

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 688

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO RESIDENCY AND VOTING; AMENDING SECTION 34-405, IDAHO CODE, TO  
2 REVISE PROVISIONS REGARDING GAIN OR LOSS OF RESIDENCE BY REASON OF AB-  
3 SENCE FROM THE STATE; AMENDING SECTION 34-1002, IDAHO CODE, TO PROVIDE  
4 A WRITTEN WARNING ON THE APPLICATION FOR AN ABSENT ELECTOR'S BALLOT  
5 FORM, TO PROVIDE THAT CERTAIN OVERSEAS VOTERS SHALL BE ALLOWED TO VOTE  
6 FOR FEDERAL OFFICES ONLY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING  
7 SECTION 34-1008, IDAHO CODE, TO REVISE PROCEDURES FOR COUNTING ABSENTEE  
8 BALLOTS; AND AMENDING CHAPTER 14, TITLE 34, IDAHO CODE, BY THE ADDITION  
9 OF A NEW SECTION 34-1414, IDAHO CODE, TO PROVIDE THAT ANY SECRETARY OF  
10 STATE RULES, POLICIES, PROCEDURES OR PRINTED DIRECTIVES THAT AMEND OR  
11 CONTRAVENE STATE STATUTES SHALL NOT BE PERMITTED; AND PROVIDING SEVER-  
12 ABILITY.  
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Section 34-405, Idaho Code, be, and the same is hereby  
16 amended to read as follows:

17 34-405. GAIN OR LOSS OF RESIDENCE BY REASON OF ABSENCE FROM STATE. For  
18 the purpose of voting, no person shall be deemed to have gained or lost a res-  
19 idence by reason of his absence while employed in the service of this state or  
20 the United States, while a student of any institution of learning, while kept  
21 at any state institution at public expense, nor absent from the state with  
22 the intent to have this state remain his residence. If a person is absent  
23 from this state but intends to maintain his residence for voting purposes  
24 here, he shall not register to vote in any other state during his absence.

25 If a person removes to another state, territory or foreign county, with  
26 the intention of establishing his domicile there, he thereby loses his resi-  
27 dence in this state. Except as otherwise provided, in state and federal law,  
28 if a person removes to another state, territory or foreign county, with the  
29 intention of residing there for an indefinite time, he thereby loses his resi-  
30 idence in this state for election purposes notwithstanding that he may in-  
31 tend to return at some uncertain future date except as provided in title 50  
32 U.S.C. app. 595.

33 SECTION 2. That Section 34-1002, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35 34-1002. APPLICATION FOR ABSENTEE BALLOT -- PRIMARY ELECTIONS. (1)  
36 Any registered elector may make written application to the county clerk, or  
37 other proper officer charged by law with the duty of issuing official ballots  
38 for such election, for an official ballot or ballots of the kind or kinds to  
39 be voted at the election. The application shall contain the name of the elec-

1 tor, the elector's home address, county, and address to which such ballot  
2 shall be forwarded.

3 (2) In order to provide the appropriate primary election ballot to  
4 electors, in the event a political party elects to allow unaffiliated elec-  
5 tors to vote in that party's primary election pursuant to section 34-904A,  
6 Idaho Code, the elector shall designate, as part of the written application  
7 for a ballot for primary elections, the elector's party affiliation or des-  
8 ignation as "unaffiliated." The application shall contain checkoff boxes  
9 for "unaffiliated" electors by which such electors shall indicate for which  
10 party's primary ballot the "unaffiliated" elector chooses to vote. Provided  
11 however, that no political party's primary election ballot shall be provided  
12 to an "unaffiliated" elector for a political party that has not elected to  
13 allow "unaffiliated" electors to vote in that political party's primary  
14 election pursuant to section 34-904A, Idaho Code. If an "unaffiliated"  
15 elector does not indicate a choice of political party's primary election  
16 ballot, the elector shall receive a nonpartisan ballot.

17 (3) In order to provide the appropriate primary election ballot to  
18 electors, in the event one (1) or more political parties elect to allow elec-  
19 tors affiliated with a different political party to vote in that party's  
20 primary election, the application shall contain checkoff boxes by which such  
21 electors may indicate the primary ballot in which the elector wishes to vote.

22 (4) For electors who are registered to vote as of January 1, 2012, and  
23 who remain registered electors, the elector shall designate, as part of  
24 the written application for a ballot for the 2012 primary elections, the  
25 elector's party affiliation or designation as "unaffiliated." The appli-  
26 cation shall contain checkoff boxes for "unaffiliated" electors by which  
27 such electors shall indicate for which party's primary election ballot the  
28 "unaffiliated" elector chooses to vote, pursuant to section 34-904A, Idaho  
29 Code. Provided however, that no political party's primary election ballot  
30 shall be provided to an "unaffiliated" elector for a political party that has  
31 not elected to allow "unaffiliated" electors to vote in the party's primary  
32 election pursuant to section 34-904A, Idaho Code. If an "unaffiliated"  
33 elector does not indicate a choice of political party's primary election  
34 ballot, the elector shall receive a nonpartisan ballot. After the 2012  
35 primary election, the county clerk shall record the party affiliation or  
36 "unaffiliated" designation so selected on the application for an absentee  
37 ballot as part of such an elector's record within the voter registration  
38 system as provided for in section 34-437A, Idaho Code.

39 (5) After the 2012 primary election, electors who remain registered  
40 voters and who did not vote in the 2012 primary elections and who make written  
41 application for an absentee ballot shall be designated as "unaffiliated"  
42 electors as provided in section 34-404, Idaho Code, and such electors shall  
43 be given the appropriate ballot for such "unaffiliated" designation pur-  
44 suant to the provisions of this act.

45 (6) An elector may not change party affiliation or designation as "un-  
46 affiliated" on an application for absentee ballot. For primary elections,  
47 an elector may change party affiliation or designation as "unaffiliated" as  
48 provided for in section 34-411A, Idaho Code.

49 (7) The application for an absent elector's ballot shall be signed  
50 personally by the applicant. The application for a mail-in absentee ballot

1 shall be received by the county clerk not later than 5:00 p.m. on the sixth  
 2 day before the election. An application for in person absentee voting at the  
 3 absent elector's polling place described in section 34-1006, Idaho Code,  
 4 shall be received by the county clerk not later than 5:00 p.m. on the Friday  
 5 before the election. Application for an absentee ballot may be made by using  
 6 a facsimile machine or other electronic transmission. In the event a regis-  
 7 tered elector is unable to vote in person at the elector's designated polling  
 8 place on the day of election because of an emergency situation which rendered  
 9 the elector physically unable, the elector may nevertheless apply for an  
 10 absent elector's ballot on the day of election by notifying the county clerk.  
 11 No person may, however, be entitled to vote under an emergency situation  
 12 unless the situation claimed rendered the elector physically unable to vote  
 13 at the elector's designated polling place within ninety-six (96) hours prior  
 14 to the closing of the polls. Each application for an absent elector's ballot  
 15 form must contain the following: "WARNING: Any elector who supplies any  
 16 information knowing it to be false is guilty of perjury, which is punishable  
 17 by imprisonment for not more than two (2) years, by a fine not in excess of  
 18 fifty thousand dollars (\$50,000) or both. UNDER PENALTY OF LAW: By signing  
 19 this application I certify that I am a citizen of the United States and that I  
 20 shall have been a resident of Idaho and the county for thirty (30) days before  
 21 the next election at which I vote and that I am or will be at least eighteen  
 22 (18) years of age on election day; and I declare under oath or affirmation  
 23 that the information supplied here is true."

24 (8) A person may make application for an absent elector's ballot by use  
 25 of a properly executed federal post card application as provided for in the  
 26 laws of the United States known as uniformed and overseas citizens absentee  
 27 voting act (UOCAVA, 42 U.S.C. 1973 ff, et seq., as amended). The issuing of-  
 28 ficer shall keep as a part of the records of such officer's office a list of  
 29 all applications so received and of the manner and time of delivery or mail-  
 30 ing to and receipt of returned ballot.

31 (9) An "overseas voter" as defined in subsection 6(c) of the uniformed  
 32 and overseas citizens absentee voting act (UOCAVA, 42 U.S.C. 1973 ff) who re-  
 33 sides outside the United States and (but for such residence) would be quali-  
 34 fied to vote before leaving the state shall be allowed to vote for federal of-  
 35 fices only, using the federal write-in absentee ballot prescribed in section  
 36 2 of 42 U.S.C. 1973 ff.

37 (10) The county clerk shall, not later than seventy-five (75) days af-  
 38 ter the date of each general election, submit a report to the secretary of  
 39 state containing information concerning absentee voters as required by fed-  
 40 eral law.

41 SECTION 3. That Section 34-1008, Idaho Code, be, and the same is hereby  
 42 amended to read as follows:

43 34-1008. DEPOSIT OF ABSENTEE BALLOTS. Between the opening and closing  
 44 of the polls on such election day the judges of election of such precinct  
 45 shall open the carrier envelope only, announce the absent elector's name,  
 46 and in the event they find such applicant to be a duly registered elector of  
 47 the precinct and that he has not heretofore voted at the election, they shall  
 48 open the return envelope and remove the ballot envelopes and deposit the same  
 49 in the proper ballot boxes and cause the absent elector's name to be entered

1 on the poll books the same as though he had been present and voted in per-  
2 son. The ballot envelope shall not be opened until the ballots are counted.  
3 Absentee ballot envelopes as well as the ballots they contain must be counted  
4 and secured. If there is more than one (1) ballot in an envelope, all ballots  
5 and the envelope are voided. The elector shall sign the return ballot enve-  
6 lope where the following is printed: "This envelope contains only the ballot  
7 marked and voted by one elector. Signature of elector."

8 SECTION 4. That Chapter 14, Title 34, Idaho Code, be, and the same is  
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
10 ignated as Section 34-1414, Idaho Code, and to read as follows:

11 34-1414. SECRETARY OF STATE. Any secretary of state rules, policies,  
12 procedures or printed directives that amend or contravene state statutes  
13 shall not be permitted.

14 SECTION 5. SEVERABILITY. The provisions of this act are hereby declared  
15 to be severable and if any provision of this act or the application of such  
16 provision to any person or circumstance is declared invalid for any reason,  
17 such declaration shall not affect the validity of the remaining portions of  
18 this act.