

**Senate Bill No. 593**

(By Senators Stollings and Miller)

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[Introduced February 21, 2011; referred to the Committee on the  
Judiciary.]  
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10 A BILL to amend and reenact §3-3-10 of the Code of West Virginia,  
11 1931, as amended, relating to allowing registered voters to  
12 challenge absentee ballots under certain circumstances.

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

14 That §3-3-10 of the Code of West Virginia, 1931, as amended,  
15 be amended and reenacted to read as follows:

16 **ARTICLE 3. VOTING BY ABSENTEES.**

17 **§3-3-10. Challenging of absent voters' ballots.**

18 (a) The official designated to supervise and conduct absentee  
19 voting may challenge an absent voter's ballot on any of the  
20 following grounds:

21 (1) That the application for an absent voter's ballot has not  
22 been completed as required by law;

23 (2) That any statement or declaration contained in the  
24 application for an absent voter's ballot is not true;

25 (3) That the applicant for an absent voter's ballot is not  
26 registered to vote in the precinct of his or her residence as

1 provided by law;

2       (4) That the person voting an absent voter's ballot by  
3 personal appearance in his or her office had assistance in voting  
4 the ballot when the person was not qualified for voting assistance  
5 because: (A) The affidavit of the person who received assistance  
6 does not indicate a legally sufficient reason for assistance; or  
7 (B) the person who received assistance did not make an affidavit as  
8 required by this article; or (C) the person who received assistance  
9 is not so illiterate as to have been unable to read the names on  
10 the ballot or that he or she is not so physically disabled as to  
11 have been unable to see or mark the absent voter's ballot;

12       (5) That the person who voted an absent voter's ballot by mail  
13 and received assistance in voting the ballot was not qualified  
14 under the provisions of this article for assistance; and

15       (6) That the person has voted absentee by mail as a result of  
16 being out of the county more than four consecutive times:  
17 *Provided*, That the determination as to whether the person has voted  
18 more than four consecutive times does not apply if the person is a  
19 citizen residing out of the United States; or a member, spouse or  
20 dependent of a member serving in the uniformed services; or a  
21 college student living outside of his or her home county.

22       (b) Any one or more of the election commissioners or poll  
23 clerks in a precinct may challenge an absent voter's ballot on any  
24 of the following grounds:

25       (1) That the application for an absent voter's ballot was not  
26 completed as required by law;

1           (2) That any statement or declaration contained in the  
2 application for an absent voter's ballot is not true;

3           (3) That the person voting an absent voter's ballot is not  
4 registered to vote in the precinct of his or her residence as  
5 provided by law;

6           (4) That the signatures of the person voting an absent voter's  
7 ballot as they appear on his or her registration record, his or her  
8 application for an absent voter's ballot and the absent voter's  
9 ballot envelope are not in the same handwriting;

10          (5) That the person voting an absent voter's ballot by  
11 personal appearance had assistance in voting the ballot when the  
12 person was not qualified for assistance because: (A) The affidavit  
13 of the person who received assistance does not indicate a legally  
14 sufficient reason for assistance; or (B) the person who received  
15 assistance did not make an affidavit as required by this article;  
16 or (C) the person who received assistance is not so illiterate as  
17 to have been unable to read the names on the ballot or that he or  
18 she was not so physically disabled as to have been unable to see or  
19 mark the absent voter's ballot;

20          (6) That the person voted an absent voter's ballot by mail and  
21 received assistance in voting the ballot when not qualified under  
22 the provisions of this article for assistance;

23          (7) That the person who voted the absent voter's ballot voted  
24 in person at the polls on election day;

25          (8) That the person voted an absent voter's ballot under  
26 authority of subdivision (3), subsection (b), section one of this

1 article and is or was present in the county in which he or she is  
2 registered to vote between the opening and closing of the polls on  
3 election day; and

4 (9) On any other ground or for any reason on which or for  
5 which the ballot of a voter voting in person at the polls on  
6 election day may be challenged.

7 (c) Any registered voter in the county may challenge an absent  
8 voter's ballot voted under authority of subdivision (2), (3) or  
9 (4), subsection (b), section one of this article on the grounds  
10 that the voter of the ballot is or was in the county in which he or  
11 she is registered to vote between the opening and closing of the  
12 polls on election day and may challenge an absent voter's ballot  
13 voted under authority of subdivision (1), subsection (b), section  
14 one of this article on the grounds that the voter of the ballot was  
15 able to vote at the polls on election day.

16 No challenge may be made to any absent voter ballot if the  
17 voter was registered and qualified to vote pursuant to the  
18 provisions of subsection (a), section one of this article.

19 ~~(e)~~ (d) Forms for, and the manner of, challenging an absent  
20 voter's ballot under the provisions of this article are to be  
21 prescribed by the Secretary of State.

22 ~~(d)~~ (e) Absent voters' ballots challenged by the official  
23 designated to supervise and conduct absentee voting under the  
24 provisions of this article are to be transmitted by the official  
25 directly to the county commission sitting as a board of canvassers.  
26 The absent voters' ballots challenged by the election commissioners

1 and poll clerks under the provisions of this article may not be  
2 counted by the election officials but are to be transmitted by them  
3 to the county commission sitting as a board of canvassers. Action  
4 by the board of canvassers on challenged absent voters' ballots is  
5 to be governed by the provisions of section forty-one, article one  
6 of this chapter.

NOTE: The purpose of this bill is to allow registered voters  
to challenge absentee ballots under certain circumstances.

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