

1 **AN ACT** *to amend* 6.87 (4) and 6.87 (6); and *to create* 12.13 (3) (tm) of the statutes;
2 **relating to:** returning absentee ballots and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the joint legislative council's special committee on election law review.

Under current law, an absentee ballot that has been mailed to an absent elector must be returned by mail by the elector, postage prepaid, or delivered in person to the municipal clerk issuing the ballot. Exceptions exist for hospitalized electors, who may return their ballots via an agent, and for occupants of nursing homes, community-based residential facilities, and retirement homes, who return their ballots via special voting deputies assigned by the municipal clerk.

This draft clarifies that when absentee ballots are returned "in person" they must be returned in person by the elector who voted the ballot. As under current law, a ballot returned in violation of the law may not be counted. In addition, the draft prohibits any person from personally delivering another elector's absentee ballot to the municipal clerk unless the person is an agent of a hospitalized elector or a special voting deputy serving occupants of nursing homes, community-based residential facilities, or retirement homes.

The draft contains an effective date of January 1, 2006.

3 **SECTION 1.** 6.87 (4) of the statutes, as amended by 2003 Wisconsin Act 265, is amended
4 to read:

5 6.87 (4) Except as otherwise provided in s. 6.875, the elector voting absentee shall make
6 and subscribe to the certification before one witness. The absent elector, in the presence of
7 the witness, shall mark the ballot in a manner that will not disclose how the elector's vote is
8 cast. The elector shall then, still in the presence of the witness, fold the ballots so each is
9 separate and so that the elector conceals the markings thereon and deposit them in the proper

1 envelope. If a consolidated ballot under s. 5.655 is used, the elector shall fold the ballot so
2 that the elector conceals the markings thereon and deposit the ballot in the proper envelope.
3 If the elector has registered by mail and has not, or is not certain whether the elector has,
4 previously voted in an election for national office in this state, the elector shall enclose
5 identification in the envelope. Identification is required if the elector is not a military elector
6 or an overseas elector, as defined in s. 6.36 (2) (c), and the elector registered by mail and has
7 not voted in an election for national office in the municipality where the elector is voting. The
8 elector may receive assistance under sub. (5). The return envelope shall then be sealed. The
9 witness may not be a candidate. The envelope shall be ~~mailed by the elector, postage prepaid,~~
10 ~~or delivered in person, returned~~ to the municipal clerk issuing the ballot or ballots as provided
11 in sub. (6). Failure to return an unused ballot in a primary does not invalidate the ballot on
12 which the elector's votes are cast. Return of more than one marked ballot in a primary or return
13 of a ballot prepared under s. 5.655 or a ballot used with an electronic voting system in a primary
14 which is marked for candidates of more than one party invalidates all votes cast by the elector
15 for candidates in the primary.

16 **SECTION 2.** 6.87 (6) of the statutes is amended to read:

17 6.87 (6) Except as provided in ss. 6.86 (3) and 6.875 (6), the ballot shall be mailed by
18 the elector [postage prepaid] or delivered in person by the elector who voted the ballot, to the
19 municipal clerk issuing the ballot. The ballot shall be returned so it is received by the
20 municipal clerk in time for delivery to the polls before the closing hour. Any ballot not mailed
21 or delivered as provided in this subsection may not be counted.

NOTE: This SECTION requires an absentee ballot to be returned by mail or returned in person by the elector voting the ballot unless the elector is a hospitalized elector or is an occupant of a nursing home, community-based residential facility, or retirement home.

COMMENT: A separate draft relates to eliminating the “prepaid postage” requirement on absentee ballots. The bracketed language in this SECTION is intended to reflect that pending decision.

SECTION 3. 12.13 (3) (tm) of the statutes is created to read:

12.13 **(3)** (tm) Except as authorized in ss. 6.86 (3) and 6.875 (6), deliver in person to the municipal clerk an absentee ballot voted by another elector.

COMMENT: Under current law, 4 penalty levels exist for violations of s. 12.13 of the statutes depending on the particular provision of that statute that is violated. The 4 levels of penalties are:

- A fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both (a Class I felony).
- A fine not to exceed \$1,000, or imprisonment not to exceed 6 months, or both.
- A forfeiture not to exceed \$500.
- A forfeiture not to exceed \$100.

The special committee suggested that staff include a penalty for a violation of the prohibition created by the draft. As numerous options exist for a penalty, the special committee should consider what an appropriate penalty should be. Is a forfeiture sufficient? Imprisonment? Should the delivery of several absentee ballots subject an offender to a separate penalty for each ballot illegally delivered? Should there be exceptions for immediate family members or persons residing at the same address?

SECTION 4. Effective date. This act takes effect on January 1, 2006.

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