

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4238

(By Delegates Poore, Marshall, Fleischauer, and Boggs)
[By Request of the Secretary of State]



Passed March 6, 2012

To Take Effect Ninety Days From Passage

E N R O L L E D

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H. B. 4238

(BY DELEGATES POORE, MARSHALL, FLEISCHAUER
AND BOGGS)

[BY REQUEST OF THE SECRETARY OF STATE]

[Passed March 6, 2012; to take effect ninety days from passage.]

AN ACT to amend and reenact §3-3-1, §3-3-2 and §3-3-2b of the Code of West Virginia, 1931, as amended, relating to providing absentee ballots to participants of the Address Confidentiality Program; authorizing program participants to vote an absentee ballot by mail; authorizing the placement of program participants on special absentee voting list; describing duties of the office of the Secretary of State and county officials designated to supervise and conduct absentee voting; and providing for the removal of program participants from the special absentee voting list.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. VOTING BY ABSENTEES.

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

1 (a) All registered and other qualified voters of the county may
2 vote an absentee ballot during the period of early voting in person.

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

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

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

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

12 (C) Incarceration or home detention: *Provided*, That the
13 underlying conviction is not for a crime which is a felony or
14 a violation of section twelve, thirteen or sixteen, article nine
15 of 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
22 distance from the county seat make voting in person
23 impossible;

24 (3) Any voter absent from the county throughout the
25 period and available hours for voting in person and who is an
26 absent uniformed services voter or overseas voter, as defined
27 by 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas
28 Citizens Absentee Voting Act of 1986, including members of
29 the uniformed services on active duty, members of the
30 merchant marine, spouses and dependents of those members
31 on active duty and persons who reside outside the United
32 States and are qualified to vote in the last place in which the
33 person was domiciled before leaving the United States;

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

37 (A) Serving as an elected or appointed federal or state
38 officer; or

39 (B) Serving in any other documented employment
40 assignment of specific duration of four years or less;

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

45 (6) Any voter who is participating in the Address
46 Confidentiality Program as established by section one
47 hundred three, article twenty-eight-a, chapter forty-eight of
48 this code.

49 (c) Registered voters and other qualified voters in the
50 county may, in the following circumstances, vote an
51 emergency absentee ballot, subject to the availability of the
52 services as provided in this article:

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

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

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

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

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

5 (1) For any election held throughout the county, within a
6 political subdivision or territory other than a municipality, or
7 within a municipality when the municipal election is
8 conducted in conjunction with a county election, the clerk of
9 the county commission; or

10 (2) The municipal recorder or other officer authorized by
11 charter or ordinance provisions to conduct absentee voting,
12 for any election held entirely within the municipality, or in
13 the case of annexation elections, within the area affected.
14 The terms "clerk" or "clerk of the county commission" or
15 "official designated to supervise and conduct absentee

16 voting” used elsewhere in this article means municipal
17 recorder or other officer in the case of municipal elections.

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

22 (1) The completed application is to be on a form
23 prescribed by the Secretary of State and is to contain the
24 name, date of birth and political affiliation of the voter,
25 residence address within the county, the address to which
26 the ballot is to be mailed, the authorized reason, if any, for
27 which the absentee ballot is requested and, if the reason is
28 illness or hospitalization, the name and telephone number of
29 the attending physician, the signature of the voter to a
30 declaration made under the penalties for false swearing as
31 provided in section three, article nine of this chapter that the
32 statements and declarations contained in the application are
33 true, any additional information which the voter is required
34 to supply, any affidavit which may be required and an
35 indication as to whether it is an application for voting in
36 person or by mail; or

37 (2) For any person authorized to vote an absentee ballot
38 under the provisions of 42 U.S.C. §1973, *et seq.*, the
39 Uniformed and Overseas Citizens Absentee Voting Act of
40 1986, the completed application may be on the federal
41 postcard application for absentee ballot form issued under
42 authority of that act, submitted by mail or electronically;

43 (3) For any person unable to obtain the official form for
44 absentee balloting at a reasonable time before the deadline for
45 an application for an absentee ballot by mail is to be received
46 by the proper official, the completed application may be in a
47 form set out by the voter, provided all information required

48 to meet the provisions of this article is set forth and the
49 application is signed by the voter requesting the ballot; or

50 (4) A person authorized to vote an absentee ballot who is
51 participating in the Address Confidentiality Program as
52 established by section one hundred three, article twenty-
53 eight-a, chapter forty-eight of this code, may apply to the
54 program manager within the office of the Secretary of State
55 to vote a mail-in absentee ballot. The program manager will
56 notify the designated county contact to coordinate the
57 application and the provision of an absentee ballot to the
58 program participant.

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

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

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

16 (c) The application is to be on a form prescribed by the
17 Secretary of State which is to include:

18 (1) The voter's name and signature,

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

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

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

29 (d) Upon receipt of a properly completed application, the
30 official designated to supervise and conduct absentee voting
31 shall enter the name on the special absentee voting list, which
32 is to be maintained in a secure and permanent record. The
33 person's name will remain active on the list until: (1) The
34 person requests in writing that his or her name be removed;
35 (2) the person removes his or her residence from the county,
36 is purged from the voter registration books or otherwise
37 becomes ineligible to vote; (3) a ballot mailed to the address
38 provided on the application is returned undeliverable by the
39 United States postal service; (4) the death of the person; or
40 (5) in the case of a Address Confidentiality Program
41 participant, withdrawal or removal from that program.

42 (e) The official designated to supervise and conduct
43 absentee voting shall mail an absentee ballot by mail to each
44 person active on the special absentee voting list due to
45 disability not later than forty-six days before each election.
46 The Address Confidentiality Program manager shall, in
47 coordination with the designated county contact, mail to each
48 person on the special absentee voting list due to participation
49 in the Address Confidentiality Program an absentee ballot by
50 mail not later than forty-six days before each election.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor