



## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

### Voter Qualifications and Residence

Wisconsin law provides that an individual is qualified to vote if the individual is a U.S. citizen, 18 years of age or older, and has resided in an election district or ward for 10 days prior to an election. However, an individual may not vote if the individual: (1) has been convicted of treason, felony, or bribery, unless the individual has completed the terms of imprisonment or probation or has been pardoned; (2) is incapable of understanding the objective of the election process or is under guardianship; or (3) has made any bet or wager that depends upon the result of the election.

This Information Memorandum describes voter qualifications and residence, including laws relating to new residents, former residents, military voters, and overseas voters.

#### **VOTER QUALIFICATIONS**

Wisconsin law provides that every U.S. citizen age 18 or older who is a resident of an election district or ward in Wisconsin for 10 days<sup>1</sup> prior to an election is a qualified voter of that district or ward.<sup>2</sup> If an individual moves within Wisconsin and does not satisfy the residency requirement for the new district or ward, the individual votes in the individual's previous district or ward if otherwise qualified to vote. [Wis. Const. art. III, ss. 1 and 2; s. 6.02, Stats.]

However, an individual is disqualified from voting if the individual: (1) is convicted of treason, felony, or bribery, unless the individual's right to vote is restored through the completion of the terms of imprisonment or probation for the crime or through pardon; (2) is incapable of understanding the objective of the election process, as determined by a court, or is under guardianship, unless the court has determined that the individual is competent to exercise the

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<sup>1</sup> As of the date of publication of this Information Memorandum, the residency requirement is 10 days prior to an election. State statutes contain a residency requirement of 28 consecutive days prior to an election. However, in 2016, the U.S. District Court for the Western District of Wisconsin held that the increase of the durational residency requirement from 10 days (under prior statutes) to 28 consecutive days (under current statutes) is unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution. [*One Wisconsin Institute, Inc. v. Thomsen*, case 15-CV-324 (W.D. Wis. July 29, 2016).] The decision was appealed to the U.S. Court of Appeals for the Seventh Circuit, but the Seventh Circuit has not yet issued its decision.

<sup>2</sup> The Wisconsin Constitution authorizes the Legislature to extend the right to vote to additional classes, subject to ratification by the people at a general election. [Wis. Const. art. III, s. 2.]

right to vote; or (3) has made or become interested, directly or indirectly, in any bet or wager that depends upon the result of the election. [Wis. Const. art. III, s. 2; ss. 6.03 and 304.078 (3), Stats.]

## **RESIDENCE**

Under Wisconsin law, a voter's residence is generally the place where the individual's habitation is fixed, without any present intent to move, and to which, when absent, the individual intends to return. [s. 6.10 (1), Stats.]

In addition to the general definition of "residence," state law provides the following guidance to determine a voter's residence in specific circumstances:

- **Family vs. business location.** When a married individual's family resides at one place and that individual's business is conducted at another place, the family's residence is considered the individual's residence, unless it is temporary or for transient purposes.
- **Sleeping vs. boarding.** The residence of an unmarried individual sleeping in one ward and boarding in another is the place where the individual sleeps.
- **Transient employees.** The residence of an unmarried individual in a transient-type job who boards at different places for part of the week, month, or year, if one of the places is the residence of the individual's parents, is the place of the parents' residence, unless through registration or similar act the individual elects to establish a residence elsewhere. If the individual has no parents and if the individual has not registered elsewhere, the individual's residence is the place that the individual considered his or her residence in preference to any other for at least 10 days<sup>3</sup> before the election.
- **Absence with intent to return.** An individual does not lose residence when the individual leaves home and goes into another state or county, town, village, or ward of this state for temporary purposes with an intent to return.
- **Government business.** An individual does not lose residence while absent from this state on business for the state or federal government.
- **Stationed in Wisconsin.** An individual who is a member of the U.S. armed forces does not gain residence because of being stationed within this state.
- **Guest or patient at certain homes.** A guest at a national or a state soldiers' home, a guest at a home for the aged supported by benevolence, or a patient of any county home or other charitable institution, resides in the municipality where the home is located and within the ward where the guest or patient sleeps, unless before becoming a guest or patient at the home, the guest or patient elects to maintain a prior residence as his or her voting residence.

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<sup>3</sup> See footnote 1.

- **Detention or commitment.** The residence of an individual who is detained, committed, or institutionalized is determined by applying the general definition of “residence,” described above, to specified dates of the detention, commitment, or offense that resulted in commitment.
- **Temporary purposes.** An individual does not gain a residence in any ward or election district of this state if there for temporary purposes only.
- **Public assistance.** An individual does not lose the right to vote at the individual’s residence while receiving public assistance or unemployment compensation even if the legal settlement for assistance is elsewhere.
- **Relocation to another state.** If an individual moves to another state with an intent to make a permanent residence there, or, if while there, the individual exercises the right to vote as a citizen of that state by voting, the individual loses Wisconsin residence.
- **Intent vs. removal.** Neither an intent to acquire a new residence without removal, nor a removal without intent, affects residence.
- **Student status.** Student status is not considered in determining residence.
- **Military electors.** A military elector who is the spouse or dependent of another military elector may elect to take as his or her residence either the individual’s most recent residence in this state or the residence of the individual’s spouse or the individual providing support.

[s. 6.10 (2) to (13), Stats.]

### **NEW AND FORMER RESIDENTS**

Under Wisconsin law, an individual who is qualified to vote except that he or she has not been a Wisconsin resident for 10 days<sup>4</sup> prior to the date of the presidential election is entitled to vote for the president and vice president, but for no other office. [s. 6.15 (1), Stats.]

Similarly, an individual who moved to another state from Wisconsin and is not eligible to vote in that new state may vote by absentee ballot in the district or ward of the individual’s prior Wisconsin residence in any presidential election occurring within 24 months after leaving Wisconsin. [s. 6.18, Stats.]

### **MILITARY AND OVERSEAS VOTERS**

Wisconsin law contains specific voting procedures for military and overseas voters that allow such individuals to vote even though they have departed from Wisconsin or, in some instances, have never resided in Wisconsin. For example, a U.S. citizen who is not otherwise disqualified from voting, has attained the age of 18, and does not qualify as a resident of Wisconsin but whose parent was last domiciled in Wisconsin immediately prior to the parent’s departure from the

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<sup>4</sup> See footnote 1.

United States may vote as an overseas voter in Wisconsin if not registered to vote or voting in any other state, territory, or possession.<sup>5</sup> [s. 6.24, Stats.]

A military voter, or an overseas voter who satisfies the residency requirement, may vote for all offices in an election. However, an overseas voter who does not satisfy the residency requirement (including an adult child of a U.S. citizen living abroad, as described above) may vote only for national offices in an election, not for any state or local office. [ss. 6.22 and 6.24, Stats.]

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Jessica Karls-Ruplinger, Deputy Director, on July 27, 2018.

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<sup>5</sup> This category of overseas voter (i.e., an adult child of a U.S. citizen living abroad) was approved in a statewide vote in November 2000, as an extension of the right to vote to an additional class under Wis. Const. art. III, s. 2. [1999 Wisconsin Act 182; see also footnote 2.]