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## **State Election Laws: Overview of Statutes Providing for Provisional Ballot Tabulation**

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# State Election Laws: Overview of Statutes Providing for Provisional Ballot Tabulation

## Summary

This report provides a summary of state statutes providing for the tabulation of provisional ballots. The first section contains summaries of District of Columbia and state provisional voting tabulation statutes, organized in alphabetical order; the second section contains summaries of five state statutes providing for election-day registration (also known as “same-day registration”), organized in alphabetical order; and the third section contains a summary of one state statute providing that voter registration is not a requirement for voting.

It is important to note that although state statutes may prescribe the circumstances under which provisional ballots may be counted, ongoing litigation regarding this issue is occurring in some states and the resulting court rulings could alter tabulation procedures in a particular jurisdiction. In addition, as this report provides a summary of provisional balloting state statutory provisions, for more detailed and comprehensive information regarding each state’s election procedures and regulations it is necessary to consult with the appropriate secretary of state or state board of elections.

## **Contents**

I. Provisional Ballot Tabulation Statutes .....	1
II. Election-Day Voter Registration Statutes .....	15
III. Statute Providing that Voter Registration Not Required .....	16

# State Election Laws: Overview of Statutes Providing for Provisional Ballot Tabulation

This report provides a summary of state statutes providing for the tabulation of provisional ballots.<sup>1</sup> The first section contains summaries of District of Columbia and state provisional voting tabulation statutes, organized in alphabetical order; the second section contains summaries of five state statutes providing for election-day registration (also known as “same-day registration”), organized in alphabetical order; and the third section contains a summary of one state statute providing that voter registration is not a requirement for voting.

It is important to note that although state statutes may prescribe the circumstances under which provisional ballots may be counted, ongoing litigation regarding this issue is occurring in some states and the resulting court rulings could alter tabulation procedures in a particular jurisdiction. In addition, as this report provides a summary of provisional balloting state statutory provisions, for more detailed and comprehensive information regarding each state’s election procedures and regulations it is necessary to consult with the appropriate secretary of state or state board of elections.

## I. Provisional Ballot Tabulation Statutes

### ***Alabama.***

Seven days after the election, the appointing board for poll workers, in the presence of watchers designated by any interested candidates, shall tabulate provisional ballots which have been certified by the board of registrars “as cast by registered and qualified voters of the precincts in which such ballots were cast.” ALA. CODE § 17-10A-2(f)(2004).

### ***Alaska.***

If a voter’s name does not appear on the official registration list in the precinct in which the voter seeks to vote, the voter may cast a “questioned ballot,” which will be counted only if the voter’s eligibility can be verified by the district “questioned ballot counting board.” A person whose registration is inactive and who votes a questioned or absentee ballot shall have the ballot counted if (1) the person was registered to vote in the last four calendar years; (2) the person signs a statement to that effect; and (3) the earlier registration is verified by the director. ALASKA STAT. §§ 15.15.198, 15.20.207 (2004).

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<sup>1</sup> This research was conducted using LEXIS.

**Arizona.**

A qualified elector, whose name is not on the precinct register, upon presentation of identification indicating that the voter's residence is within the precinct or upon "signing an affirmation that states that the elector is a registered voter in that jurisdiction and is eligible to vote in that jurisdiction," shall be permitted to vote a provisional ballot. "Such ballot shall be verified for proper registration of the elector by the county recorder before being counted." ARIZ. REV. STAT. § 16-584 B,E (2004).

**Arkansas.**

If an individual's name does not appear in the registration records, the individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is: (A) a registered voter in the jurisdiction in which the individual desires to vote; and (B) eligible to vote in that election. The provisional ballot shall be counted only upon verification of the voter's registration status by the county board of election commissioners before certification of the election. ARK. CODE ANN. § 7-5-306 (2004).

**California.**

A voter claiming to be properly registered, but whose qualifications as an elector cannot be determined upon review of the registration records, is permitted to cast a provisional ballot. "The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official." "If the ballot cast by the voter contains the same candidates and measures on which the voter would have been entitled to vote in his or her assigned precinct, the elections official shall count the votes for the entire ballot." "If the ballot cast by the voter contains candidates or measures on which the voter would not have been entitled to vote in his or assigned precinct, the elections official shall count only the votes for the candidates and measures on which the voter was entitled to vote in his or her assigned precinct." CAL. ELEC. CODE § 14310 (2004).

**Colorado.**

A voter who moves from one precinct to another precinct in the same county or to another county "later than 30 days" prior to an election "is not properly registered at the new address for purposes of this section and may not vote a provisional ballot." If the voter does not complete and sign the provisional ballot affidavit, "the ballot shall not be counted unless the county clerk and recorder or designated election official determines that the voter was properly registered in the precinct and county." COLO. REV. STAT. § 1-9-301(4),(6)(2004).

**Connecticut.**

A voter may be issued a provisional ballot if the individual declares that he or she is "an elector in the town in which the individual desires to vote" and "that the individual is eligible to vote in the primary or election for federal office in the polling place," but the name of the individual does not appear on the official registry list for that polling place. After the election, the registrars of voters shall verify the information contained with each provisional ballot. If the registrars determine that

the applicant is eligible to vote, they shall count the provisional ballot not later six days after the election. 2003 CONN. LEGIS. SERV. P.A. 6, § 86(a).

***Delaware.***

A person claiming to be properly registered in an election district, but whose eligibility to vote at that election district cannot be determined, shall be entitled to vote a provisional ballot. Where the provisional ballot affidavit is incomplete, the ballot shall be set aside, not opened and the votes not tallied. An incomplete affidavit shall be defined as one that does not include all of the following information: full name, complete address, political party affiliation (primary elections only), and date of birth. “Provisional ballots cast by persons who are not registered to vote in the state or who are not registered to vote in the election district in which they were cast shall be set aside, not opened and the votes not tallied.” A provisional ballot cast by a person who is registered to vote and who has moved into the election district shall be counted if the person voted at the correct polling place for that person’s new address. DEL. CODE ANN. § 4948 (2004).

***District of Columbia.***

A voter may cast a paper ballot marked “challenged.” The precinct captain shall not allow the challenged voter to cast a “challenged” ballot unless the voter signs an affidavit swearing or affirming, under penalty of perjury, that he or she is a registered, qualified elector in D.C. “who resides in the precinct in which the ballot is to be cast, and if applicable, the Advisory Neighborhood Commission single-member district in which the ballot is to be cast.” D.C. CODE § 1-1001.09(8)(2004).

***Florida.***

Any voter claiming to be properly registered, but whose eligibility cannot be determined, shall be permitted to cast a provisional ballot. If it is determined that the person voting the provisional ballot was not registered or entitled to vote at the precinct where the person cast a vote in the election, the provisional ballot shall not be counted and the ballot shall remain in the envelope containing the Provisional Ballot Voter’s Certificate and Affirmation and the envelope shall be marked “Rejected as Illegal.” FLA. STAT. § 101.048(1),(2)(2004).

***Georgia.***

If the registrars determine after the polls close, but not later than two days following the primary or election, that the person voting the provisional ballot timely registered and was eligible to vote in the election, but voted in the wrong precinct, the board of registrars shall notify the election superintendent. “The superintendent shall count such person’s votes that were cast for candidates in those races for which the person was entitled to vote,” but shall not count the votes cast for candidates in those races in which such person was not entitled to vote. If the registrars determine that the person casting the provisional ballot did not timely register to vote or was not eligible or entitled to vote in the election or shall be unable to determine within two days following the election whether such person timely registered to vote and was eligible to vote, the registrars shall not count the ballot. “The board of registrars shall notify in writing those electors who voted in the wrong precinct and whose votes were partially counted of their correct precinct.” GA. CODE ANN. §21-2-30 (2004).

***Hawaii.***

If neither the challenger nor the challenged voter appeals the ruling of the clerk or the precinct officials, in accordance with the ruling, the voter will either be permitted or prevented from voting. If an appeal is made to the board of registration, the challenged voter shall be allowed to vote; “provided that ballot is placed in a sealed envelope to be later counted or rejected in accordance with the ruling on appeal.” HAW. REV. STAT. § 11-25(c)(2004). “Voters will be notified by polling officials that they may vote a provisional ballot. Voters will complete a self-subscribing affidavit in which the individuals affirm under penalties of perjury that they are registered in the jurisdiction in which the individual desires to vote and is eligible to vote in that election.” STATE OF HAWAII STATE PLAN, as required by the Help America Vote Act, available at [<http://www.state.hi.us/elections/>].

***Illinois.***

If a county clerk or board of election commissioners determines that all of the following apply, then a provisional ballot is valid and shall be counted as a vote: (1) The provisional voter cast the provisional ballot in the correct precinct based on the address provided by the provisional voter; (2) The affidavit executed by the provisional voter is properly executed; and (3) the provisional voter is a registered voter based on information available to the county clerk or board of election commissioners provided by either the provisional voter, an election judge, the statewide voter registration database maintained by the State Board of Elections, the records of the county clerk or board of election commissioners’ database, or Secretary of State records. The county clerk or board of election commissioners shall use any information it obtains as the basis for determining the voter registration status of the provisional voter. If a conflict exists among the information available to the county clerk or board of election commissioners as to the registration status of the provisional voter, then the county clerk or board of election commissioners shall make a determination based on the totality of the circumstances. In a case where the above information equally supports or opposes the registration status of the voter, the county clerk or board of election commissioners shall decide in favor of the provisional voter as being duly registered to vote. If the statewide voter registration database maintained by the State Board of Elections indicates that the provisional voter is registered to vote, but the county clerk’s or board of election commissioners’ voter registration database indicates that the provisional voter is not registered to vote, then the information found in the statewide voter registration database shall control the matter and the provisional voter shall be deemed to be registered to vote. If the records of the county clerk or board of election commissioners indicate that the provisional voter is registered to vote, but the statewide voter registration database maintained by the State Board of Elections indicates that the provisional voter is not registered to vote, then the information found in the records of the county clerk or board of election commissioners shall control the matter and the provisional voter shall be deemed to be registered to vote. If the provisional voter’s signature on his or her provisional ballot request varies from the signature on an otherwise valid registration application solely because of the substitution of initials for the first or middle name, the election authority may not reject the provisional ballot. In validating the registration status of a person casting a provisional ballot, the county clerk or board of election commissioners shall not require a provisional voter to complete any form other than the affidavit. In addition, the county clerk or board of election commissioners shall not require provisional voters to appear personally

before the county clerk or board of election commissioners or require provisional voters to submit additional information to verify or otherwise support information already submitted. Within two calendar days after the election, the provisional voter may submit additional information to the county clerk or board of election commissioners. This information must be received by the county clerk or board of election commissioners within the two calendar day period. If the county clerk or board of election commissioners determines that the provisional ballot is not valid pursuant to this section, then the provisional ballot may not be counted. The provisional ballot envelope containing the ballot cast by the provisional voter may not be opened. The county clerk or board of election commissioners shall write on the provisional ballot envelope the following: "Provisional ballot determined invalid." If a voter's eligibility to vote is challenged, the voter must complete an affidavit affirming his or her registration status before casting a ballot. 10 ILL. COMP. STAT. § 5/18A-15 (2004).

***Indiana.***

A voter who does not appear in the registration records is entitled to cast a provisional ballot "if the voter makes an affidavit in writing that the voter is a legal voter of the precinct." If the county election board determines that provisional voter is a qualified voter of the precinct, the provisional ballot will be counted. IND. CODE §§ 3-11-8-22, 3-11.7-5-2 (2004).

***Iowa.***

A voter whose name does not appear in the registration records, but claims the right to vote, shall be permitted to cast a ballot if the voter affirms that he or she is properly registered and presents proper identification. The individual envelopes used for each provisional ballot cast shall have printed on them that the voter believes that he or she is registered voter of the precinct and the county and is eligible to vote in this election. 2004 IA. ACTS §§ 1083, 4981 (2004).

***Kansas.***

If a voter's eligibility to vote is challenged by an election official, he or she is only permitted to cast a provisional ballot. "When a registered voter has cast a provisional ballot intended for a precinct other than the precinct in which the voter resides but located within the same county, the canvassers shall count the votes for those offices or issues which are identical in both precincts. The canvassers shall not count the votes for those offices or issues which differ from the offices or issues appearing on the ballot used in the precinct in which the voter resides." 2004 KAN. SESS. LAWS 25.

***Kentucky.***

A voter, who does not possess the proper identification required by the election official, must complete an affidavit affirming his or her identification and registration status. KY. REV. STAT. ANN. § 117.245 (2004).



***Louisiana.***

In an election for federal office, when an applicant's name does not appear on the precinct register and the registrar of voters has not authorized the applicant to vote by affidavit, or the commissioners assert that the applicant is not eligible to vote, and the applicant declares himself to be a registered voter and eligible to vote in the federal election, the applicant may cast a provisional ballot for candidates for federal office. Upon receipt of the "Provisional Ballot" envelope, the registrar of voters shall compile a list of the names of individuals who voted a provisional ballot, including the names of individuals who voted a provisional absentee ballot. On or before the date prescribed for the date of tabulation and counting of provisional ballots set forth in Subsection C of this Section, the registrar of voters, secretary of state, and other state and local agencies shall compile and provide available registration documentation to the parish board of election supervisors for the purposes of determining whether the individual casting a provisional ballot is a registered voter and eligible to vote in the election. The parish board of election supervisors in each parish shall be responsible for the counting and tabulation of all provisional ballots for federal office. LA. REV. STAT. ANN. § 18:562 (2004).

***Maryland.***

A local board may not reject a provisional ballot except by unanimous vote and in accordance with State Board regulations. The local board shall reject a provisional ballot if: (i) the local board determines that the individual who cast the provisional ballot is not qualified to vote that provisional ballot; (ii) the individual failed to sign the oath on the provisional ballot application; (iii) the individual cast more than one ballot for the same election; or (iv) the local board determines that a provisional ballot is intentionally marked with an identifying mark that is clearly evident and placed on the ballot for the purpose of identifying the ballot. An individual is qualified to vote the provisional ballot cast "if the local board determines that: (i) the individual is registered in the State; (ii) based on the address given on the provisional ballot application, the individual resides in the precinct in which the individual seeks to vote." MD. CODE ANN., ELEC. § 11-303 (2004).

***Massachusetts.***

Whenever a person asserting a right to vote in a primary, caucus, preliminary, or other election appears at the polling place for the precinct in which that person resides, but that person is not permitted to vote, that person shall be allowed to cast a provisional ballot. An election officer who believes that the individual may be eligible instead to vote in a different precinct shall direct the individual to the polling place for that precinct.

A provisional ballot shall be counted if it is determined that "the individual is eligible to vote in the precinct in the election under the law of the commonwealth." A provisional ballot will not be counted if the city or town clerk determines that "the individual is ineligible to vote in the precinct in the election under the law of the commonwealth." MASS. ANN. LAWS ch. 54 § 76C (2004).

***Michigan.***

If an individual does not present a receipt verifying the acceptance of a voter registration application, the election inspector shall determine whether the individual is in the appropriate polling place based on residence information provided by the

individual. The election inspector shall review any documents or maps in the polling place or communicate with the city or township clerk to verify the appropriate polling place for the individual and shall direct an individual who is not in the appropriate polling place to the appropriate polling place. “If the individual refuses to go to the appropriate polling place, the election inspector shall issue the individual a provisional ballot.” If an individual is in the incorrect precinct, “the individual will be issued a provisional ballot that is not tabulated on election day but is secured for verification after the election.” “Before the provisional ballot is tabulated, election officials shall process the ballot as a challenged ballot.” MICH. COMP. LAWS §§ 168.523a, 168.746 (2004).

### ***Mississippi.***

A poll manager shall notify a person that he may cast an “affidavit ballot” at the election if the person executes a written affidavit before a manager of the election stating that the individual “believes he is a registered voter in the jurisdiction in which he desires to vote and is eligible to vote in the election.” The affidavit shall include a statement that “the affiant believes he is registered to vote in the jurisdiction in which he offers to vote.” 2004 MISS. LAWS 305.

### ***Missouri.***

A voter claiming to be properly registered in the jurisdiction of the election authority and eligible to vote in an election, but whose eligibility cannot be immediately established shall be entitled to vote a provisional ballot after providing certain identification or may vote at a central polling place, where they may vote their appropriate ballot upon verification of eligibility or vote a provisional ballot if eligibility cannot be determined. If the voter declares that the voter is eligible to vote and the election authority determines that the voter is eligible to vote at another polling place, the voter shall be directed to the correct polling place or a central polling place. “If the voter refuses to go to the correct polling place or a central polling place, the voter shall be permitted to vote a provisional ballot at the incorrect polling place, but such ballot shall not be counted.” MO. REV. STAT. § 115.430 (2004).

### ***Montana.***

If information presented is insufficient to verify the elector’s identity and eligibility to vote or if the elector’s name does not appear in the precinct register, the elector may sign the precinct register and cast a provisional ballot. Before being given a ballot, an elector casting a provisional ballot shall sign an affirmation in a form prescribed by the secretary of state “swearing that, to the best of the elector’s knowledge, the elector is eligible to vote in the election and precinct” and is aware of the penalty for false swearing. A provisional ballot must be counted if the election administrator verifies the elector’s eligibility, however, it will not be counted if the election administrator cannot verify the elector’s eligibility under the rules. MONT. CODE ANN. § 13-15-107 (2004).

### ***Nebraska.***

If a person is registered to vote but his or her name does not appear in the voter registration register, and he or she is not entitled to vote under section 32-914.01 (name change) or 32-914.02 (address change within same county and precinct), and he or she has continuously resided in such county since registering to vote, the person

is entitled to vote upon completing a voter registration form at the polling place for his or her place of residence. The voter shall enclose his or her ballot in an envelope marked provisional ballot and certify that he or she is registered in an identified county and has not resided or voted outside the county since registering to vote there. Upon receipt of a provisional ballot, the election commissioner or county clerk shall copy the information from the envelope containing the provisional ballot, verify that it is in proper form and that such person has not voted anywhere else in the county, and make the appropriate changes to the voter registration register. “The election commissioner or county clerk shall investigate whether any credible evidence exists that the person was properly registered to vote before the election.” “Upon verifying the form and the existence of credible evidence that the person was properly registered to vote before the election, the election commissioner or county clerk shall remove the ballot from the envelope without exposing the marks on the ballot and shall place the ballot with the ballots to be counted by the county canvassing board.” NEB. REV. STAT. §§ 32-915, 32-1002(2)(2004).

### ***Nevada.***

A person at a polling place may cast a provisional ballot in an election to vote for a candidate for federal office if the person declares that he has registered to vote and is eligible to vote at that election in that jurisdiction, but his name does not appear on a voter registration list or an election official asserts that the person is not eligible to vote in that election in that jurisdiction. A provisional ballot must be counted if the county or city clerk determines that the person who cast the provisional ballot was registered to vote in the election and “issued the appropriate ballot for the address at which he resides.” “A provisional ballot must not be counted if the county or city clerk determines that the person who cast the provisional ballot cast the wrong ballot for the address at which he resides.” NEV. REV. STAT. §§ 293.3081, 293.3085 (2004).

### ***New Jersey.***

When sorting provisional ballots, the name, signature and other information contained on the form as supplied by a voter shall be compared with the same information that the commissioner of registration has on file for that voter. After a comparison is completed, the letter “p” shall be placed next to the voter’s name on the register or computer listing with the name of the municipality in which the voter cast the provisional ballot. If two provisional ballots from the same voter are received, both such ballots shall not be counted, the affirmation statements shall not be separated from the envelopes, and the ballots shall be put aside for further investigation. Whenever the address supplied by the voter on the affirmation statement does not match the address for such a person contained in the registration files, but it is clear that the circumstance of a voter matches the circumstance of a voter described in R.S.19:31-11(b), the updated information on the affirmation statement shall be recorded and shall constitute a transfer by the voter to a new address for subsequent elections. “After the examination of the affirmation statement by the commissioner of registration, the county board of elections shall determine if a provisional ballot voter is legally entitled to have voted and if a provisional ballot conforms to the requirements established by law.” The members of the county board shall then proceed to count and canvass the votes cast on each provisional ballot. Unless provided otherwise by this section, all provisional ballot materials shall be processed by the county board of elections in accordance with the procedures

established for absentee ballots. “If a voter fails in some way to inform the “commissioner of registration” of a change of address, the voter shall be permitted to cast a provisional ballot in the district to which the voter has moved. The provisional ballot will be provided only upon completion of a written affirmation indicating the change of address.” N.J. STAT. ANN. §§ 19:31-11, 19:53C-13 (2004).

***New Mexico.***

“A person shall be permitted to vote on a provisional paper ballot even though his original certificate of registration cannot be found in the county register or even if his name does not appear on the signature roster, provided: (1) his residence is within the boundaries of the county in which he offers to vote; (2) his name is not on the list of persons submitting absentee ballots; and (3) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector, is currently registered and eligible to vote in that county and has not cast a ballot or voted in that election.” N.M. STAT. ANN. § 1-12-8 (2004).

***New York.***

An individual, whose registration is in doubt, is permitted to vote by one of two methods: (i) the voter may seek a court order requiring that he or she be permitted to vote or (ii) the voter may execute an affidavit affirming that he or she has properly registered to vote in the applicable election district. The voter may then cast an “emergency ballot.” Whenever a voter presents to cast such a ballot, and the address where he claims to live is in the election district in which he seeks to vote, but no registration poll record can be found, he shall be permitted to vote only as follows: (i) he may present a court order requiring that he be permitted to vote; or (ii) he may swear to an affidavit stating that “he has duly registered to vote, the address in such election district from which he registered, that he remains a duly qualified voter in such election district, that his registration poll record appears to be lost or misplaced or that his name and/or his signature was omitted from the computer generated registration list or that he has moved within the county or city since he last registered, the address from which he was previously registered and the address at which he currently resides, and at a primary election, the party in which he is enrolled.” The inspectors of election shall offer such an affidavit to each such voter “whose residence address is in such election district” and each such affidavit shall be in a form prescribed by the state board of elections. The voter shall then, without further inquiry, be permitted to vote an emergency ballot. N.Y. ELEC. LAW § 8-302(e) (2004).

***North Carolina.***

“Voters not clearly eligible to vote in the precinct, but who seek to vote there, are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.” If an individual seeking to vote claims to be a registered voter in a jurisdiction and though eligible to vote in the election does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional ballot. The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before an election official stating that the individual is a registered voter in the jurisdiction in which the individual seeks to vote and is eligible to vote in that election. The County Board of Elections shall count the individual’s provisional

official ballot for all ballot items on which it determines that the individual was eligible under state or federal law to vote. 2003 N.C. SESS. LAWS 226.

**Ohio.**

When an elector appears in a polling place to vote he shall announce his full name and address to the precinct election officials and write his name and address in the poll lists. The elector's signature in the poll lists shall then be compared with his signature on his registration form or a digitized signature list, and if the signatures match, the clerks shall enter the date of the election on the registration form. If the right of the elector to vote is not then challenged, or, if being challenged, he establishes his right to vote, he shall be allowed to proceed into the voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call his name and the stub number on each of the ballots. The clerk shall enter the stub numbers opposite the signature of the elector in the pollbook. The elector shall then retire to one of the voting compartments to mark his ballots. "When by mistake a qualified voter has caused himself not to be properly registered, the board of elections may verify the voter's eligibility and correct the records. The board of elections has the power to correct all errors occurring in the registration of voters when no fraudulent intent is found." OHIO REV. CODE ANN. § 3505.18(2004).

**Oklahoma.**

Provisional ballots shall be available for all elections conducted by the county election board. Persons who are not listed in the precinct registry, but who claim to be registered voters in the precinct and eligible to vote in the election, shall be entitled to vote a provisional ballot upon execution of an affidavit. "A provisional ballot shall be counted only if it is cast in the precinct of the voter's residence and if evidence of the provisional voter's valid voter registration, or of the voter's identity, is found, except a provisional ballot cast by a voter identified in Section 14-121 of Title 26 of the Oklahoma Statutes shall be counted." 2004 OKLA. SESS. LAWS 545, to be codified at OKLA. STAT. § 7-116.1, § 8 (2004).

**Oregon.**

A person offering to vote and who claims to be an elector, but for whom no evidence of active or inactive registration can be found, shall be granted the right to vote in the manner provided in this section. The elector voting under this section shall complete and sign a registration card and insert the ballot into a small envelope provided by the election board and then insert the small envelope into a larger envelope, which shall be deposited in the ballot box. When the ballot box is opened, the larger envelopes shall be segregated and not counted until the registration of the elector is verified under this section. "The county clerk shall determine if the elector is validly registered to vote and if the vote was properly cast. The ballot shall be counted only if the county clerk determines the registration of the elector is considered active or inactive." "A vote shall be counted only if the elector is qualified to vote for the particular office or on the measure." OR. REV. STAT. § 254.408 (2004).

***Pennsylvania.***

At all elections an individual who claims to be properly registered and eligible to vote at the election district, but whose name does not appear on the district register and whose registration cannot be determined by the inspectors of election or the county election board, shall be permitted to cast a provisional ballot. Individuals who are voting for the first time at the election district shall be required to produce identification and if unable to do so, shall be permitted to cast a provisional ballot. An individual presenting a judicial order to vote shall be permitted to cast a provisional ballot. Prior to voting the provisional ballot, the elector shall be required to sign an affidavit stating the following: "I do solemnly swear or affirm that my name is \_\_\_\_\_, that my date of birth is \_\_\_\_\_, and at the time that I registered I resided at \_\_\_\_\_ in the Municipality of \_\_\_\_\_ in \_\_\_\_\_ County of the Commonwealth of Pennsylvania and that this is the only ballot that I cast in this election. Signature of voter/elector; Current address; Check the reason for casting the provisional ballot. Signed by Judge of Elections and Minority Inspector"

"Within seven calendar days of the election, the county board of elections shall examine each provisional ballot envelope that is received to determine if the individual voting that ballot was entitled to vote at the election district in the election." "Except as provided in subparagraph (ii), if it is determined that the individual was registered and entitled to vote at the election district where the ballot was cast, the county board of elections shall compare the signature on the provisional ballot envelope with the signature on the elector's registration form and, if the signatures are determined to be genuine, shall count the ballot if the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election." (ii) A provisional ballot shall not be counted if: (a) the provisional ballot envelope or the affidavit is not signed by the individual; (b) the signatures required are either not genuine or are not executed by the same individual; or (c) a provisional ballot envelope does not contain a secrecy envelope. "If it is determined that the individual voting the provisional ballot was not registered, the provisional ballot shall not be counted and the ballot shall remain in the provisional ballot envelope and shall be marked 'rejected as ineligible.'"

Except as provided in subparagraph (ii), if it is determined that the individual voting the provisional ballot was eligible to vote in the county in which the ballot was cast but not at the election district where the ballot was cast, the county board of elections shall open the envelope and only count that portion of the ballot that the individual would have been eligible to vote in his proper election district and at the election district where the vote was cast if: (a) the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election; and (b) the individual casting the provisional ballot is a resident of the county in which the provisional ballot was cast. "(ii) In the event that the individual casting the provisional ballot is not found to be a resident of the county in which the provisional ballot was cast, the ballot shall not be counted." (iii) In the event that the board of elections determines, based on an evidentiary record, that the individual intentionally and wilfully cast a provisional ballot in an election district in which the individual was not eligible to vote, the ballot shall not be counted. 2004 PA. LAWS 97.

***Rhode Island.***

If an individual's name does not appear on the certified voting list and the individual is eligible to vote in an election for federal office, or an election official asserts that the individual is not eligible to vote in the district in which the individual desires to vote, then the individual shall be permitted to cast a provisional ballot as provided in Section 302 of the Help America Vote Act, P.L. 107-252, codified at 42 U.S.C. § 15481. Provisional ballots provided for in this section shall be cast in accordance with rules and regulations which shall be promulgated by the state board of elections in accordance with the Help America Vote Act, 42 U.S.C. § 15301 et seq. Any voter, whose name is not listed in the registration records, may apply to the local election board for a certificate entitling the voter to cast a ballot. The certificate will only be granted if the board is able to verify the voter's qualifications to vote. A certificate marked "Temporary Certificate of Registration" will have the same force and effect as a voter's name being listed on the voter registration list. R.I. GEN. LAWS § 17-19-224.1 (2004).

***South Carolina.***

When any person is challenged to vote, the manager must explain to him the qualifications of an elector. If the person insists that he is qualified and the challenge is not withdrawn, his provisional vote must be received. The election authority must hear all objections to these votes, and when no person appears or offers evidence before the meeting to sustain an objection made at the polls, the ballot is no longer a provisional ballot. Each provisional ballot which is no longer challenged and each ballot whose challenge was decided in favor of the voter must be counted. Where a person's name could not be verified and the person was allowed to vote a provisional ballot, the Board of Voter Registration "must certify to the authority in charge whether or not the voter is a qualified elector of the precinct in which he voted his provisional ballot." "If the board certifies the person challenged is not a qualified elector of the precinct, this certification is considered an administrative challenge and is clear and convincing evidence for the meeting authority to disallow the ballot." S.C. CODE ANN. §§ 7-13-820, 17-13-830 (2003).

***South Dakota.***

Prior to the official canvass, the person in charge of the election shall determine if the person voting by provisional ballot was legally qualified to vote in the precinct in which the provisional ballot was cast. In making this determination, the person in charge of the election shall consider the information provided on the affirmation and diligently investigate the voter registration status of the person. "If there is no evidence that a voter registration form had been completed by the person showing a residence address in that precinct and returned to an official voter registration site prior to the deadline to register to vote for the election, the provisional ballot is invalid." S.D. CODIFIED LAWS § 12-20-5.1 (2004).

***Tennessee.***

A person shall be entitled to vote a provisional ballot under the procedures of this section "if the voter claims to be properly registered in the county and eligible to vote at the precinct in the election, but whose eligibility cannot be determined." If the election official cannot determine that the voter's name should have been placed on the precinct's computer signature list, then the voter shall complete an original voter registration application. If the central provisional ballot counting board

determines that “the person should have been registered to vote and met the statutory requirements for registration in the precinct where the voter cast the ballot” and has not cast a ballot in the election in a different precinct, then the central provisional ballot counting board shall count the ballot. If the central provisional ballot counting board determines that “the person should not have been registered to vote in the precinct where the voter cast the ballot or that the voter has previously cast a ballot in the election in a different precinct, the provisional ballot envelope shall not be opened nor its provisional ballot affidavit removed, but it shall be marked ‘Rejected.’” TENN. CODE ANN. § 2-7-112 (2004).

***Texas .***

A person to whom Section 63.008(b) or 63.009(a) applies may cast a provisional ballot if the person executes an affidavit stating that the person “is a registered voter in the precinct in which the person seeks to vote” and is eligible to vote in the election. After executing the affidavit, the person shall be given a provisional ballot for the election. TEX. ELEC. CODE § 63.011 (2004).

***Utah.***

The election judges shall follow the procedures and requirements of this section when: the person’s right to vote is challenged or the person’s name is not found on the official register. Under such circumstances, the election judge shall: (a) request that the person provide proof of identity and proof of residence; and (b) review the proof of identity and proof of residence provided by the person. If the election judge is satisfied that the person has established the person’s identity and residence in the voting precinct: (a) the election judge in charge of the official register shall: (i) record in the official register the type of source documents that established the person’s proof of identity and proof of residence; (ii) write the provisional ballot envelope number opposite the name of the voter in the official register; and (iii) direct the voter to sign his name in the election column in the official register; (b) another judge shall list the ballot number and voter’s name in the pollbook; and (c) the election judge having charge of the ballots shall: (i) endorse his initials on the stub; (ii) check the name of the voter on the pollbook list with the number of the stub; (iii) give the voter a ballot and a provisional ballot envelope; and (iv) allow the voter to enter the voting booth. If the election judge is not satisfied that the voter has provided sufficient proof of identity and proof of residence: (a) the election judge in charge of the official register shall: (i) record in the official register that the voter did not provide adequate proof of identity and proof of residence; (ii) write the provisional ballot envelope number opposite the name of the voter in the official register; and (iii) direct the voter to sign his name in the election column in the official register; (b) another judge shall list the ballot number and voter’s name in the pollbook; and (c) the election judge having charge of the ballots shall: (i) endorse his initials on the stub; (ii) check the name of the voter on the pollbook list with the number of the stub; (iii) give the voter a ballot and a provisional ballot envelope; and (iv) allow the voter to enter the voting booth. Whenever the election officer is required to furnish more than one kind of official ballot to a voting precinct, the election judges of that voting precinct shall give the registered voter the kind of ballot that the voter is qualified to vote. UTAH CODE ANN. § 20A-3-105.5 (2004).



***Vermont.***

If an individual's name does not appear on the checklist and the individual claims to have submitted an application for the checklist prior to noon on the second Monday before the election, the election official shall allow the individual to vote provisionally. The provisional voter shall be given a ballot that includes only candidates for federal offices and an envelope with an attestation printed upon it and shall complete the attestation on the envelope. Upon completion, the provisional voter shall seal the envelope and deposit it in a ballot box marked for the receipt of provisional ballots. The town clerk may make such investigation as he or she deems proper to verify any fact stated in the application. In making the determination whether to accept the provisional voter's attestation, the town clerk shall determine whether the applicant meets all of the registration eligibility requirements. VT. STAT. ANN. §§ 2556, 2557 (2004).

***Virginia.***

When a person offers to vote pursuant and the general registrar is not available or cannot state that the person is registered to vote, then such person shall be allowed to vote by paper ballot in the manner provided in this section. "The electoral board shall meet on the day following the election and determine whether each person having submitted such a provisional vote was entitled to do so as a qualified voter in the precinct in which he offered the provisional vote." One authorized representative of each political party or independent candidate in a general or special election or one authorized representative of each candidate in a primary election, who is a qualified voter of the city or county, shall be permitted to remain in the room in which the determination is being made so long as he does not impede the orderly conduct of the determination. If the electoral board determines that such person was not entitled to vote as a qualified voter in the precinct in which he offered the provisional vote, or is unable to determine his right to vote, the envelope containing his ballot shall not be opened and his vote shall not be counted. However, "the provisional vote shall be counted if such person is entitled to vote in the precinct." VA. CODE ANN. §§ 24.2-652, 24.2-653 (2004).

***Washington.***

If a voter's status as an eligible voter is challenged, the voter may cast a ballot which shall be separated from other voted ballots. The county canvassing board will meet at a later date to rule on the challenged ballots. If the challenging party fails to provide clear and convincing evidence that the voter's registration is invalid, the challenged ballot will be counted. WASH. REV. CODE § 29.10.127 (2004).

***West Virginia.***

It shall be the duty of the members of the receiving board to challenge the right of any person requesting a ballot to vote in any election if the person's registration record is not available at the time of the election or if the signature written by the person in the poll book does not correspond with the signature purported to be his or hers on the registration record, if the registration record of the person indicates any other legal disqualification or if any other valid challenge exists. Any person challenged shall nevertheless be permitted to vote in the election with a provisional ballot. The county commission shall, at the time of canvassing of the election returns, sit in session to determine the validity of any challenges according to the provisions of this chapter. "If the county commission determines that the challenges

are unfounded, each provisional ballot of each challenged voter, if otherwise valid, shall be counted and tallied together with the regular ballots cast in the election.” The county commission shall disregard technical errors, omissions or oversights if it can reasonably be ascertained that the challenged voter was entitled to vote. Any person duly appointed as an election commissioner or clerk, who serves in that capacity in a precinct other than the precinct in which the person is legally entitled to vote, may cast a provisional ballot in the precinct in which the person is serving as a commissioner or clerk. “The ballot shall not be invalid for the sole reason of having been cast in a precinct other than the precinct in which the person is legally entitled to vote.” The county commission shall record the provisional ballot on the voter’s permanent registration record provided that the county commission may only count the votes for the offices that the voter was legally authorized to vote for in his or her own precinct. W. VA. CODE § 3-1-41 (2004).

### ***Wyoming.***

A person challenged on any ground may vote by provisional ballot, if he subscribes this oath in writing before a judge of election: “I do solemnly swear (or affirm) that I am the person I represent myself to be and that I am a qualified elector entitled to vote in this precinct at this election and that this is the only ballot I have or will vote in this election.” “A challenged voter may present information and documentation of his eligibility to register at the election or to vote to the county clerk until the close of business on the day following the election. Any information presented shall be considered by the canvassing board in determining the voter’s eligibility to register at the election or to vote and whether to open and count his provisional ballot. The provisional ballot shall be counted only after the voter has, by presenting documentation required under this code to the county clerk, established he had previously registered and is a qualified elector or he was eligible to register at the election and is a qualified elector.” WYO. STAT. ANN. §§ 22-15-105, 22-15-106 (2004).

## **II. Election-Day Voter Registration Statutes**

### ***Idaho.***

“An individual who is eligible to vote may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence, by completing a registration card, making an oath in the form prescribed by the secretary of state and providing proof of residence.” IDAHO CODE § 34-408A (2004).

### ***Maine.***

The registrar shall accept registrations of applicants who appear in person on election day. ME. REV. STAT. ANN. 21-A § 122 (2004).

### ***Minnesota.***

Any individual who is eligible to vote may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence. The individual must complete a registration card, make an oath, and provide proof of residence. MINN. STAT. § 201.061 (2003).

***New Hampshire.***

Any person who is qualified to vote may request to be registered to vote at the polling place on election day. The applicant must complete an election day affidavit. N.H. REV. STAT. ANN. § 654:7-a (2004).

***Wisconsin.***

Any qualified voter, whose name does not appear on the registration list, shall be entitled to vote at the election if he or she delivers to the municipal clerk a registration form. WIS. STAT. § 6.29 (2004).

**III. Statute Providing that Voter Registration Not Required**

***North Dakota.***

Every citizen who is eighteen years of age, a resident of the state, and has resided in the precinct at least thirty days before the election, is a qualified voter. N.D. CENT. CODE § 16.1-01-04 (2003).

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