

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4238**

4 (By Delegates Poore, Marshall, Fleischauer
5 and Boggs)

6 (By request of the Secretary of State)

7 (Originating in the Committee on the Judiciary)

8 [January 24, 2012]

9
10 A BILL to amend and reenact §3-3-1, §3-3-2 and §3-3-2b of the Code
11 of West Virginia, 1931, as amended, relating to the provision
12 of absentee ballots to participants of the Address
13 Confidentiality Program; authorizing program participants to
14 vote an absentee ballot by mail; authorizing the placement of
15 program participants on special absentee voting list;
16 describing duties of the office of the Secretary of State and
17 county officials designated to supervise and conduct absentee
18 voting; and providing for the removal of program participants
19 from the special absentee voting list.

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

21 That §3-3-1, §3-3-2 and §3-3-2b of the Code of West Virginia,
22 1931, as amended, be amended and reenacted, to read as follows:

23 **ARTICLE 3. VOTING BY ABSENTEES.**

24 **§3-3-1. Persons eligible to vote absentee ballots.**

25 (a) All registered and other qualified voters of the county

1 may vote an absentee ballot during the period of early voting in
2 person.

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

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

9 (A) Illness, injury or other medical reason;

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

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

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

18 (A) Personal or business travel;

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

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

23 (3) Any voter absent from the county throughout the period and
24 available hours for voting in person and who is an absent uniformed

1 services voter or overseas voter, as defined by 42 U.S.C. §1973, et
2 seq., the Uniformed and Overseas Citizens Absentee Voting Act of
3 1986, including members of the uniformed services on active duty,
4 members of the merchant marine, spouses and dependents of those
5 members on active duty and persons who reside outside the United
6 States and are qualified to vote in the last place in which the
7 person was domiciled before leaving the United States;

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

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

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

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

19 (6) Any voter who is participating in the Address
20 Confidentiality Program as established by section one hundred ten,
21 article twenty-eight-a, chapter forty-eight of this code.

22 (c) Registered voters and other qualified voters in the county
23 may, in the following circumstances, vote an emergency absentee
24 ballot, subject to the availability of the services as provided in

1 this article:

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

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

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

15 **§3-3-2. Authority to conduct absentee voting; absentee voting**
16 **application; form.**

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

21 (1) For any election held throughout the county, within a
22 political subdivision or territory other than a municipality, or
23 within a municipality when the municipal election is conducted in
24 conjunction with a county election, the clerk of the county

1 commission; or

2 (2) The municipal recorder or other officer authorized by
3 charter or ordinance provisions to conduct absentee voting, for any
4 election held entirely within the municipality, or in the case of
5 annexation elections, within the area affected. The terms "clerk"
6 or "clerk of the county commission" or "official designated to
7 supervise and conduct absentee voting" used elsewhere in this
8 article means municipal recorder or other officer in the case of
9 municipal elections.

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

14 (1) The completed application is to be on a form prescribed by
15 the Secretary of State and is to contain the name, date of birth
16 and political affiliation of the voter, residence address within
17 the county, the address to which the ballot is to be mailed, the
18 authorized reason, if any, for which the absentee ballot is
19 requested and, if the reason is illness or hospitalization, the
20 name and telephone number of the attending physician, the signature
21 of the voter to a declaration made under the penalties for false
22 swearing as provided in section three, article nine of this chapter
23 that the statements and declarations contained in the application
24 are true, any additional information which the voter is required to

1 supply, any affidavit which may be required and an indication as to
2 whether it is an application for voting in person or by mail; or

3 (2) For any person authorized to vote an absentee ballot under
4 the provisions of 42 U.S.C. §1973, *et seq.*, the Uniformed and
5 Overseas Citizens Absentee Voting Act of 1986, the completed
6 application may be on the federal postcard application for absentee
7 ballot form issued under authority of that act, submitted by mail
8 or electronically; ~~or~~

9 (3) For any person unable to obtain the official form for
10 absentee balloting at a reasonable time before the deadline for an
11 application for an absentee ballot by mail is to be received by the
12 proper official, the completed application may be in a form set out
13 by the voter, provided all information required to meet the
14 provisions of this article is set forth and the application is
15 signed by the voter requesting the ballot; or

16 (4) A person authorized to vote an absentee ballot who is
17 participating in the Address Confidentiality Program as established
18 by section one hundred ten, article twenty-eight-a, chapter forty-
19 eight of this code, may apply to the program manager within the
20 office of the Secretary of State to vote a mail-in absentee ballot.
21 The program manager will notify the designated county contact to
22 coordinate the application and the provision of an absentee ballot
23 to the program participant.

24 **§3-3-2b. Special absentee voting list.**

1 (a) Any person who is registered and otherwise qualified to
2 vote and who is permanently and totally physically disabled and who
3 is unable to vote in person at the polls in an election may apply
4 to the official designated to supervise and conduct absentee voting
5 for placement on the special absentee voting list.

6 (b) Any person who is registered and otherwise qualified to
7 vote and who is participating in the Address Confidentiality
8 Program as established by section one hundred ten, article twenty-
9 eight-a, chapter forty-eight of this code, may apply to the program
10 manager within the office of the Secretary of State for placement
11 on the special absentee voting list. The program manager will
12 notify the designated county contact to coordinate the provision of
13 an absentee ballot to the program participant.

14 ~~(b)~~ (c) The application is to be on a form prescribed by the
15 Secretary of State which is to include:

16 (1) the voter's name and signature,

17 (2) residence address unless the applicant is a participant in
18 the Address Confidentiality Program as established by section one
19 hundred ten, article twenty-eight-a, chapter forty-eight of this
20 code, and

21 (3) (A) a statement that the voter is permanently and totally
22 physically disabled and would be unable to vote in person at the
23 polls in any election, a description of the nature of that
24 disability, and a statement signed by a physician to that effect;

1 or

2 (B) a statement that the voter is a program participant in the
3 Address Confidentiality Program.

4 ~~(c)~~ (d) Upon receipt of a properly completed application, the
5 official designated to supervise and conduct absentee voting shall
6 enter the name on the special absentee voting list, which is to be
7 maintained in a secure and permanent record. The person's name will
8 remain active on the list until: (1) The person requests in writing
9 that his or her name be removed; (2) the person removes his or her
10 residence from the county, is purged from the voter registration
11 books or otherwise becomes ineligible to vote; (3) a ballot mailed
12 to the address provided on the application is returned
13 undeliverable by the United States postal service; ~~or~~ (4) the death
14 of the person; or (5) in the case of a Address Confidentiality
15 Program participant, withdrawal or removal from that program.

16 ~~(d)~~ (e) The official designated to supervise and conduct
17 absentee voting shall mail an ~~application for an~~ absentee ballot by
18 mail to each person active on the special absentee voting list due
19 to disability not later than forty-six days before each election.
20 The Address Confidentiality Program manager shall, in coordination
21 with the designated county contact, mail to each person on the
22 special absentee voting list due to participation in the Address
23 Confidentiality Program an absentee ballot by mail not later than
24 forty-six days before each election.