

1 **H. B. 3065**

2
3 (By Delegates Miley and Poore)
4 (By Request of the Secretary of State)
5 [Introduced February 8, 2011; referred to the
6 Committee on the Judiciary then Finance.]
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10 A BILL to repeal §3-3-3a of the Code of West Virginia, 1931, as
11 amended; and to amend and reenact §3-3-1, §3-3-2, §3-3-2b, §3-
12 3-3, §3-3-4, §3-3-5, §3-3-5a, §3-3-5b, §3-3-5c and §3-3-6 of
13 said code, all relating to the eligibility requirements,
14 processes, and assistance of absentee voting, and early in
15 person voting.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §3-3-3a of the Code of West Virginia, 1931, as amended,
18 be repealed; and that §3-3-1, §3-3-2, §3-3-2b, §3-3-3, §3-3-4, §3-
19 3-5, §3-3-5a, §3-3-5b, §3-3-5c and §3-3-6 of said code be amended
20 and reenacted, all to read as follows:

21 **ARTICLE 3. VOTING BY ABSENTEES.**

22 **§3-3-1. Persons eligible to vote absentee ballots.**

23 (a) All registered ~~and other qualified~~ voters of the county
24 may vote an absentee ballot during the period of early voting in

1 person.

2 (b) Registered voters ~~and other qualified voters~~ in the county
3 are authorized to vote an absentee ballot by mail. ~~in the following~~
4 ~~circumstances:~~

5 ~~(1) Any voter who is confined to a specific location and~~
6 ~~prevented from voting in person throughout the period of voting in~~
7 ~~person because of:~~

8 ~~(A) Illness, injury or other medical reason;~~

9 ~~(B) Physical disability or immobility due to extreme advanced~~
10 ~~age; or~~

11 ~~(C) Incarceration or home detention: Provided, That the~~
12 ~~underlying conviction is not for a crime which is a felony or a~~
13 ~~violation of section twelve, thirteen or sixteen, article nine of~~
14 ~~this chapter involving bribery in an election;~~

15 ~~(2) Any voter who is absent from the county throughout the~~
16 ~~period and available hours for voting in person because of:~~

17 ~~(A) Personal or business travel;~~

18 ~~(B) Attendance at a college, university or other place of~~
19 ~~education or training; or~~

20 ~~(C) Employment which because of hours worked and distance from~~
21 ~~the county seat make voting in person impossible;~~

22 ~~(3) Any voter absent from the county throughout the period and~~
23 ~~available hours for voting in person and who is an absent uniformed~~
24 ~~services voter or overseas voter, as defined by 42 U.S.C. §1973, et~~
25 ~~seq., the Uniformed and Overseas Citizens Absentee Voting Act of~~

1 1986, including members of the uniformed services on active duty,
2 members of the merchant marine, spouses and dependents of those
3 members on active duty and persons who reside outside the United
4 States and are qualified to vote in the last place in which the
5 person was domiciled before leaving the United States is authorized
6 to vote an absentee ballot by mail.

7 ~~(4) Any voter who is required to dwell temporarily outside the~~
8 ~~county and is absent from the county throughout the time for voting~~
9 ~~in person because of:~~

10 ~~(A) Serving as an elected or appointed federal or state~~
11 ~~officer; or~~

12 ~~(B) Serving in any other documented employment assignment of~~
13 ~~specific duration of four years or less; and~~

14 ~~(5) Any voter for whom the designated area for absentee voting~~
15 ~~within the county courthouse or annex of the courthouse and the~~
16 ~~voter's assigned polling place are inaccessible because of his or~~
17 ~~her physical disability.~~

18 (c) Registered voters ~~and other qualified voters in the county~~
19 may, in the following circumstances, vote an emergency absentee
20 ballot, subject to the availability of the services as provided in
21 this article:

22 (1) Any voter who is confined or expects to be confined in a
23 hospital or other duly licensed health care facility within the
24 county of residence or other authorized area, as provided in this
25 article, on the day of the election;

1 (2) Any voter who resides in a nursing home within the county
2 of residence and would be otherwise unable to vote in person,
3 providing the county commission has authorized the services if the
4 voter has resided in the nursing home for a period of less than
5 thirty days; and

6 (3) Any voter who is working as a replacement poll worker and
7 is assigned to a precinct out of his or her voting district, if the
8 assignment was made after the period for voting an absentee ballot
9 in person has expired.

10 **§3-3-2. Authority to conduct absentee voting; absentee voting**
11 **application; form.**

12 (a) Absentee voting is to be supervised and conducted by the
13 proper official for the political division in which the election is
14 held, in conjunction with the ballot commissioners appointed from
15 each political party, as follows:

16 (1) For any election held throughout the county, within a
17 political subdivision or territory other than a municipality, or
18 within a municipality when the municipal election is conducted in
19 conjunction with a county election, the clerk of the county
20 commission; or

21 (2) The municipal recorder or other officer authorized by
22 charter or ordinance provisions to conduct absentee voting, for any
23 election held entirely within the municipality, or in the case of
24 annexation elections, within the area affected. The terms "clerk"
25 or "clerk of the county commission" or "official designated to

1 supervise and conduct absentee voting" used elsewhere in this
2 article means municipal recorder or other officer in the case of
3 municipal elections.

4 (b) A person authorized and desiring to vote a mail-in
5 absentee ballot in any primary, general or special election is to
6 make application in writing in the proper form to the proper
7 official as follows:

8 (1) The completed application is to be on a form prescribed by
9 the Secretary of State and is to contain the name, date of birth
10 and in the case of a primary political affiliation of the voter,
11 residence address within the county, the address to which the
12 ballot is to be mailed, ~~the authorized reason, if any, for which~~
13 ~~the absentee ballot is requested and, if the reason is illness or~~
14 ~~hospitalization, the name and telephone number of the attending~~
15 ~~physician,~~ the signature of the voter to a declaration made under
16 the penalties for false swearing as provided in section three,
17 article nine of this chapter that the statements and declarations
18 contained in the application are true, any additional information
19 which the voter is required to supply, and any affidavit which may
20 be required; ~~and an indication as to whether it is an application~~
21 ~~for voting in person or by mail; or~~

22 (2) For any person authorized to vote an absentee ballot under
23 the provisions of 42 U.S.C. §1973, *et seq.*, the Uniformed and
24 Overseas Citizens Absentee Voting Act of 1986, the completed
25 application may be on the federal postcard application for absentee

1 ballot form issued under authority of that act, submitted by mail
2 or electronically; or on the federal write-in absentee ballot;

3 (3) For any person unable to obtain the official form for
4 absentee balloting at a reasonable time before the deadline for an
5 application for an absentee ballot by mail is to be received by the
6 proper official, the completed application may be in a form set out
7 by the voter, provided all information required to meet the
8 provisions of this article is set forth and the application is
9 signed by the voter requesting the ballot.

10 **§3-3-2b. Special absentee voting list.**

11 (a) Any person who is registered and otherwise qualified to
12 vote and who is permanently and totally physically disabled and who
13 is unable to vote in person at the polls in an election may apply
14 to the official designated to supervise and conduct absentee voting
15 for placement on the special absentee voting list.

16 (b) The application is to be on a form prescribed by the
17 Secretary of State which is to include the voter's name and
18 signature, residence address, and a statement that the voter is
19 permanently and totally physically disabled and would be unable to
20 vote in person at the polls in any election. ~~a description of the
21 nature of that disability, and a statement signed by a physician to
22 that effect.~~

23 (c) Upon receipt of a properly completed application, the
24 official designated to supervise and conduct absentee voting shall
25 enter the name on the special absentee voting list, which is to be

1 maintained in a secure and permanent record. The person's name
2 will remain active on the list until: (1) The person requests in
3 writing that his or her name be removed; (2) the person removes his
4 or her residence from the county, is purged from the voter
5 registration books or otherwise becomes ineligible to vote; (3) a
6 ballot mailed to the address provided on the application is
7 returned undeliverable by the United States postal service; or (4)
8 the death of the person.

9 (d) The official designated to supervise and conduct absentee
10 voting shall mail an application for an absentee ballot by mail to
11 each person active on the special absentee voting list not later
12 than forty-six days before each election.

13 **§3-3-3. Early voting in person.**

14 (a) The voting period for early in-person voting is to be
15 conducted during regular business hours beginning on the twentieth
16 day before the election and continuing through the third day before
17 the election. For any election held on a Tuesday, the early voting
18 period for in-person voting is to be available from 9:00 a.m. to
19 5:00 p.m. on the two Saturdays prior to the election.

20 (b) Any person desiring to vote during the period of early in-
21 person voting shall, upon entering the election room, clearly state
22 his or her name and residence to the official or representative
23 designated to supervise and conduct early-in-person ~~absentee~~
24 voting. If that person is found to be duly registered as a voter
25 in the precinct of his or her residence, he or she shall be

1 required to sign his or her name in the space marked "signature of
2 voter" on the pollbook. If the voter is unable to sign his or her
3 name due to illiteracy or physical disability, the person assisting
4 the voter and witnessing the mark of the voter shall sign his or
5 her name in the space provided. No ballot may be given to the
6 person until he or she signs his or her name on the pollbook or the
7 voter's mark is duly witnessed.

8 (c) When the voter's signature or mark is properly on the
9 pollbook, two qualified representatives of the official designated
10 to supervise and conduct absentee voting shall sign their names in
11 the places indicated on the back of the official ballot. Provided,
12 That if the ballot is provided electronically, the requirement for
13 the signature of two qualified representatives shall be waived.

14 (d) If the official designated to supervise and conduct
15 absentee voting determines that the voter is not properly
16 registered in the precinct where he or she resides, the clerk or
17 his or her representative shall challenge the voter's absentee
18 ballot as provided in this article.

19 (e) The official designated to supervise and conduct absentee
20 voting shall provide each person voting an absentee ballot in
21 person the following items to be printed as prescribed by the
22 Secretary of State:

23 (1) In counties using paper ballots, one of each type of
24 official absentee ballot the voter is eligible to vote, prepared
25 according to law;

1 ~~(2) In counties using punch card systems, one of each type of~~
2 ~~official absentee ballot the voter is eligible to vote, prepared~~
3 ~~according to law, and a gray secrecy envelope;~~

4 (2) ~~(3)~~ In counties using optical scan systems, one of each
5 type of official absentee ballot the voter is eligible to vote,
6 prepared according to law, and a secrecy sleeve; or

7 (3) ~~(4)~~ For direct recording election systems, access to the
8 voting equipment in the voting booth.

9 (f) The voter shall enter the voting booth alone and there
10 mark the ballot: *Provided*, That the voter may have assistance in
11 voting according to the provisions of section four of this article.
12 After the voter has voted the ballot or ballots, the absentee voter
13 shall: Place the ballot or ballots in the ~~gray~~ secrecy envelope
14 and return the ballot or ballots to the official designated to
15 supervise and conduct the absentee voting: *Provided, however*, That
16 in direct recording election systems, once the voter has cast his
17 or her ballot, the voter shall exit the polling place.

18 (g) Upon receipt of the voted ballot, representatives of the
19 official designated to supervise and conduct the absentee voting
20 shall:

21 (1) Remove the ballot stub;

22 (2) Place punch card ballots and paper ballots into one
23 envelope which shall not have any marks except the precinct number
24 and seal the envelope;

25 (3) Place ballots for all voting systems into a ballot box

1 that is secured by two locks with a key to one lock kept by the
2 president of the county commission and a key to the other lock kept
3 by the county clerk;

4 ~~(4) Due to the reenactment of this section by the Legislature~~
5 ~~in the two thousand three regular session removing authorization~~
6 ~~for early in person voting on the Monday prior to a Tuesday~~
7 ~~election, to assure notice to all persons that voted on the Monday~~
8 ~~before the Tuesday election day of the two thousand two general~~
9 ~~election are made aware of this change, the clerk of each county~~
10 ~~shall, for the primary election of the year two thousand four,~~
11 ~~include along with the sample ballots published in local newspapers~~
12 ~~as required by this chapter a notice to voters that Monday in-~~
13 ~~person voting will no longer be available.~~

14 **§3-3-4. Assistance to voter in voting an absent voter's ballot by**
15 **personal appearance; penalties.**

16 (a) Any registered voter who requires assistance to vote by
17 reason of blindness, disability, advanced age or inability to read
18 and write may be given assistance by a person of the voter's
19 choice: *Provided*, That the assistance may not be given by the
20 voter's present or former employer or agent of that employer, by
21 the officer or agent of a labor union of which the voter is a past
22 or present member or by a candidate on the ballot.

23 ~~(b) Any voter who requests assistance in voting an absent~~
24 ~~voter's ballot but who is determined by the official designated to~~
25 ~~supervise and conduct absentee voting not to be qualified for~~

1 ~~assistance under the provisions of this section and section thirty-~~
2 ~~four, article one of this chapter may vote a challenged absent~~
3 ~~voter's ballot with the assistance of any person authorized to~~
4 ~~render assistance pursuant to this section. The official~~
5 ~~designated to supervise and conduct absentee voting shall in this~~
6 ~~case challenge the absent voter's ballot on the basis of If in his~~
7 ~~or her determination ~~that~~ the voter is not qualified for~~
8 ~~assistance, the official designated to supervise and conduct early~~
9 ~~in-person voting shall challenge the voter's ballot.~~

10 (c) Any one or more of the election commissioners or poll
11 clerks in the precinct to which an absent voter's ballot has been
12 sent may challenge the ballot on the ground that the voter received
13 assistance in voting it when in his or their opinion: (1) The
14 person who received the assistance in voting the absent voter's
15 ballot did not require assistance; or (2) the person who provided
16 the assistance in voting did not make an affidavit as required by
17 this section. The election commissioner or poll clerk or
18 commissioners or poll clerks making a challenge shall enter the
19 challenge and reason for the challenge on the form and in the
20 manner prescribed or authorized by this article.

21 (d) Before entering the voting booth or compartment, the
22 person who intends to provide a voter assistance in voting shall
23 make an affidavit, the form of which is to be prescribed by the
24 Secretary of State, that he or she will not in any manner request
25 or seek to persuade or induce the voter to vote any particular

1 ticket or for any particular candidate or for or against any public
2 question and that he or she will not keep or make any memorandum,
3 image or recording, or entry of anything occurring within the
4 voting booth or compartment and that he or she will not, directly
5 or indirectly, reveal to any person the name of any candidate voted
6 for by the voter or which ticket he or she had voted or how he or
7 she had voted on any public question or anything occurring within
8 the voting booth or compartment or voting machine booth, except
9 when required pursuant to law to give testimony as to the matter in
10 a judicial proceeding.

11 (e) In accordance with instructions issued by the Secretary of
12 State, the official designated to supervise and conduct early-in-
13 person absentee voting shall provide a form entitled "List of
14 Assisted Voters". The form of which is to be prescribed by the
15 Secretary of State. The ~~which~~ list is to be divided into two
16 parts: : Part A is to be entitled "Unchallenged Assisted Voters"
17 and Part B is to be entitled "Challenged Assisted Voters". ~~Under~~
18 ~~Part A, the official designated to supervise and conduct absentee~~
19 ~~voting shall enter the name of each voter receiving unchallenged~~
20 ~~assistance in voting an absent voter's ballot, the address of the~~
21 ~~voter assisted, the nature of the disability which qualified the~~
22 ~~voter for assistance in voting an absent voter's ballot, the name~~
23 ~~and address of the assisted voter, the name of the person providing~~
24 ~~assistance, and an indication of the person providing the voter~~
25 ~~with assistance in voting an absent voter's ballot, the fact that~~

1 the person rendering the assistance has completed the affidavit as
2 prescribed in subsection (c) in voting made and subscribed to the
3 oath required by of this section and the signature of the official
4 designated to supervise and conduct absentee voting certifying to
5 the fact that he or she had determined that the voter who received
6 assistance in voting an absent voter's ballot was qualified to
7 receive the assistance under the provisions of this section. Under
8 Part B shall also include a description of the reason for the
9 challenge issued by the official designated to supervise and
10 conduct early-in-person absentee voting. ~~shall enter the name of~~
11 ~~each voter receiving challenged assistance in voting, the address~~
12 ~~of the voter receiving challenged assistance, the reason for the~~
13 ~~challenge and the name of the person providing the challenged voter~~
14 ~~with assistance in voting.~~ At the close of the period provided for
15 early-in-person voting, ~~an absent voter's ballot by personal~~
16 ~~appearance~~ the official designated to supervise and conduct early-
17 in-person ~~absentee~~ voting shall make and subscribe to an oath on
18 the list that the list is correct in all particulars; if no voter
19 has been assisted in voting an early-in-person ~~absent voter's~~
20 ballot as provided in this section, the official ~~designated to~~
21 ~~supervise and conduct absentee voting~~ shall make and subscribe to
22 an oath of that fact on the list. The "List of Assisted Voters" is
23 to be available for public inspection in the office of the official
24 designated to supervise and conduct absentee voting during regular
25 business hours throughout the period provided for early-in-person

1 voting ~~an absent voter's ballot by personal appearance~~ and, unless
2 otherwise directed by the Secretary of State, or a court of
3 competent jurisdiction ~~the official shall retain this~~ ~~transmit the~~
4 list, together with the affidavits of early-in-person voters
5 assistants and other related records for a period of twenty-two
6 months or, if under order of the court, until their destruction or
7 other disposition is authorized or directed by the court. During
8 the time the "List of Assisted Voters" shall remain available for
9 public inspection. ~~applications and absent voters' ballots, to the~~
10 ~~precincts on election day.~~

11 ~~(f) Following the election, the affidavits required by this~~
12 ~~section from persons providing assistance in voting, together with~~
13 ~~the "List of Assisted Voters", are to be returned by the election~~
14 ~~commissioners to the clerk of the county commission, along with the~~
15 ~~election supplies, records and returns, who shall make the oaths~~
16 ~~and list available for public inspection and who shall preserve the~~
17 ~~oaths and list for twenty-two months or, if under order of the~~
18 ~~court, until their destruction or other disposition is authorized~~
19 ~~or directed by the court.~~

20 ~~(g)~~ (f) Any person making an affidavit required under the
21 provisions of this section who knowingly swears falsely in the
22 affidavit or ~~any person~~ who counsels or advises, aids or abets
23 another in the commission of false swearing under this section, or
24 who renders assistance in the voting an early-in-person ballot when
25 not qualified or permitted under this section to provide assistance

1 is guilty of a misdemeanor and, upon conviction thereof, shall be
2 fined not more than \$1,000 or confined in jail for a period of not
3 more than one year, or both.

4 ~~(h) Any person who provides a voter assistance in voting an~~
5 ~~absent voter's ballot in the office of the official designated to~~
6 ~~supervise and conduct absentee voting who is not qualified or~~
7 ~~permitted by this section to provide assistance is guilty of a~~
8 ~~misdemeanor and, upon conviction thereof, shall be fined not more~~
9 ~~than one thousand dollars or imprisoned in the county or regional~~
10 ~~jail for a period of not more than one year, or both.~~

11 ~~(i)~~ (g) Any official designated to supervise and conduct
12 early-in-person ~~absentee~~ voting, ~~election commissioner or poll~~
13 ~~clerk~~ who ~~authorizes~~ or allows a voter to receive or to have
14 received unchallenged assistance in voting an early-in-person
15 ~~absent voter's~~ ballot when the voter is known to the official
16 ~~designated to supervise and conduct absentee voting or election~~
17 ~~commissioner or poll clerk~~ not to be or have been authorized by the
18 provisions of this section to receive or to have received
19 assistance in voting is guilty of a misdemeanor and, upon
20 conviction thereof, shall be fined not more than \$1,000 or
21 imprisoned in jail for a period of not more than one year, or both.

22 ~~(j) The term "physical disability" as used in this section~~
23 ~~means blindness or a degree of blindness as will prevent the voter~~
24 ~~from seeing the names on the ballot or amputation of both hands or~~
25 ~~a disability of both hands that neither can be used to make cross~~

1 ~~marks on the absent voter's ballot.~~

2 (h) "Physical Disability" or "Physically Disabled" shall mean
3 blindness or a degree of blindness as will prevent a person from
4 seeing any form, posting, document, ballot, or other writing set
5 forth in this chapter, whether presented on paper or
6 electronically; or any physical condition, whether chronic or
7 temporary, which results in substantial impairment or the person's
8 ability to conduct any action prescribed by this chapter.

9 **§3-3-5. Voting an absentee ballot by mail or electronically;**
10 **penalties.**

11 (a) Upon ~~oral or written~~ request, the official designated to
12 supervise and conduct absentee voting shall provide to any voter of
13 the county, in person, by mail, or electronically the appropriate
14 application for voting absentee by mail as provided in this
15 article. The voter shall ~~complete and~~ sign the application in his
16 or her own handwriting or, if the voter is unable to complete the
17 application because of illiteracy or physical disability, the
18 person assisting the voter and witnessing the mark of the voter
19 shall sign his or her name in the space provided.

20 (b) Completed applications for voting an absentee ballot by
21 mail are to be accepted when received by the official designated to
22 supervise and conduct absentee voting in person, by mail, or
23 electronically within the following times:

24 (1) For persons eligible to vote an absentee ballot under the
25 provisions of subdivision (3), subsection (b), section one of this

1 article, relating to absent uniformed services and overseas voters,
2 not earlier than January 1 of an election year or eighty-four days
3 preceding the election, whichever is earlier, and not later than
4 the sixth day preceding the election, which application is to, upon
5 the voter's request, be accepted as an application for the ballots
6 for all elections in the calendar year; and

7 (2) For all other persons eligible to vote an absentee ballot
8 by mail, not earlier than eighty-four days preceding the election
9 and not later than the sixth day preceding the election.

10 (c) Upon acceptance of a completed application, the official
11 designated to supervise and conduct absentee voting shall determine
12 whether the following requirements have been met:

13 (1) The application has been completed as required by law;

14 (2) The applicant is duly registered to vote in the precinct
15 of his or her residence and, in a primary election, is qualified to
16 vote the ballot of the political party requested;

17 ~~(3) The applicant is authorized for the reasons given in the~~
18 ~~application to vote an absentee ballot by mail;~~

19 ~~(4) The address to which the ballot is to be mailed is an~~
20 ~~address outside the county if the voter is applying to vote by mail~~
21 ~~under the provisions of paragraph (A) or (B), subdivision (2),~~
22 ~~subsection (b), section one of this article; or subdivision (3) or~~
23 ~~(4) of said subsection;~~

24 (3) ~~(4)~~ The applicant is not making his or her first vote
25 after having registered by postcard registration or, if the

1 applicant is making his or her first vote after having registered
2 by postcard registration, the applicant is exempt from these
3 requirements if they are physically disabled, a uniformed and
4 overseas voter or attend school out of state; and

5 ~~(6) No regular and repeated pattern of applications for an~~
6 ~~absentee ballot by mail for the reason of being out of the county~~
7 ~~during the entire period of voting in person exists to suggest that~~
8 ~~the applicant is no longer a resident of the county.~~

9 (d) If the official designated to supervise and conduct
10 absentee voting determines that the required conditions have been
11 met, two representatives that are registered to vote with not the
12 same ~~different~~ political party designation ~~affiliations~~ shall sign
13 their names in the places indicated on the back of the official
14 ballot. If the official designated to supervise and conduct
15 absentee voting determines the required conditions have not been
16 met, or has evidence that any of the information contained in the
17 application is not true, the official shall give notice to the
18 voter that the voter's absentee ballot will be challenged as
19 provided in this article and shall enter that challenge.

20 (e) (1) Within one day after the official designated to
21 supervise and conduct absentee voting has both the completed
22 application and the ballot, the official shall provide ~~mail~~ to the
23 voter at the address given on the application the following items
24 as required and as prescribed by the Secretary of State:

25 (A) One of each type of official absentee ballot the voter is

1 eligible to vote, prepared according to law;

2 (B) One envelope, unsealed, which may have no marks except the
3 designation "Absent Voter's Ballot Envelope No. 1" and printed
4 instructions to the voter;

5 (C) One postage paid envelope, unsealed, designated "Absent
6 Voter's Ballot Envelope No. 2";

7 (D) Instructions for voting absentee by mail;

8 ~~(E) For electronic systems, a device for marking by
9 electronically sensible pen or ink, as may be appropriate;~~

10 (E) ~~(F)~~ Notice that a list of write-in candidates is available
11 upon request; and

12 (F) ~~(G)~~ Any other notice ~~supplies~~ required for voting in the
13 particular voting system.

14 (2) If the voter is an absent uniformed services voter or
15 overseas voter, as defined by 42 U.S.C. §1973, *et seq.*, the
16 official designated to supervise and conduct absentee voting shall
17 transmit the ballot to the voter via mail, or electronically as
18 requested by the voter. If the voter does not designate a
19 preference for transmittal, the clerk may select either method of
20 transmittal for the ballot. If the ballot is transmitted
21 electronically pursuant to this subdivision, the official
22 designated to supervise and conduct absentee voting shall also
23 transmit electronically:

24 (A) A waiver of privacy form, to be promulgated by the
25 Secretary of State;

1 (B) Instructions for voting absentee utilizing a federally
2 approved system for voting by mail or electronically;

3 (C) Notice that a list of write-in candidates is available
4 upon request; and

5 (D) Statement of the voter affirming the voter's current name
6 and address and whether or not he or she received assistance in
7 voting.

8 (f) The voter shall mark the ballot alone: *Provided*, That the
9 voter may have assistance in voting according to the provisions of
10 section six of this article.

11 (1) After the voter has voted the ballot or ballots to be
12 returned by mail, the voter shall:

13 (A) Place the ballot or ballots in envelope no. 1 and seal
14 that envelope;

15 (B) Place the sealed envelope no. 1 in envelope no. 2 and seal
16 that envelope;

17 (C) Complete and sign the forms on envelope no. 2; and

18 (D) Return that envelope to the official designated to
19 supervise and conduct absentee voting.

20 (2) If the ballot was transmitted electronically as provided
21 in subdivision (2), subsection (e) of this section, the voter shall
22 return the ballot in the same manner the ballot was received, or
23 the voter may return the ballot by United States mail, along with
24 a signed privacy waiver form.

25 (g) Except as provided in subsection (h) of this section,

1 absentee ballots returned by United States mail or other express
2 shipping service are to be accepted if:

3 (1) The ballot is received by the official designated to
4 supervise and conduct absentee voting no later than the day after
5 the election; or

6 (2) The ballot bears a postmark of the United States Postal
7 Service dated no later than election day and the ballot is received
8 by the official designated to supervise and conduct absentee voting
9 no later than the hour at which the board of canvassers convenes to
10 begin the canvass.

11 (h) Absentee ballots received through the United States mail
12 from persons eligible to vote an absentee ballot under the
13 provisions of subdivision (3), subsection (b), section one of this
14 article, relating to uniform services and overseas voters, are to
15 be accepted if the ballot is received by the official designated to
16 supervise and conduct absentee voting no later than the hour at
17 which the board of canvassers convenes to begin the canvass.

18 (i) Voted ballots submitted electronically pursuant to
19 subdivision (2), subsection (f) of this section are to be accepted
20 if the ballot is received by the official designated to supervise
21 and conduct absentee voting no later than the close of polls on
22 election day: *Provided*, That the Secretary of State's office shall
23 enter into an agreement with the Federal Voting Assistance Program
24 of the United States Department of Defense to transmit the ballots
25 to the county clerks at a time when two individuals of opposite

1 political parties are available to process the received ballots.

2 (j) Ballots received after the proper time which cannot be
3 accepted are to be placed unopened in an envelope marked for the
4 purpose and kept secure for twenty-two months following the
5 election, after which time they are to be destroyed without being
6 opened.

7 (k) Absentee ballots which are hand delivered are to be
8 accepted if they are received by the official designated to
9 supervise and conduct absentee voting no later than the day
10 preceding the election: *Provided*, That no person may hand deliver
11 more than two absentee ballots in any election and any person hand
12 delivering an absentee ballot is required to certify that he or she
13 has not examined or altered the ballot. Any person who makes a
14 false certification violates the provisions of article nine of this
15 chapter and is subject to those provisions.

16 (l) Upon receipt of the sealed envelope, the official
17 designated to supervise and conduct absentee voting shall:

18 (1) Enter onto the envelope any other required information;

19 (2) Enter the challenge, if any, to the ballot;

20 (3) Enter the required information into the permanent record
21 of persons applying for and voting an absentee ballot in person;
22 and

23 (4) Place the sealed envelope into a ballot box that is
24 secured by two locks with a key to one lock kept by the president
25 of the county commission and a key to the other lock kept by the

1 county clerk.

2 (m) Upon receipt of a ballot submitted electronically pursuant
3 to subdivision (2), subsection (f) of this section, the official
4 designated to supervise and conduct absentee voting shall place the
5 ballot in an envelope marked "Absentee by Electronic Means" with
6 the completed waiver: *Provided*, That no ballots are to be processed
7 without the presence of two individuals of opposite political
8 parties.

9 (n) All ballots received electronically prior to the close of
10 the polls on election day are to be tabulated in the manner
11 prescribed for tabulating absentee ballots submitted by mail to the
12 extent that those procedures are appropriate for the applicable
13 voting system. The clerk of the county commission shall keep a
14 record of absentee ballots sent and received electronically.

15 **§3-3-5a. Processing federal postcard applications.**

16 When a federal postcard registration and absentee ballot
17 request (FPCA), as defined in subdivision (2), subsection (b),
18 section two of this article, is received by the official designated
19 to supervise and conduct absentee voting, the official shall
20 examine the application and take the following steps:

21 (1) The official shall first enter the name of the applicant
22 in the permanent absentee voter's record for each election for
23 which a ballot is requested, make a photocopy of the application
24 for each election for which a ballot is requested and place the
25 separate copies in secure files to be maintained for use in the

1 various elections. Unless otherwise specified by the voter, the
2 application shall serve for any federal, state or local election
3 held during the calendar year. Voters must indicate a political
4 party preference on the FPCA or, if not affiliated with a political
5 party as defined in section eight, article one of this chapter,
6 must specifically request the ballot of a political party in order
7 to receive a primary election ballot, provided the political party
8 has elected to allow unaffiliated voters to participate in that
9 party's primary election.

10 (2) The official designated to supervise and conduct absentee
11 voting shall determine if the applicant is registered to vote at
12 the residence address listed in the voting residence section of the
13 application. If the applicant is not registered, or not registered
14 at the address given, the official shall deliver the original FPCA
15 to the clerk of the county commission for processing, and the clerk
16 of the county commission shall process the application as an
17 application for registration ~~and, if the application is received~~
18 ~~after the close of voter registration for the next succeeding~~
19 ~~election, the official shall challenge the absentee ballot for that~~
20 ~~election.~~ up to and including the final day to accept an
21 application for an absentee ballot prior to any election.

22 (3) Except as provided in subdivision (2) of this section, the
23 federal application for an absentee ballot received from a person
24 qualified to use the application as provided in section two of this
25 article is to be processed as all other applications and the ballot

1 or ballots for each election for which ballots are requested by the
2 applicant is to be ~~mailed~~ provided to the voter on the first day on
3 which both the application and the ballot are available.

4 **§3-3-5b. Procedures for voting a special write-in absentee ballot**
5 **by qualified persons.**

6 (a) Notwithstanding any other provisions of this chapter, a
7 person qualified to vote an absentee ballot in accordance with
8 subdivision (3), subsection (~~a~~ b), section one of this article may
9 apply not earlier than January 1 of an election year for a ~~special~~
10 federal write-in absentee ballot for a primary or general election,
11 ~~in conjunction with the application for a regular absentee ballot~~
12 ~~or ballots. If the application is received after the forty ninth~~
13 ~~day preceding the election, the~~ The official designated to
14 supervise and conduct absentee voting shall honor ~~only~~ the
15 application for local, state and federal offices in general,
16 special and primary elections.

17 (b) The application for a ~~special~~ federal write-in absentee
18 ballot may be made on the federal ~~postcard application form~~ write-
19 in absentee ballot at the time the federal write-in absentee ballot
20 is submitted.

21 (c) In order to qualify for a ~~special~~ federal write-in
22 absentee ballot, the voter must state that he or she is unable to
23 vote by regular absentee ballot or in person due to requirements of
24 military service, or due to living in isolated areas or extremely
25 remote areas of the world, or due to other circumstances making

1 standard absentee voting impracticable or impossible. The federal
2 write-in absentee ballot may be used as a failsafe voting mechanism
3 in the case of a qualified voter who has not timely received a
4 previously requested absentee ballot. This statement may be made on
5 the federal postcard application or on a form ~~prepared~~ approved by
6 the Secretary of State and ~~supplied and returned~~ submitted with the
7 ~~special~~ federal write-in absentee ballot.

8 (d) Upon ~~receipt of the application~~ request of a qualified
9 voter within the time required, the official designated to
10 supervise and conduct absentee voting shall ~~issue~~ provide the
11 ~~special~~ federal write-in absentee ballot which is to be the same
12 ballot issued under the provisions of 42 U.S.C. §1973, et seq., the
13 Uniformed and Overseas Citizens Absentee Voting Act of 1986. The
14 ballot is to permit the elector to vote in a primary election by
15 indicating his or her political party affiliation and the names of
16 the specific candidates for each office, and in a general election
17 by writing in a party preference for each office, the names of
18 specific candidates for each office, or the name of the person whom
19 the voter prefers for each office.

20 (e) When a ~~special~~ federal write-in absentee ballot is
21 received by the official designated to supervise and conduct
22 absentee voting from a voter: (1) Who mailed the write-in ballot
23 from any location within the ~~United States~~ county of residence; or
24 (2) who is not a qualified voter as defined in accordance with
25 subdivision (3), subsection (b), section one of this article, ~~who~~

1 ~~did not apply for a regular absentee ballot; (3) who did not apply~~
2 ~~for a regular absentee ballot by mail; or (4) whose application for~~
3 ~~a regular absentee ballot by mail was received less than thirty~~
4 ~~days before the election~~ the write-in ballot may not be counted.

5 (f) Any write-in absentee ballot must be received by the
6 official designated to supervise and conduct absentee voting ~~prior~~
7 ~~to the close of the polls on election day or it may not be counted~~
8 as provided in subsection (g), section five of this article.

9 **§3-3-5c. Procedures for voting an emergency absentee ballot by**
10 **qualified voters.**

11 (a) Notwithstanding any other provision of this chapter, a
12 person qualified to vote an emergency absentee ballot, as provided
13 in subsection (c), section one of this article may vote an
14 emergency absentee ballot under the procedures established in this
15 section. The county commission may adopt a policy extending the
16 emergency absentee voting procedures to: (1) Hospitals or other
17 duly licensed health care facilities within an adjacent county or
18 within thirty-five miles of the county seat; or (2) nursing homes
19 within the county: *Provided*, That the policy is to be adopted by
20 the county commission at least ninety days prior to the election
21 that will be affected and a copy of the policy is to be filed with
22 the Secretary of State.

23 (b) On or before the fifty-sixth day preceding the date on
24 which any election is to be held the official designated to
25 supervise and conduct absentee voting shall notify the county

1 commission of the number of sets of emergency absentee ballot
2 commissioners which he or she determines necessary to perform the
3 duties and functions pursuant to this section.

4 (c) A set of emergency absentee ballot commissioners at-large
5 shall consist of two persons with different political party
6 affiliations appointed by the county commission in accordance with
7 the procedure prescribed for the appointment of election
8 commissioners under the provisions of article one of this chapter.
9 Emergency absentee ballot commissioners have the same
10 qualifications and rights and take the same oath required under the
11 provisions of this chapter for commissioners of elections.
12 Emergency absentee ballot commissioners are to be compensated for
13 services and expenses in the same manner as commissioners of
14 election or poll clerks obtaining and delivering election supplies
15 under the provisions of section forty-four, article one of this
16 chapter.

17 (d) Upon request of the voter or a member of the voter's
18 immediate family or, when the county commission has adopted a
19 policy to provide emergency absentee voting services to nursing
20 home residents within the county, upon request of a staff member of
21 the nursing home, the official designated to supervise and conduct
22 absentee voting, upon receiving a proper request for voting an
23 emergency absentee ballot no earlier than the seventh day next
24 preceding the election and no later than noon of election day shall
25 supply to the emergency absentee ballot commissioners the

1 application for voting an emergency absentee ballot and the
2 balloting materials. The emergency absentee ballot application is
3 to be prescribed by the Secretary of State and is to include the
4 name, residence address and political party affiliation of the
5 voter, the date, location and reason for confinement in the case of
6 an emergency, and the name of the attending physician if any.

7 (e) The application for an emergency absentee ballot is to be
8 signed by the person applying. If the person applying for an
9 emergency absentee ballot is unable to sign his or her application
10 because of illiteracy or physical disability, he or she is to make
11 his or her mark on the signature line provided for an illiterate or
12 disabled applicant, the mark is to be witnessed. The person
13 assisting the voter and witnessing the mark of the voter shall sign
14 his or her name in the space provided.

15 (f) A declaration is to be completed and signed by each of the
16 emergency absentee ballot commissioners, stating their names, the
17 date on which they appeared at the place of confinement of the
18 person applying for an emergency absentee ballot and the
19 particulars of the confinement.

20 (g) At least one of the emergency absentee ballot
21 commissioners receiving the balloting materials shall sign a
22 receipt which is to be attached to the application form. Each of
23 the emergency absentee ballot commissioners shall deliver the
24 materials to the absent voter, await his or her completion of the
25 application and ballot and return the application and the ballot to

1 the official designated to supervise and conduct absentee voting.
2 Upon delivering the application and the voted ballot to the
3 official, the emergency absentee ballot commissioners shall sign an
4 oath that no person other than the absent voter voted the ballot.
5 The application and the voted ballot are to be returned to the
6 official designated to supervise and conduct absentee voting prior
7 to the close of the polls on election day. Any ballots received by
8 the official after the time that delivery may reasonably be made
9 but before the closing of the polls are to be delivered to the
10 canvassing board along with the absentee ballots challenged in
11 accordance with the provisions of section ten of this article.

12 (h) Upon receiving the application and emergency absentee
13 ballot, the official designated to supervise and conduct absentee
14 voting shall ascertain whether the application is complete, whether
15 the voter appears to be eligible to vote an emergency absentee
16 ballot, and whether the voter is properly registered to vote with
17 the office of the clerk of the county commission. If the voter is
18 found to be properly registered in the precinct shown on the
19 application, the ballot is to be delivered to the precinct election
20 commissioner pursuant to section seven of this article. If the
21 voter is found not to be registered or is otherwise ineligible to
22 vote an emergency ballot, the ballot is to be challenged for the
23 appropriate reason provided for in section ten of this article.

24 (i) If either or both of the emergency absentee ballot
25 commissioners refuse to sign any application for voting an

1 emergency absentee ballot, the voter may vote as an emergency
2 absentee and the ballot will be challenged in accordance with the
3 provisions of section ten of this article, in addition to those
4 absentee ballots subject to challenge as provided in that section.

5 (j) Any voter who receives assistance in voting an emergency
6 absentee ballot shall comply with the provisions of section six of
7 this article. Any other provisions of this chapter relating to
8 absentee ballots not altered by the provisions of this section are
9 to govern the treatment of emergency absentee ballots.

10 **§3-3-6. Assistance to voter in voting an absent voter's ballot by**
11 **mail.**

12 No voter shall receive any assistance in voting an absent
13 voter's ballot by mail unless he or she shall make a declaration at
14 the time he or she makes application for an absent voter's ballot
15 that because of blindness, disability, advanced age or inability to
16 read or write he or she requires assistance in voting an absent
17 voter's ballot.

18 Upon receipt of an absent voter's ballot by mail, the voter
19 who requires assistance in voting such ballot and who has indicated
20 he or she requires such assistance and the reasons therefor on the
21 application may select any eligible person to assist him or her in
22 voting as defined in section three, article three, of this chapter.

23 The person providing assistance in voting an absent voter's
24 ballot by mail shall make an affidavit on a form as may be
25 prescribed by the Secretary of State, that he or she will not in

1 any manner request, or seek to persuade, or induce the voter to
2 vote any particular ticket or for any particular candidate or for
3 or against any public question, and that he or she will not keep or
4 make any memorandum or entry of anything occurring within the
5 voting booth or compartment, and that he or she will not, directly
6 or indirectly, reveal to any person the name of any candidate voted
7 for by the voter, or which ticket he or she had voted, or how he or
8 she had voted on any public question, or anything occurring within
9 the voting booth or compartment or voting machine booth, except
10 when required pursuant to law to give testimony as to such matter
11 in a judicial proceeding.

12 The term "assistance in voting" as used in this section shall
13 mean assistance in physically marking the official absent voter's
14 ballot for a voter, or reading or directing the voter's attention
15 to any part of the official absent voter's ballot.

NOTE: The purpose of this bill is to eliminate noncompliance with federal law; to remove restrictions on absentee ballots; and to remove obsolete and outdated code language.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.