

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2362

BY DELEGATES MILLER, SHOTT, CAMPBELL, LOVEJOY,
CANESTRARO, MAYNARD, HORNBUCKLE, SUMMERS AND
ROBINSON

[Introduced January 14, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §3-3-5c of the Code of West Virginia, 1931, as amended, relating
 2 to procedures for voting an emergency absentee ballot by qualified voters; and providing
 3 a mechanism to allow a qualified voter who is confined to a specific location within the
 4 county other than a hospital or other duly licensed health care facility or a nursing home
 5 and is prevented from travelling to a polling place and voting in person because of illness,
 6 injury or other medical reason, or a physical disability or immobility due to extreme
 7 advanced age.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. VOTING BY ABSENTEES.

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

1 (a) (1) Notwithstanding any other provision of this chapter, a person qualified to vote an
 2 emergency absentee ballot, as provided in §3-3-1(c) of this code may vote an emergency
 3 absentee ballot under the procedures established in this section.

4 (2) The county commission may adopt a policy extending the emergency absentee voting
 5 procedures to:

6 ~~(1)~~ (A) Hospitals or other duly licensed health care facilities within an adjacent county or
 7 within ~~35~~ five miles of the county seat; ~~or~~

8 ~~(2)~~ (B) Nursing homes within the county; ~~Provided, That or~~

9 (C) Any qualified voter who is confined to a specific location within the county on or after
 10 the seventh day preceding an election and prevented from travelling to a polling place and voting
 11 in person because of:

12 (i) Illness, injury or other medical reason; or

13 (ii) Physical disability or immobility due to extreme advanced age.

14 (3) The policy is to adopted under this subsection shall be adopted by the county
 15 commission at least 90 days prior to the election that will be affected. ~~and~~ A copy of the policy is
 16 ~~to~~ shall be filed with the Secretary of State.

17 (b) On or before the 56th day preceding the date on which any election is to be held the
18 official designated to supervise and conduct absentee voting shall notify the county commission
19 of the number of sets of emergency absentee ballot commissioners which he or she determines
20 necessary to perform the duties and functions pursuant to this section.

21 (c) A set of emergency absentee ballot commissioners at-large shall consist of two
22 persons with different political party affiliations appointed by the county commission in accordance
23 with the procedure prescribed for the appointment of election commissioners under the provisions
24 of §3-1-1 *et seq.* of this code. Emergency absentee ballot commissioners have the same
25 qualifications and rights and take the same oath required under the provisions of this chapter for
26 commissioners of elections. Emergency absentee ballot commissioners are to be compensated
27 for services and expenses in the same manner as commissioners of election or poll clerks
28 obtaining and delivering election supplies under the provisions of §3-1-44 of this code.

29 (d) Upon request of the voter or a member of the voter's immediate family or, when the
30 county commission has adopted a policy to provide emergency absentee voting services to
31 nursing home residents within the county, upon request of a staff member of the nursing home,
32 the official designated to supervise and conduct absentee voting, upon receiving a proper request
33 for voting an emergency absentee ballot no earlier than the seventh day next preceding the
34 election and no later than noon of election day shall supply to the emergency absentee ballot
35 commissioners the application for voting an emergency absentee ballot and the balloting
36 materials. The emergency absentee ballot application is to be prescribed by the Secretary of State
37 and is to include the name, residence address and political party affiliation of the voter, the date,
38 location and reason for confinement in the case of an emergency, and the name of the attending
39 physician.

40 (e) The application for an emergency absentee ballot is to be signed by the person
41 applying. If the person applying for an emergency absentee ballot is unable to sign his or her
42 application because of illiteracy or physical disability, he or she is to make his or her mark on the

43 signature line provided for an illiterate or disabled applicant, the mark is to be witnessed. The
44 person assisting the voter and witnessing the mark of the voter shall sign his or her name in the
45 space provided.

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

49 (g) At least one of the emergency absentee ballot commissioners receiving the balloting
50 materials shall sign a receipt which is to be attached to the application form. Each of the
51 emergency absentee ballot commissioners shall deliver the materials to the absent voter, await
52 his or her completion of the application and ballot and return the application and the ballot to the
53 official designated to supervise and conduct absentee voting. Upon delivering the application and
54 the voted ballot to the official, the emergency absentee ballot commissioners shall sign an oath
55 that no person other than the absent voter voted the ballot. The application and the voted ballot
56 are to be returned to the official designated to supervise and conduct absentee voting prior to the
57 close of the polls on election day. Any ballots received by the official after the time that delivery
58 may reasonably be made but before the closing of the polls are to be delivered to the canvassing
59 board along with the absentee ballots challenged in accordance with the provisions of §3-3-10 of
60 this code.

61 (h) Upon receiving the application and emergency absentee ballot, the official designated
62 to supervise and conduct absentee voting shall ascertain whether the application is complete,
63 whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the
64 voter is properly registered to vote with the office of the clerk of the county commission. If the
65 voter is found to be properly registered in the precinct shown on the application, the ballot is to be
66 delivered to the precinct election commissioner pursuant to §3-3-7 of this code. If the voter is
67 found not to be registered or is otherwise ineligible to vote an emergency ballot, the ballot is to be
68 challenged for the appropriate reason provided for in §3-3-10 of this code.

69 (i) If either or both of the emergency absentee ballot commissioners refuse to sign any
70 application for voting an emergency absentee ballot, the voter may vote as an emergency
71 absentee and the ballot will be challenged in accordance with the provisions of §3-3-10 of this
72 code, in addition to those absentee ballots subject to challenge as provided in that section.

73 (j) Any voter who receives assistance in voting an emergency absentee ballot shall comply
74 with the provisions of §3-3-6 of this code. Any other provisions of this chapter relating to absentee
75 ballots not altered by the provisions of this section are to govern the treatment of emergency
76 absentee ballots.

NOTE: The purpose of this bill is to provide a mechanism to allow a qualified voter to vote by absentee ballot if:

(1) The person is confined to a specific location within the county (other than a hospital or other duly licensed health care facility or a nursing home); and

(2) Is prevented from travelling to a polling place and voting in person because of illness, injury or other medical reason, or a physical disability or immobility due to extreme advanced age.

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