michigan League of Conservation Voters (6-20-23)
- Voters Not Politicians (6-20-23)

⁴ The Uniformed and Overseas Citizens Absentee Voting Act, as amended in 2010 by the Military and Overseas Voter Act, <https://www.justice.gov/crt/uniformed-and-overseas-citizens-absentee-voting-act>.

⁵ MCL 168.759a, codified into section 4 of Article II of the Michigan Constitution by Proposal 3 of 2018. HFA summary of Proposal 3: http://www.house.mi.gov/hfa/PDF/Alpha/Ballot_Proposal_2018-3_Promote_The_Vote.pdf.

⁶ More information on electronic ballot return in each state can be found here: <https://www.ncsl.org/elections-and-campaigns/electronic-ballot-return-internet-voting>.

⁷ A summary of 2022 PA 196 and 2022 PA 197 can be found here: <http://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-0311-B5F35D59.pdf>.

⁸ A summary of this change can be found here: <http://www.legislature.mi.gov/documents/2023-2024/billanalysis/House/pdf/2023-HLA-0259-123CA65B.pdf>. Under current law, postmark means any type of mark applied to an absentee ballot return envelope that indicates when the ballot was mailed.

A representative of the Michigan Department of Military and Veterans Affairs testified with a neutral position on the bill. (5-9-23)

Representatives of the following entities testified in opposition to the bill (5-9-23):

- Common Cause
- Free Speech for People
- Pure Integrity for Michigan Elections

Verified Voting indicated opposition to the bill. (6-20-23)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.