



April 1, 2005

**ENGROSSED
SENATE BILL No. 419**

DIGEST OF SB 419 (Updated March 31, 2005 3:09 pm - DI 75)

Citations Affected: IC 3-7; IC 3-11; IC 3-11.5; IC 3-12; IC 6-3; IC 10-16; IC 20-12; noncode.

Synopsis: Rights of citizens serving overseas. Permits the use of electronic mail to transmit and receive ballots from military voters and overseas voters through a program authorized and administered by the United States Department of Defense. Provides that the federal form serving as both a registration application and absentee ballot application for military and overseas voters may be submitted by facsimile (fax) transmission. Specifies which types of overseas voters are subject to the provision entitling the voter to cast a ballot for federal offices only. Removes obsolete provisions concerning the printing of certain ballots by the election division. Requires the documentation of certain information concerning absentee applications and ballots cast by military and overseas voters. Conforms state law to 2004 federal legislation requiring the counting of ballots only for federal offices cast by military voters present within the United States, and permitting state law to authorize the counting of these ballots regardless of when a county election board might receive an application for a regular
(Continued next page)

Effective: January 1, 2002 (retroactive); upon passage; July 1, 2005.

Steele, Mishler

(HOUSE SPONSORS — KOCH, FOLEY, WELCH)

January 13, 2005, read first time and referred to Committee on Elections and Civic Affairs.
January 31, 2005, reported favorably — Do Pass.
February 3, 2005, read second time, ordered engrossed.
February 4, 2005, engrossed.
February 7, 2005, read third time, passed. Yeas 45, nays 1.

HOUSE ACTION

March 8, 2005, read first time and referred to Committee on Elections and Apportionment.
March 31, 2005, amended, reported — Do Pass.

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absentee ballot from a military voter or overseas voter. Requires the employer of an individual called to active duty in the Indiana National Guard, when the individual returns from the active duty, to reemploy the individual in the same position or a similar position for a period of time equal to the time the individual served on active duty. Provides for a one time deduction from the employer's adjusted gross income of \$500 for compensation to the individual for the period or reemployment. Provides that income earned by a member of the national guard while deployed overseas is exempt from consideration as income in determining eligibility for the Frank O'Bannon grant program administered by the state student assistance commission. Extends the eligibility period for the National Guard tuition supplement program for a member of the national guard called to active duty outside Indiana after September 11, 2001. Provides that the extension is equal to the period of active duty.

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April 1, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 419

A BILL FOR AN ACT to amend the Indiana Code concerning the rights of citizens serving overseas.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 3-7-32-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE UPON PASSAGE]: Sec. 4. A voter may not submit a
3 registration application by **fax or an** electronic transmission except as
4 provided in:
- 5 (1) IC 3-11-4 **by an absent uniformed services voter or**
 - 6 **overseas voter submitting a registration application on the**
 - 7 **standard form approved under 42 U.S.C. 1973ff(b); or**
 - 8 (2) after December 31, 2005, IC 3-7-26.3.
- 9 SECTION 2. IC 3-11-4-6 IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) This section applies,
11 notwithstanding any other provision of this title, to absentee ballot
12 applications for the following:
- 13 (1) An absent uniformed services voter.
 - 14 (2) An address confidentiality program participant (as defined in
 - 15 IC 5-26.5-1-6).
 - 16 (3) An overseas voter.
 - 17 (b) A county election board shall make blank absentee ballot

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1 applications available for persons covered by this section after
2 November 20 preceding the election to which the application applies.
3 Except as provided in subsection (c), the person may apply for an
4 absentee ballot at any time after the applications are made available.

5 (c) A person covered by this section may apply for an absentee
6 ballot for the next scheduled primary, general, or special election at any
7 time by filing a standard form approved under 42 U.S.C. 1973ff(b).

8 (d) If the county election board receives an absentee ballot
9 application from a person described by this section, the circuit court
10 clerk shall mail to the person, free of postage as provided by 39 U.S.C.
11 3406, all ballots for the election immediately upon receipt of the ballots
12 under sections 13 and 15 of this chapter.

13 (e) In accordance with 42 U.S.C. 1973ff-3, whenever a voter files
14 an application for an absentee ballot and indicates on the application
15 that the voter:

- 16 (1) is an absent uniformed services voter or an overseas voter; and
 - 17 (2) does not expect to be in the county on the next general
18 election day following the date the application is filed and expects
19 to remain absent from the county until at least the date of the
20 second general election following the date the application is filed;
- 21 the application is an adequate application for an absentee ballot for
22 both subsequent general elections and any municipal or special election
23 conducted during that period. The circuit court clerk and county
24 election board shall process this application and send general election
25 absentee ballots to the voter in the same manner as other general
26 election and special election absentee ballot applications and ballots
27 are processed and sent under this chapter.

28 (f) Whenever a voter described in subsection (a)(2) files an
29 application for a primary election absentee ballot and indicates on the
30 application that the voter is an address confidentiality program
31 participant, the application is an adequate application for a general
32 election absentee ballot under this chapter and an absentee ballot for a
33 special election conducted during the twelve (12) months following the
34 date of the application. The circuit court clerk and county election
35 board shall process this application and send general election and
36 special election absentee ballots to the voter in the same manner as
37 other general election and special election absentee ballot applications
38 and ballots are processed and sent under this chapter.

39 (g) The name, address, telephone number, and any other identifying
40 information relating to a program participant (as defined in
41 IC 5-26.5-1-6) in the address confidentiality program, as contained in
42 a voting registration record, is declared confidential for purposes of

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1 IC 5-14-3-4(a)(1). The county voter registration office may not disclose
2 for public inspection or copying a name, an address, a telephone
3 number, or any other information described in this subsection, as
4 contained in a voting registration record, except as follows:

- 5 (1) To a law enforcement agency, upon request.
- 6 (2) As directed by a court order.

7 (h) The county election board shall by fax **(or electronic mail when**
8 **authorized under this section)** transmit an absentee ballot to and
9 receive an absentee ballot from an absent uniformed services voter or
10 an overseas voter at the request of the voter. If the voter wants to
11 submit absentee ballots by fax **or electronic mail**, the voter must
12 separately sign and date a statement on the cover of the fax
13 transmission that states substantively the following: "I understand that
14 by faxing **or e-mailing** my voted ballot I am voluntarily waiving my
15 right to a secret ballot."

16 (i) The county election board shall send confirmation to a voter
17 described in subsection (h) that the voter's absentee ballot has been
18 received as follows:

- 19 (1) If the voter provides a fax number to which a confirmation
20 may be sent, the county election board shall send the confirmation
21 to the voter at the fax number provided by the voter.
- 22 (2) If the voter provides an electronic mail address to which a
23 confirmation may be sent, the county election board shall send the
24 confirmation to the voter at the electronic mail address provided
25 by the voter.
- 26 (3) If:
 - 27 (A) the voter does not provide a fax number or an electronic
28 mail address; or
 - 29 (B) the number or address provided does not permit the board
30 to send the confirmation not later than the end of the first
31 business day after the board receives the voter's absentee
32 ballot;

33 the county election board shall send the confirmation by United
34 States mail.

35 The county election board shall send the confirmation required by this
36 subsection not later than the end of the first business day after the
37 county election board receives the voter's absentee ballot.

38 **(j) A county election board may transmit an absentee ballot to**
39 **an absent uniformed services voter or an overseas voter by**
40 **electronic mail under a program authorized and administered by**
41 **the Federal Voting Assistance Program of the United States**
42 **Department of Defense. A voter described by this section may**

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1 transmit the voted absentee ballot to a county election board by
 2 electronic mail in accordance with the procedures established
 3 under this program. An electronic mail message transmitting a
 4 voted absentee ballot under this subsection must include an
 5 optically scanned image of the voter's signature on the statement
 6 required under subsection (h).

7 SECTION 3. IC 3-11-4-8 IS AMENDED TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2005]: Sec. 8. **(a) This section applies to an**
 9 **overseas voter described in IC 3-5-2-34.5(3).**

10 ~~(a)~~ **(b)** An overseas voter who resides outside the United States and
 11 who is no longer a resident of a precinct in Indiana is only entitled to
 12 receive absentee ballots for a federal office under this chapter.

13 ~~(b)~~ **(c)** A voter described in subsection (a) is considered to be a
 14 voter of the Indiana precinct where the voter registration office **of the**
 15 **county where the person was domiciled before leaving the United**
 16 **States** is located.

17 SECTION 4. IC 3-11-4-12 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. ~~(a) The absentee~~
 19 ~~ballots for:~~

- 20 (1) President and Vice President of the United States;
 21 (2) United States Senator;
 22 (3) all state offices; and
 23 (4) the ratification or rejection of a public question to be voted for
 24 by the electorate of the entire state or for the retention of a judge
 25 of the Indiana court of appeals;

26 shall be prepared and printed under the direction of the election
 27 division:

28 ~~(b) The election division shall have the ballots printed upon~~
 29 ~~certification of the political party tickets and independent candidates:~~

30 ~~(c) Except as provided in subsection (f), ballots prepared under this~~
 31 ~~section must provide space for the voter to cast a write-in ballot.~~

32 ~~(d)~~ **(a)** The election division shall prepare a special absentee ballot
 33 for use by:

- 34 (1) absent uniformed services voters; and
 35 (2) overseas voters;

36 who will be outside of the United States on general election day.

37 ~~(e)~~ **(b)** The ballot described by ~~subsection (d):~~ **subsection (a):**

- 38 (1) must indicate each state office to be elected by the voters at
 39 the general election;
 40 (2) must set forth each public question to be voted for at the
 41 general election by the electorate of the entire state;
 42 (3) may not state the name of any political party or candidate for

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1 election;
 2 (4) must permit the voter to write in the name of a political party
 3 or a candidate for election to each office; and
 4 (5) must include a notice stating that regular absentee ballots will
 5 be mailed to the voter by the county election board as soon as the
 6 ballots are available.

7 ~~(f)~~ (c) Space for write-in voting for an office is not required if there
 8 are no declared write-in candidates for that office. However,
 9 procedures must be implemented to permit write-in voting for
 10 candidates for federal offices.

11 SECTION 5. IC 3-11-4-13 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) Except as
 13 provided in subsections (b) and (c), the absentee ballots that are
 14 prepared and printed under the direction of the election division shall
 15 be delivered to the circuit court clerk or the clerk's authorized deputy
 16 not less than forty-five (45) days before a general election or
 17 twenty-nine (29) days before a special election. The absentee ballots
 18 shall be delivered in the same manner that other official ballots are
 19 delivered.

20 (b) This subsection applies to the printing of absentee ballots for a
 21 general election in which the names of nominees for President and
 22 Vice President of the United States are to be printed on the ballot. The
 23 absentee ballots that are prepared and printed under the direction of the
 24 election division shall be delivered to the circuit court clerk not later
 25 than thirty-eight (38) days before the general election.

26 (c) An absentee ballot described by ~~section 12(d)~~ **section 12(a)** of
 27 this chapter shall be delivered by the election division to the circuit
 28 court clerk or the clerk's authorized deputy not later than the first
 29 Monday in June before a general election.

30 SECTION 6. IC 3-11-4-17 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. Upon receipt of an
 32 application for an absentee ballot, a circuit court clerk shall file the
 33 application in the clerk's office and record all of the following:

- 34 (1) The voter's name.
- 35 (2) The date the application is received.
- 36 (3) The date the ballot is sent to the voter.
- 37 (4) If mailed, the address to which the ballot is sent.
- 38 (5) If transmitted by fax, the fax number to which the ballot is
 39 faxed.
- 40 (6) The date the ballot is marked before the clerk or otherwise
 41 received from the voter.
- 42 **(7) The combined total number of absentee ballots sent by the**

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county to absent uniformed services voters and overseas voters.

(8) The total number of absentee ballots returned by voters described in subdivision (7) in time to be counted.

(9) The total number of absentee ballots described in subdivision (7) that were counted in whole or in part.

~~(7)~~ **(10)** Any other information that is necessary or advisable.

SECTION 7. IC 3-11-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A voter voting by absentee ballot shall make and subscribe to the affidavit prescribed by IC 3-11-4-21. The voter then shall, except as provided in subsection (b), do the following:

- (1) Mark the ballot in the presence of no other person.
- (2) Fold each ballot separately.
- (3) Fold each ballot so as to conceal the marking.
- (4) Enclose each ballot, with the seal and signature of the circuit court clerk on the outside, together with any unused ballot, in the envelope provided.
- (5) Securely seal the envelope.
- (6) Do one (1) of the following:
 - (A) Mail the envelope to the county election board, with not more than one (1) ballot per envelope.
 - (B) Deliver the envelope to the county election board in person.
 - (C) Deliver the envelope to a member of the voter's household or a person designated as the attorney in fact for the voter under IC 30-5.

(b) A voter permitted to transmit the voter's absentee ballots by fax **or electronic mail** under IC 3-11-4-6 is not required to comply with subsection (a). The individual designated by the circuit court clerk to receive absentee ballots transmitted by fax **or electronic mail** shall do the following upon receipt of an absentee ballot transmitted by fax:

- (1) Note the receipt of the absentee ballot in the records of the circuit court clerk as other absentee ballots received by the circuit court clerk are noted.
- (2) Fold each ballot received from the voter separately so as to conceal the marking.
- (3) Enclose each ballot in a blank absentee ballot envelope.
- (4) Securely seal the envelope.
- (5) Mark on the envelope: "Absentee Ballot Received by Fax **or Electronic Mail**".
- (6) Securely attach to the envelope the faxed affidavit received

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1 with the voter's absentee ballots.

2 (c) Except as otherwise provided in this title, absentee ballots
3 received by fax **or electronic mail** shall be handled and processed as
4 other absentee ballots received by the circuit court clerk are handled
5 and processed.

6 SECTION 8. IC 3-11-10-4 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Upon receipt of
8 an absentee ballot, a county election board (or the absentee voter board
9 in the office of the circuit court clerk) shall immediately examine the
10 signature of the absentee voter to determine its genuineness.

11 (b) This subsection does not apply to an absentee ballot cast by a
12 voter permitted to transmit the voter's absentee ballots by fax **or**
13 **electronic mail** under IC 3-11-4-6. The board shall compare the
14 signature as it appears upon the envelope containing the absentee ballot
15 with the signature of the voter as it appears upon the application for the
16 absentee ballot. The board may also compare the signature on the ballot
17 envelope with any other admittedly genuine signature of the voter.

18 (c) This subsection applies to an absentee ballot cast by a voter
19 permitted to transmit the voter's absentee ballots by fax **or electronic**
20 **mail** under IC 3-11-4-6. The board shall compare the signature as it
21 appears on the affidavit transmitted with the voter's absentee ballot to
22 the voter's signature as it appears on the application for the absentee
23 ballot. The board may also compare the signature on the affidavit with
24 any other admittedly genuine signature of the voter.

25 (d) If a member of the absentee voter board questions whether a
26 signature on a ballot envelope or transmitted affidavit is genuine, the
27 matter shall be referred to the county election board for consideration
28 under section 5 of this chapter.

29 SECTION 9. IC 3-11-10-12 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) Each county
31 election board shall have all absentee ballots delivered to the precinct
32 election boards at their respective polls on election day.

33 (b) The absentee ballots shall be delivered during the hours that the
34 polls are open and in sufficient time to enable the precinct election
35 boards to vote the ballots during the time the polls are open.

36 (c) This subsection applies after December 31, 2003. Along with the
37 absentee ballots delivered to the precinct election boards under
38 subsection (a), each county election board shall provide a list certified
39 by the circuit court clerk. This list must state the name of each voter
40 subject to IC 3-7-33-4.5 who:

41 (1) filed the documentation required by IC 3-7-33-4.5 with the
42 county voter registration office after the printing of the certified

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1 list under IC 3-7-29 or the poll list under IC 3-11-3-18; and
2 (2) as a result, is entitled to have the voter's absentee ballot
3 counted if the ballot otherwise complies with this title.

4 (d) This subsection applies after December 31, 2003. If the county
5 election board is notified not later than 3 p.m. on election day by the
6 county voter registration office that a voter subject to IC 3-7-33-4.5 and
7 not identified in the list certified under subsection (c) has filed
8 documentation with the office that complies with IC 3-7-33-4.5, the
9 county election board shall transmit a supplemental certified list to the
10 appropriate precinct election board. If the board determines that the
11 supplemental list may not be received before the closing of the polls,
12 the board shall:

- 13 (1) attempt to contact the precinct election board to inform the
14 board regarding the content of the supplemental list; and
- 15 (2) file a copy of the supplemental list for that precinct as part of
16 the permanent records of the board.

17 (e) This subsection applies to a special write-in absentee ballot
18 described in:

- 19 (1) 42 U.S.C. 1973ff for federal offices; and
- 20 (2) ~~IC 3-11-4-12(d)~~ **IC 3-11-4-12(a)** for state offices.

21 If the county election board receives both a special write-in absentee
22 ballot and the regular absentee ballot described by IC 3-11-4-12 from
23 the same voter, the county election board shall reject the special
24 write-in ballot and deliver only the regular absentee ballot to the
25 precinct election board.

26 SECTION 10. IC 3-11-10-14 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. Subject to section
28 11 of this chapter, absentee ballots received by mail (or **by fax or**
29 **electronic mail under IC 3-11-4-6**) after the county election board has
30 started the final delivery of the ballots to the precincts on election day
31 are considered as arriving too late and need not be delivered to the
32 polls.

33 SECTION 11. IC 3-11-10-17 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) If the inspector
35 finds under section 15 of this chapter that any of the following applies,
36 a ballot may not be accepted or counted:

- 37 (1) The affidavit is insufficient or the ballot has not been endorsed
38 with the initials of:
 - 39 (A) the two (2) members of the absentee voter board in the
40 office of the circuit court clerk under IC 3-11-4-19 or section
41 27 of this chapter;
 - 42 (B) the two (2) members of the absentee voter board visiting

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1 the voter under section 25(b) of the chapter; or
 2 (C) the two (2) appointed members of the county election
 3 board or their designated representatives under IC 3-11-4-19.
 4 (2) A copy of the voter's signature has been furnished to the
 5 precinct election board and that the signatures do not correspond
 6 or there is no signature.
 7 (3) The absentee voter is not a qualified voter in the precinct.
 8 (4) The absentee voter has voted in person at the election.
 9 (5) The absentee voter has not registered.
 10 (6) The ballot is open or has been opened and resealed. This
 11 subdivision does not permit an absentee ballot transmitted by fax
 12 **or electronic mail under IC 3-11-4-6** to be rejected because the
 13 ballot was sealed in the absentee ballot envelope by the individual
 14 designated by the circuit court to receive absentee ballots
 15 transmitted by fax **or electronic mail**.
 16 (7) The ballot envelope contains more than one (1) ballot of any
 17 kind for the same office or public question.
 18 (8) In case of a primary election, if the absentee voter has not
 19 previously voted, the voter failed to execute the proper
 20 declaration relative to age and qualifications and the political
 21 party with which the voter intends to affiliate.
 22 (9) The ballot has been challenged and not supported.
 23 (b) Subsection (c) applies whenever a voter with a disability is
 24 unable to make a signature:
 25 (1) on an absentee ballot application that corresponds to the
 26 voter's signature in the records of the county voter registration
 27 office; or
 28 (2) on an absentee ballot secrecy envelope that corresponds with
 29 the voter's signature:
 30 (A) in the records of the county voter registration office; or
 31 (B) on the absentee ballot application.
 32 (c) The voter may request that the voter's signature or mark be
 33 attested to by:
 34 (1) the absentee voter board under section 25(b) of this chapter;
 35 (2) a member of the voter's household; or
 36 (3) an individual serving as attorney in fact for the voter.
 37 (d) An attestation under subsection (c) provides an adequate basis
 38 for an inspector to determine that a signature or mark complies with
 39 subsection (a)(2).
 40 SECTION 12. IC 3-11.5-4-10 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. Subject to section
 42 7 of this chapter, absentee ballots received by mail (or **by fax or**

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1 **electronic mail under IC 3-11-4-6)** after noon on election day are
2 considered as arriving too late and may not be counted.

3 SECTION 13. IC 3-11.5-4-13 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) If the absentee
5 ballot counters find under section 11 of this chapter that any of the
6 following applies, the ballots shall be rejected:

7 (1) The affidavit is insufficient or that the ballot has not been
8 endorsed with the initials of:

9 (A) the two (2) members of the absentee voter board in the
10 office of the clerk of the circuit court under IC 3-11-4-19 or
11 IC 3-11-10-27;

12 (B) the two (2) members of the absentee voter board visiting
13 the voter under IC 3-11-10-25; or

14 (C) the two (2) appointed members of the county election
15 board or their designated representatives under IC 3-11-4-19.

16 (2) The signatures do not correspond or there is no signature.

17 (3) The absentee voter is not a qualified voter in the precinct.

18 (4) The absentee voter has voted in person at the election.

19 (5) The absentee voter has not registered.

20 (6) The ballot is open or has been opened and resealed. This
21 subdivision does not permit an absentee ballot transmitted by fax
22 **or electronic mail under IC 3-11-4-6** to be rejected because the
23 ballot was sealed in the absentee ballot envelope by the individual
24 designated by the circuit court to receive absentee ballots
25 transmitted by fax **or electronic mail**.

26 (7) The ballot envelope contains more than one (1) ballot of any
27 kind for the same office or public question.

28 (8) In case of a primary election, if the absentee voter has not
29 previously voted, the voter failed to execute the proper
30 declaration relative to age and qualifications and the political
31 party with which the voter intends to affiliate.

32 (9) The ballot has been challenged and not supported.

33 (b) Subsection (c) applies whenever a voter with a disability is
34 unable to make a signature:

35 (1) on an absentee ballot application that corresponds to the
36 voter's signature in the records of the county voter registration
37 office; or

38 (2) on an absentee ballot security envelope that corresponds with
39 the voter's signature:

40 (A) in the records of the county voter registration office; or

41 (B) on the absentee ballot application.

42 (c) The voter may request that the voter's signature or mark be

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attested to by any of the following:

- (1) The absentee voter board under section 22 of this chapter.
- (2) A member of the voter's household.
- (3) An individual serving as attorney in fact for the voter.

(d) An attestation under subsection (c) provides an adequate basis for the absentee ballot counters to determine that a signature or mark complies with subsection (a)(2).

(e) If the absentee ballot counters are unable to agree on a finding described under this section or section 12 of this chapter, the county election board shall make the finding.

(f) The absentee ballot counters or county election board shall issue a certificate to a voter whose ballot has been rejected under this section if the voter appears in person before the board not later than 5 p.m. on election day. The certificate must state that the voter's absentee ballot has been rejected and that the voter may vote in person under section 21 of this chapter if otherwise qualified to vote.

SECTION 14. IC 3-11.5-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) This section applies to the counting of write-in absentee ballots for:

- (1) a federal office received under 42 U.S.C. 1973ff; and
- (2) a federal office, state office, or public question under ~~IC 3-11-4-12(d)~~; **IC 3-11-4-12(a)**.

(b) If a voter writes an abbreviation, a misspelling, or other minor variation instead of the correct name of a candidate or political party, that vote shall be counted if the intent of the voter can be determined.

(c) If a voter casts a ballot under this section for President or Vice President and writes in the name of a candidate or political party that has not certified a list of electors under IC 3-10-4-5, the vote for President or Vice President is void. The remaining votes on the ballot may be counted.

(d) IC 3-12-1-7 applies to a ballot subject to this section.

(e) A ballot subject to this section may not be counted if:

- (1) the ballot was submitted from within the United States;
- (2) the voter's application for a regular absentee ballot was received by the circuit court clerk or board of registration less than thirty (30) days before the election;
- (3) the voter's completed regular state absentee ballot was received by the circuit court clerk or board of registration by the deadline for receiving absentee ballots under IC 3-11.5-4-7; or
- (4) the ballot subject to this section was not received by the circuit court clerk or board of registration by the deadline for receiving absentee ballots under IC 3-11.5-4-7.

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1 SECTION 15. IC 3-12-2-7.5 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.5. (a) This
 3 section applies to the counting of write-in absentee ballots for:

- 4 (1) a federal office received under 42 U.S.C. 1973ff; and
 5 (2) a federal office, state office, or public question under
 6 ~~IC 3-11-4-12(d)~~; **IC 3-11-4-12.**

7 (b) If a voter writes an abbreviation, misspelling, or other minor
 8 variation instead of the correct name of a candidate or political party,
 9 that vote shall be counted if the intent of the voter can be determined.

10 (c) If a voter casts a ballot under this section for President or Vice
 11 President of the United States and writes in the name of a candidate or
 12 political party that has not:

- 13 (1) certified a list of electors under IC 3-10-4-5; or
 14 (2) included a list of electors on the declaration for candidacy
 15 filed by a write-in candidate under IC 3-8-2-2.5;

16 the vote for President or Vice President is void. The remaining votes on
 17 the ballot may be counted.

18 (d) IC 3-12-1-7 applies to a ballot subject to this section.

19 (e) A ballot subject to this section may not be counted if:

- 20 (1) the ballot was submitted:

21 **(A) by an overseas voter who is not an absent uniformed**
 22 **services voter; and**

23 **(B) from within the United States;**

24 ~~(2) the voter's application for a regular absentee ballot was~~
 25 ~~received by the circuit court clerk or board of registration less~~
 26 ~~than thirty (30) days before the election;~~

27 ~~(3) (2) the voter's completed regular state absentee ballot was~~
 28 ~~received by the circuit court clerk or county election board of~~
 29 ~~registration by the deadline for receiving absentee ballots under~~
 30 ~~IC 3-11-10-11; or~~

31 ~~(4) (3) the ballot subject to this section was not received by the~~
 32 ~~circuit court clerk or county election board of registration by the~~
 33 ~~deadline for receiving absentee ballots under IC 3-11-10-11.~~

34 SECTION 16. IC 3-12-3-5 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) If a ballot card is
 36 damaged or defective so that it cannot properly be counted by the
 37 automatic tabulating machines, then a remake team composed of one
 38 (1) person from each of the major political parties of the county shall
 39 have the card prepared for processing so as to record accurately the
 40 intention of the voter insofar as it can be ascertained.

41 (b) If the ballot card voting system is designed to allow the counting
 42 and tabulation of votes by the precinct election board, the members of

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1 the remake team must be members of the precinct election board in
2 which the ballot was cast.

3 (c) If necessary, a true, duplicate copy shall be made of the damaged
4 ballot card in the presence of witnesses and substituted for the damaged
5 card. Similarly, a duplicate ballot card shall be made of a defective
6 card, not including the uncounted votes.

7 (d) This subsection applies to an absent uniformed services voter **or**
8 **overseas voter** permitted to transmit an absentee ballot by fax **or**
9 **electronic mail** under IC 3-11-4-6. To facilitate the transmittal and
10 return of the voter's absentee ballot by fax **or electronic mail**, the
11 county election board may provide the voter with a paper ballot rather
12 than a ballot card. The paper ballot must conform with the
13 requirements for paper ballots set forth in IC 3-10 and IC 3-11. After
14 the voter returns the ballot by fax **or electronic mail**, a remake team
15 appointed under this section shall prepare a ballot card for processing
16 that accurately records the intention of the voter as indicated on the
17 paper ballot. The ballot card created under this subsection must be
18 marked and counted as a duplicate ballot under sections 6 through 7 of
19 this chapter.

20 (e) If an automatic tabulating machine fails during the counting and
21 tabulation of votes following the close of the polls, the county election
22 board shall immediately arrange for the repair and proper functioning
23 of the system. The county election board may, by unanimous vote of its
24 entire membership, authorize the counting and tabulation of votes for
25 this election on an automatic tabulating machine approved for use in
26 Indiana by the commission:

27 (1) until the repair and retesting of the malfunctioning machine;
28 and

29 (2) whether or not the machine was tested under IC 3-11-13-22.

30 SECTION 17. IC 6-3-2-20 IS ADDED TO THE INDIANA CODE
31 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
32 **JANUARY 1, 2002 (RETROACTIVE)]: Sec. 20. (a) This section**
33 **applies to an employer that reemploys an employee under**
34 **IC 10-16-7.5.**

35 **(b) An employer that reemploys an employee who was called to**
36 **active duty in the Indiana National Guard is entitled to a one (1)**
37 **time deduction from the employer's adjusted gross income equal**
38 **to the lesser of:**

39 **(1) the employee's compensation actually paid by the**
40 **employer for the period of time specified in IC 10-16-7.5-8; or**

41 **(2) five hundred dollars (\$500).**

42 SECTION 18. IC 10-16-7.5 IS ADDED TO THE INDIANA CODE

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1 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
2 JANUARY 1, 2002 (RETROACTIVE)]:

3 **Chapter 7.5. National Guard Employment Rights**

4 **Sec. 1. This chapter applies to a person called to active duty**
5 **after September 11, 2001.**

6 **Sec. 2. As used in this chapter, "active duty" means full-time**
7 **service in the national guard for a period that exceeds thirty (30)**
8 **consecutive days in a calendar year.**

9 **Sec. 3. As used in this chapter, "employee" means an individual**
10 **employed or permitted to work or perform any service for**
11 **remuneration under a contract for hire, written or oral, by an**
12 **employer in any occupation.**

13 **Sec. 4. As used in this chapter, "employer" means a person who**
14 **employs at least twenty-five (25) employees in Indiana, including**
15 **the state and political subdivisions of the state. The term does not**
16 **include the United States or a corporation wholly owned by the**
17 **United States.**

18 **Sec. 5. As used in this chapter, "national guard" refers only to:**

- 19 (1) the Indiana army national guard; and
- 20 (2) the Indiana air national guard.

21 **Sec. 6. As used in this chapter, "person" means an individual, a**
22 **partnership, a corporation, a limited liability company, an**
23 **unincorporated association, or a governmental entity.**

24 **Sec. 7. As used in this chapter, "political subdivision" has the**
25 **meaning set forth in IC 6-3.5-2-1.**

26 **Sec. 8. (a) When an employee who was called to active duty is**
27 **discharged or released after the active duty, the employer of the**
28 **employee shall reemploy the employee for:**

- 29 (1) a period of employment required by the federal Uniform
- 30 Services Employment and Reemployment Rights Act, 38
- 31 U.S.C. 4301 through 38 U.S.C. 4330; and
- 32 (2) an additional period equal to the extent to which the time
- 33 the employee was on active duty exceeds the period of time
- 34 determined under subdivision (1).

35 **(b) Reemployment under subsection (a) shall be covered by the**
36 **provisions of the federal Uniform Services Employment and**
37 **Reemployment Rights Act.**

38 **(c) The period of reemployment under subsection (a) begins on**
39 **the first day the employee reports to work for the employer after**
40 **the employee's discharge or release from active duty.**

41 **Sec. 9. An employer who reemploys an employee under section**
42 **8 of this chapter is entitled to a deduction from the employer's**

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adjusted gross income under IC 6-3-2-20.

Sec. 10. This chapter may not be construed as a restriction or limitation on any of the rights, benefits, and protections granted to a member of the national guard under federal law.

SECTION 19. IC 20-12-21-5.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.1. (a) In addition to the duties described in section 5(a) of this chapter, the commission shall do the following:

- (1) Prepare and supervise the issuance of public information concerning all of the commission's programs.
- (2) Prescribe the form and regulate the submission of applications for all of the commission's programs.
- (3) Determine the amounts of grants and scholarships.
- (4) Determine eligibility for grants and scholarships.
- (5) Receive federal funds made available to the commission for awards, grants, and scholarships, and disburse these funds in the manner prescribed by federal law.

(b) In addition to the powers described in section 5(b) of this chapter, the commission may do the following:

- (1) Accept gifts, grants, devises, or bequests for the purpose of providing grants, awards, scholarships, loans, or other forms of financial aid to students attending approved institutions of higher learning.
- (2) Enter into contracts, subject to IC 4-13-2, that the commission determines are necessary to carry out the commission's functions.
- (3) Provide administrative or technical assistance to other governmental or nongovernmental entities if the provision of this assistance will increase the number and value of grants, awards, scholarships, or loans available to students attending approved institutions of higher learning.

(c) When the commission receives an offer of a gift, grant, devise, or bequest under subsection (b)(1), the commission may accept stipulations on the use of the donated funds. In this case, sections 7(d) and 17 of this chapter do not apply. Before accepting a gift, grant, devise, or bequest, the commission shall determine that the purposes for which a donor proposes to provide funds are:

- (1) lawful;
- (2) in the state's best interests; and
- (3) generally consistent with the commission's programs and purposes.

Whenever the commission agrees to stipulations on the use of donated funds under this subsection, the commission and the donor shall,

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1 subject to approval by the state budget agency and the governor or the
2 governor's designee, execute an agreement.

3 (d) Whenever the commission agrees to provide administrative or
4 technical assistance under subsection (b)(3), the commission and the
5 party to whom the assistance is to be provided shall execute an
6 agreement specifying:

- 7 (1) the assistance that is to be provided; and
- 8 (2) the charges, if any, that are to be assessed by the commission
9 for providing this assistance.

10 The commission may waive charges for administrative or technical
11 assistance under this subsection if the commission determines that a
12 waiver is in the best interest of the state. Agreements to provide
13 assistance under this subsection must be approved by the budget
14 agency and the governor or the governor's designee.

15 (e) The commission shall exercise its functions without regard to an
16 applicant's race, creed, sex, color, national origin, or ancestry.

17 **(f) This subsection applies to a person called to active duty after**
18 **September 11, 2001. As used in this subsection, "active duty"**
19 **means full-time service in the national guard (as defined in**
20 **IC 10-16-1-13) that exceeds thirty (30) consecutive days in a**
21 **calendar year. When determining financial eligibility under**
22 **subsection (a)(4) for a Frank O'Bannon grant, which includes**
23 **grants formerly designated as the higher education award and the**
24 **freedom of choice award, the commission may not consider any**
25 **salary for service on active duty that is received by a member of**
26 **the national guard who is called to active duty.**

27 SECTION 20. IC 20-12-74-8 IS ADDED TO THE INDIANA
28 CODE AS A NEW SECTION TO READ AS FOLLOWS
29 [EFFECTIVE UPON PASSAGE]: **Sec. 8. (a) This section applies to**
30 **a person called to active duty after September 11, 2001.**

31 **(b) As used in this section, "active duty" means full-time service**
32 **in the national guard (as defined in IC 10-16-1-13) that exceeds**
33 **thirty (30) consecutive days in a calendar year.**

34 **(c) A person who:**
35 **(1) is called to active duty; and**
36 **(2) meets the requirements of subsection (d);**
37 **is entitled to an extension of time under subsection (e) to renew a**
38 **tuition scholarship awarded under section 7(a) of this chapter.**

39 **(d) A person must meet the following requirements to receive an**
40 **extension of time under subsection (c):**

- 41 **(1) On the date the person is called to active duty, the person**
42 **must be attending a state educational institution using a**

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1 tuition scholarship awarded under section 7(a) of this chapter.
2 (2) The person must provide proof of active duty by providing
3 a copy of the person's:
4 (A) discharge; or
5 (B) government movement orders;
6 to the commission at the time the person applies for renewal
7 of the tuition scholarship awarded under section 7(a) of this
8 chapter.
9 (3) Not later than one hundred eighty (180) days after the
10 person's discharge or release from active duty, the person
11 must resume the course of study in which the person was
12 enrolled when the person was called to active duty.
13 (e) The extension of time to which a person is entitled under
14 subsection (c) is equal in length to the period during which the
15 person was on active duty status. However, the number of
16 semesters for which a person may receive a tuition scholarship
17 awarded under section 7(a) of this chapter, including all renewals
18 under this section, may not exceed the number specified in section
19 7(b) of this chapter.
20 (f) A person who, at the time the person was called to active
21 duty:
22 (1) met the eligibility criteria established by:
23 (A) this chapter; and
24 (B) the commission; and
25 (2) had received a tuition scholarship under section 7(a) of
26 this chapter;
27 may use the extension of time under subsection (c) to renew the
28 tuition scholarship without meeting the requirements set forth in
29 sections 2(1) and 3(4) of this chapter.
30 (g) This section may not be construed as a restriction or
31 limitation on any of the rights, benefits, and protections granted to
32 a member of the national guard (as defined in IC 10-16-1-13) under
33 federal law.
34 SECTION 21. [EFFECTIVE JANUARY 1, 2002
35 (RETROACTIVE)] IC 6-3-2-20, as added by this act, applies to
36 taxable years beginning after December 31, 2001.
37 SECTION 22. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Lawson C be removed as author of Senate Bill 419 and that Senator Steele be substituted therefor.

LAWSON C

SENATE MOTION

Madam President: I move that Senator Mishler be added as coauthor of Senate Bill 419.

STEELE

COMMITTEE REPORT

Madam President: The Senate Committee on Elections and Civic Affairs, to which was referred Senate Bill No. 419, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 419 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 9, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Elections and Apportionment, to which was referred Senate Bill 419, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning the rights of citizens serving overseas.

Page 13, between lines 29 and 30, begin a new paragraph and insert:

"SECTION 17. IC 6-3-2-20 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002 (RETROACTIVE)]: **Sec. 20. (a) This section**

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applies to an employer that reemploys an employee under IC 10-16-7.5.

(b) An employer that reemploys an employee who was called to active duty in the Indiana National Guard is entitled to a one (1) time deduction from the employer's adjusted gross income equal to the lesser of:

- (1) the employee's compensation actually paid by the employer for the period of time specified in IC 10-16-7.5-8; or
- (2) five hundred dollars (\$500).

SECTION 18. IC 10-16-7.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002 (RETROACTIVE)]:

Chapter 7.5. National Guard Employment Rights

Sec. 1. This chapter applies to a person called to active duty after September 11, 2001.

Sec. 2. As used in this chapter, "active duty" means full-time service in the national guard for a period that exceeds thirty (30) consecutive days in a calendar year.

Sec. 3. As used in this chapter, "employee" means an individual employed or permitted to work or perform any service for remuneration under a contract for hire, written or oral, by an employer in any occupation.

Sec. 4. As used in this chapter, "employer" means a person who employs at least twenty-five (25) employees in Indiana, including the state and political subdivisions of the state. The term does not include the United States or a corporation wholly owned by the United States.

Sec. 5. As used in this chapter, "national guard" refers only to:

- (1) the Indiana army national guard; and
- (2) the Indiana air national guard.

Sec. 6. As used in this chapter, "person" means an individual, a partnership, a corporation, a limited liability company, an unincorporated association, or a governmental entity.

Sec. 7. As used in this chapter, "political subdivision" has the meaning set forth in IC 6-3.5-2-1.

Sec. 8. (a) When an employee who was called to active duty is discharged or released after the active duty, the employer of the employee shall reemploy the employee for:

- (1) a period of employment required by the federal Uniform Services Employment and Reemployment Rights Act, 38 U.S.C. 4301 through 38 U.S.C. 4330; and
- (2) an additional period equal to the extent to which the time

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the employee was on active duty exceeds the period of time determined under subdivision (1).

(b) Reemployment under subsection (a) shall be covered by the provisions of the federal Uniform Services Employment and Reemployment Rights Act.

(c) The period of reemployment under subsection (a) begins on the first day the employee reports to work for the employer after the employee's discharge or release from active duty.

Sec. 9. An employer who reemploys an employee under section 8 of this chapter is entitled to a deduction from the employer's adjusted gross income under IC 6-3-2-20.

Sec. 10. This chapter may not be construed as a restriction or limitation on any of the rights, benefits, and protections granted to a member of the national guard under federal law.

SECTION 19. IC 20-12-21-5.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.1. (a) In addition to the duties described in section 5(a) of this chapter, the commission shall do the following:

- (1) Prepare and supervise the issuance of public information concerning all of the commission's programs.
- (2) Prescribe the form and regulate the submission of applications for all of the commission's programs.
- (3) Determine the amounts of grants and scholarships.
- (4) Determine eligibility for grants and scholarships.
- (5) Receive federal funds made available to the commission for awards, grants, and scholarships, and disburse these funds in the manner prescribed by federal law.

(b) In addition to the powers described in section 5(b) of this chapter, the commission may do the following:

- (1) Accept gifts, grants, devises, or bequests for the purpose of providing grants, awards, scholarships, loans, or other forms of financial aid to students attending approved institutions of higher learning.
- (2) Enter into contracts, subject to IC 4-13-2, that the commission determines are necessary to carry out the commission's functions.
- (3) Provide administrative or technical assistance to other governmental or nongovernmental entities if the provision of this assistance will increase the number and value of grants, awards, scholarships, or loans available to students attending approved institutions of higher learning.

(c) When the commission receives an offer of a gift, grant, devise, or bequest under subsection (b)(1), the commission may accept

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stipulations on the use of the donated funds. In this case, sections 7(d) and 17 of this chapter do not apply. Before accepting a gift, grant, devise, or bequest, the commission shall determine that the purposes for which a donor proposes to provide funds are:

- (1) lawful;
- (2) in the state's best interests; and
- (3) generally consistent with the commission's programs and purposes.

Whenever the commission agrees to stipulations on the use of donated funds under this subsection, the commission and the donor shall, subject to approval by the state budget agency and the governor or the governor's designee, execute an agreement.

(d) Whenever the commission agrees to provide administrative or technical assistance under subsection (b)(3), the commission and the party to whom the assistance is to be provided shall execute an agreement specifying:

- (1) the assistance that is to be provided; and
- (2) the charges, if any, that are to be assessed by the commission for providing this assistance.

The commission may waive charges for administrative or technical assistance under this subsection if the commission determines that a waiver is in the best interest of the state. Agreements to provide assistance under this subsection must be approved by the budget agency and the governor or the governor's designee.

(e) The commission shall exercise its functions without regard to an applicant's race, creed, sex, color, national origin, or ancestry.

(f) This subsection applies to a person called to active duty after September 11, 2001. As used in this subsection, "active duty" means full-time service in the national guard (as defined in IC 10-16-1-13) that exceeds thirty (30) consecutive days in a calendar year. When determining financial eligibility under subsection (a)(4) for a Frank O'Bannon grant, which includes grants formerly designated as the higher education award and the freedom of choice award, the commission may not consider any salary for service on active duty that is received by a member of the national guard who is called to active duty.

SECTION 20. IC 20-12-74-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8. (a) This section applies to a person called to active duty after September 11, 2001.**

(b) As used in this section, "active duty" means full-time service in the national guard (as defined in IC 10-16-1-13) that exceeds

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thirty (30) consecutive days in a calendar year.

(c) A person who:

- (1) is called to active duty; and
- (2) meets the requirements of subsection (d);

is entitled to an extension of time under subsection (e) to renew a tuition scholarship awarded under section 7(a) of this chapter.

(d) A person must meet the following requirements to receive an extension of time under subsection (c):

(1) On the date the person is called to active duty, the person must be attending a state educational institution using a tuition scholarship awarded under section 7(a) of this chapter.

(2) The person must provide proof of active duty by providing a copy of the person's:

- (A) discharge; or
- (B) government movement orders;

to the commission at the time the person applies for renewal of the tuition scholarship awarded under section 7(a) of this chapter.

(3) Not later than one hundred eighty (180) days after the person's discharge or release from active duty, the person must resume the course of study in which the person was enrolled when the person was called to active duty.

(e) The extension of time to which a person is entitled under subsection (c) is equal in length to the period during which the person was on active duty status. However, the number of semesters for which a person may receive a tuition scholarship awarded under section 7(a) of this chapter, including all renewals under this section, may not exceed the number specified in section 7(b) of this chapter.

(f) A person who, at the time the person was called to active duty:

(1) met the eligibility criteria established by:

- (A) this chapter; and
- (B) the commission; and

(2) had received a tuition scholarship under section 7(a) of this chapter;

may use the extension of time under subsection (c) to renew the tuition scholarship without meeting the requirements set forth in sections 2(1) and 3(4) of this chapter.

(g) This section may not be construed as a restriction or limitation on any of the rights, benefits, and protections granted to a member of the national guard (as defined in IC 10-16-1-13) under

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federal law.

SECTION 21. [EFFECTIVE JANUARY 1, 2002 (RETROACTIVE)] **IC 6-3-2-20, as added by this act, applies to taxable years beginning after December 31, 2001."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 419 as printed February 1, 2005.)

THOMAS, Chair

Committee Vote: yeas 11, nays 0.

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