

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 76**

4 (By Senator Facemire)

5 _____
6 [Originating in the Committee on the Judiciary;
7 reported February 21, 2013.]
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10
11 A BILL to amend and reenact §3-1-3a of the Code of West Virginia,
12 1931, as amended; and to amend and reenact §3-3-1 of said
13 code, all relating to voting for President and Vice President;
14 permitting voters who have moved from the state to vote for
15 President and Vice President in certain circumstances;
16 requiring voters who move from the state and vote for
17 President and Vice President in the state to be removed from
18 the voter rolls thereafter; allowing persons who move to the
19 state to vote for President and Vice President in certain
20 circumstances; and permitting voters to obtain an absentee
21 ballot for President and Vice President only in certain
22 circumstances.

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

24 That §3-1-3a of the Code of West Virginia, 1931, as amended,
25 be amended and reenacted; and that §3-3-1 of said code be amended
26 and reenacted, all to read as follows:

27 **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

28 **§3-1-3a. Persons entitled to vote under federal Voting Rights Act**

Amendments of 1970; authority of Secretary of State.

1
2 ~~(1)~~ (a) Any citizen of the United States who is a resident of
3 the state and who applies, not later than ~~thirty~~ twenty-one days
4 immediately prior to any presidential election for registration or
5 qualification to vote for the choice of electors for President and
6 Vice President, or for President and Vice President, in such
7 election, and who is otherwise qualified to vote may register to
8 vote, and vote, for the choice of electors for President and Vice
9 President, or for President and Vice President, in such election,
10 as provided by the federal Voting Rights Act Amendments of 1970.

11 ~~(2)~~ (b) Any citizen of the United States who has moved his or
12 her residence from this state within thirty days next preceding any
13 election for President and Vice President, and who was otherwise
14 qualified to vote in this state as of the date of his or her change
15 of residence and who has not satisfied the registration
16 requirements of the state to which he or she has moved, may ~~vote~~
17 ~~for the choice of electors for president and vice president, or for~~
18 ~~president and vice president, in such election, as provided by the~~
19 ~~federal Voting Rights Act Amendments of 1970.~~ cast a vote for the
20 offices of President and Vice President: (1) In person at the
21 primary early-voting location serving the county from which the
22 voter has moved; or (2) by absentee ballot. The request for the
23 ballot must be on a form prescribed by the Secretary of State and,
24 in the case of an absentee ballot, must be received by the clerk of
25 the county commission of the last county of residence no later than
26 the sixth day prior to the general election. The voter's request
27 for a ballot due to a move out of state after the thirtieth day
28 preceding the election shall serve as authorization for removal

1 from the West Virginia voter rolls as provided in the National
2 Voter Registration Act of 1993, 42 U. S. C. §1973gg-6.

3 (c) Any citizen of the United States who is otherwise
4 qualified to vote in any election for President and Vice President
5 shall not be denied the right to vote for those offices due to the
6 failure to comply with any durational residency requirement of the
7 state or political subdivision.

8 (d) No citizen of the United States may be denied the right to
9 vote for electors for President and Vice President, or for
10 President and Vice President, in any election because of failure of
11 the citizen to be physically present in the state or political
12 subdivision at the time of the election, if the citizen has
13 complied with the requirements prescribed by the laws of this state
14 for the casting of an absentee ballot in the election.

15 ~~(3)~~ (e) Any citizen of the United States who has attained the
16 age of eighteen years but who has not attained the age of twenty-
17 one years by the time of the next ensuing primary or election in
18 which he may vote under section 302 of the federal Voting Rights
19 Act Amendments of 1970, as interpreted and limited by the United
20 States Supreme Court, and who is otherwise qualified to vote, may
21 vote in any primary or election for those candidates for whom he or
22 she is entitled to vote under said section 302 of the federal
23 Voting Rights Act Amendments of 1970, as interpreted and limited by
24 the United States Supreme Court.

25 ~~(4)~~ (f) The Secretary of State shall have authority to make,
26 amend and rescind such rules, regulations, orders and instructions,
27 and prescribe such registration and voting procedures, forms
28 (including registration, ballot and ballot label forms), lists and

1 records, as may be necessary in order for this state to fully
2 implement, and comply with, ~~the~~ federal voting laws ~~Voting Rights~~
3 ~~Act Amendments of 1970~~, as interpreted and limited by the United
4 States Supreme Court, and it shall be the duty of all public
5 officers, election officers, boards and commissioners having any
6 authority or responsibility in connection with any election to
7 comply with all such rules, regulations, orders and instructions,
8 and use, make, follow or comply with all such registration and
9 voting procedures, forms (including registration, ballot and ballot
10 label forms), lists and records as have been prescribed by the
11 Secretary of State under the foregoing authority vested in that
12 office.

13 **ARTICLE 3. VOTING BY ABSENTEES.**

14 **§3-3-1. Persons eligible to vote absentee ballots.**

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

18 (b) Registered voters and other qualified voters in the county
19 are authorized to vote an absentee ballot by mail in the following
20 circumstances:

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

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

25 (B) Physical disability or immobility due to extreme advanced
26 age; or

27 (C) Incarceration or home detention: *Provided*, That the
28 underlying conviction is not for a crime which is a felony or a

1 violation of section twelve, thirteen or sixteen, article nine of
2 this chapter involving bribery in an election;

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

5 (A) Personal or business travel;

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

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

10 (3) Any voter absent from the county throughout the period and
11 available hours for voting in person and who is an absent uniformed
12 services voter or overseas voter, as defined by 42 U. S. C. §1973,
13 *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of
14 1986, including members of the uniformed services on active duty,
15 members of the merchant marine, spouses and dependents of those
16 members on active duty and persons who reside outside the United
17 States and are qualified to vote in the last place in which the
18 person was domiciled before leaving the United States;

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

22 (A) Serving as an elected or appointed federal or state
23 officer; or

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

26 (5) Any voter for whom the designated area for absentee voting
27 within the county courthouse or annex of the courthouse and the
28 voter's assigned polling place are inaccessible because of his or

1 her physical disability; and

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

5 (c) Registered voters and other qualified voters in the county
6 may, in the following circumstances, vote an emergency absentee
7 ballot, subject to the availability of the services as provided in
8 this article:

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

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

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

22 (d) Registered voters and other qualified voters in the county
23 may vote a special absentee ballot for President and Vice President
24 only if they qualify for such a ballot under the provisions of
25 section three-a, article one of this chapter.

(NOTE: The purpose of this bill is to conform the Code of West

Virginia to federal requirements for presidential office ballots for registered voters moving from the state.

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