

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4293

FISCAL
NOTE

BY DELEGATES MAYNARD, HOWELL, HOLSTEIN, LINVILLE,
HOUSEHOLDER, STEELE, ANDERSON, HOTT, KEATON,
DEAN, AND BRIDGES

[Introduced January 20, 2022; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §3-3-5 of the Code of West Virginia, 1931, as amended, relating to
2 providing applications for absentee ballots; requiring applications for absentee ballots to
3 be available at the office of the county clerk and online at the Secretary of State's official
4 website; prohibiting any person from providing unsolicited applications for absentee voting
5 to any voter; and creating a felony penalty upon conviction for such prohibited activity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-5. Voting an absentee ballot by mail or electronically; penalties.

1 (a) Upon oral or written request, the official designated to supervise and conduct absentee
2 voting shall provide to any voter of the county, in person, by mail, or electronically, the appropriate
3 application for voting absentee as provided in this article. The application for voting absentee shall
4 be available at the office of the county clerk and online at the official website of the Secretary of
5 State. It is unlawful for any person, including any election official, to mail or deliver an application
6 for an absentee ballot to any voter except when specifically requested by that voter. The voter
7 shall complete and sign the application in his or her own handwriting or, if the voter is unable to
8 complete the application because of illiteracy or physical disability:

9 (1) The person assisting the voter and witnessing the mark of the voter shall sign his or
10 her name in the space provided; or

11 (2) The person, if eligible to vote by electronic absentee ballot due to physical disability,
12 may complete and verify the application by available electronic means prescribed by the
13 Secretary of State.

14 (b) Completed applications for voting an absentee ballot by mail are to be accepted when
15 received by the official designated to supervise and conduct absentee voting in person, by mail,
16 or electronically within the following times:

17 (1) For persons eligible to vote an absentee ballot under the provisions of §3-3-1(b)(3) of
18 this code, relating to absent uniformed services and overseas voters, not earlier than January 1

19 of an election year or 84 days preceding the election, whichever is earlier, and not later than the
20 sixth day preceding the election, which application is to, upon the voter's request, be accepted as
21 an application for the ballots for all elections in the calendar year; and

22 (2) For all other persons eligible to vote an absentee ballot by mail or electronically, not
23 earlier than January 1 of an election year or 84 days preceding the election, whichever is earlier,
24 and not later than the sixth day preceding the election.

25 (c) Upon acceptance of a completed application, the official designated to supervise and
26 conduct absentee voting shall determine whether the following requirements have been met:

27 (1) The application has been completed as required by law;

28 (2) The applicant is duly registered to vote in the precinct of his or her residence and, in a
29 primary election, is qualified to vote the ballot of the political party requested;

30 (3) The applicant is authorized for the reasons given in the application to vote an absentee
31 ballot by mail or electronically;

32 (4) The address to which a ballot is to be mailed is an address outside the county if the
33 voter is applying to vote by mail under the provisions of §3-3-1(b)(2)(A), §3-3-1(b)(2)(B), §3-3-
34 1(b)(3), or §3-3-1(b)(4) of this code;

35 (5) The applicant is not making his or her first vote after having registered by postcard
36 registration or, if the applicant is making his or her first vote after having registered by postcard
37 registration, the applicant is subject to one of the exceptions provided in §3-2-10 of this code; and

38 (6) No regular and repeated pattern of applications for an absentee ballot by mail for the
39 reason of being out of the county during the entire period of voting in person exists to suggest
40 that the applicant is no longer a resident of the county.

41 (d) (1) If the official designated to supervise and conduct absentee voting determines that
42 the required conditions have been met for voting an absentee ballot by mail, two representatives
43 that are registered to vote with different political party affiliations shall sign their names in the
44 places indicated on the back of the official ballot. If the official designated to supervise and conduct

45 absentee voting determines the required conditions have not been met or has evidence that any
46 of the information contained in the application is not true, the official shall give notice to the voter
47 that the voter's absentee ballot will be challenged as provided in this article and shall enter that
48 challenge.

49 (2) If the official designated to supervise and conduct electronic voting determines that a
50 voter is eligible to submit an electronic ballot because the voter is an absent uniformed services
51 voter or overseas voter or a person with a physical disability, the official designated to supervise
52 absentee voting shall cause the absentee ballot to be transmitted electronically in the manner
53 required for the electronic ballot marking tool or other electronic means.

54 (e)(1) Beginning on the 46th day prior to election day, within one day after the official
55 designated to supervise and conduct absentee voting has both the completed application and the
56 ballot, the official shall provide to the voter at the address given on the application, or by the
57 appropriate electronic delivery method, the following items as required and as prescribed by the
58 Secretary of State:

59 (A) One of each type of official absentee ballot the voter is eligible to vote, prepared
60 according to law;

61 (B) For persons voting absentee ballot by mail, one envelope, unsealed, which may have
62 no marks except the designation "Absent Voter's Ballot Envelope No. 1" and printed instructions
63 to the voter;

64 (C) For persons voting absentee ballot by mail, one postage paid envelope, unsealed,
65 designated "Absent Voter's Ballot Envelope No. 2";

66 (D) Instructions for voting absentee by mail or electronically;

67 (E) For electronic systems or transmission, an electronic means by which eligible voters
68 with physical disabilities may mark the absentee ballot without assistance, as prescribed by the
69 Secretary of State; and

70 (F) Notice that a list of write-in candidates is available upon request.

71 (2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42
72 U.S.C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the
73 official designated to supervise and conduct absentee voting shall transmit the ballot to the voter
74 via mail, or electronically, as requested by the voter. If the voter does not designate a preference
75 for transmittal, the clerk may select either method of transmittal for the ballot. If the ballot is
76 transmitted electronically pursuant to this subdivision, the official designated to supervise and
77 conduct absentee voting shall also transmit electronically:

78 (A) A waiver of privacy form, to be promulgated by the Secretary of State;

79 (B) Instructions for voting absentee by mail or electronically;

80 (C) Notice that a list of write-in candidates is available upon request; and

81 (D) A statement of the voter affirming the voter's current name and address and whether
82 or not he or she received assistance in voting.

83 (f) The voter shall mark the ballot alone: Provided, That the voter may have assistance in
84 voting according to the provisions of §3-3-6 of this code.

85 (1) After the voter has voted the ballot or ballots to be returned by mail, the voter shall:

86 (A) Place the ballot or ballots in envelope no. 1 and seal that envelope;

87 (B) Place the sealed envelope no. 1 in envelope no. 2 and seal that envelope;

88 (C) Complete and sign the forms on envelope no. 2; and

89 (D) Return that envelope to the official designated to supervise and conduct absentee
90 voting.

91 (2) If the ballot was transmitted electronically as provided in subdivisions (1) or (2),
92 subsection (e) of this section, the voter shall return the ballot electronically, in the manner
93 prescribed by the Secretary of State, or the voter may return the ballot by United States mail,
94 along with a signed privacy waiver form.

95 (g) Except as provided in subsection (h) of this section, absentee ballots returned by
96 United States mail or other express shipping service are to be accepted if:

97 (1) The ballot is received by the official designated to supervise and conduct absentee
98 voting no later than the day after the election; or

99 (2) The ballot bears a postmark of the United States Postal Service dated no later than
100 election day and the ballot is received by the official designated to supervise and conduct
101 absentee voting no later than the hour at which the board of canvassers convenes to begin the
102 canvass.

103 (h) Absentee ballots received through the United States mail from persons eligible to vote
104 an absentee ballot under the provisions of §3-3-1(b)(3) of this code, relating to uniform services
105 and overseas voters, are to be accepted if the ballot is received by the official designated to
106 supervise and conduct absentee voting no later than the hour at which the board of canvassers
107 convenes to begin the canvass.

108 (i) Voted ballots submitted electronically are to be accepted if the ballot is received by the
109 official designated to supervise and conduct absentee voting no later than the close of polls on
110 election day: Provided, That for uniform services and overseas voters, the Secretary of State's
111 office shall enter into an agreement with the Federal Voting Assistance Program of the United
112 States Department of Defense to transmit the ballots to the county clerks at a time when two
113 individuals of opposite political parties are available to process the received ballots. For persons
114 casting absentee ballots electronically due to physical disability, the county clerk shall designate
115 two individuals of opposite political parties to process the received ballots in the manner required
116 by the particular electronic ballot marking tool or other electronic means of returning the electronic
117 absentee ballot.

118 (j) Ballots received after the proper time which cannot be accepted are to be placed
119 unopened in an envelope marked for the purpose and kept secure for 22 months following the
120 election, after which time they are to be destroyed without being opened.

121 (k) Absentee ballots which are hand delivered are to be accepted if they are received by
122 the official designated to supervise and conduct absentee voting no later than the day preceding

123 the election: Provided, That no person may hand deliver more than two absentee ballots in any
124 election and any person hand delivering an absentee ballot is required to certify that he or she
125 has not examined or altered the ballot. Any person who makes a false certification violates the
126 provisions of §3-9-1 et seq. of this code and is subject to those provisions.

127 (l) Upon receipt of the sealed envelope, the official designated to supervise and conduct
128 absentee voting shall:

129 (1) Enter onto the envelope any other required information;

130 (2) Enter the challenge, if any, to the ballot;

131 (3) Enter the required information into the permanent record of persons applying for and
132 voting an absentee ballot in person; and

133 (4) Place the sealed envelope into a ballot box that is secured by two locks with a key to
134 one lock kept by the president of the county commission and a key to the other lock kept by the
135 county clerk.

136 (m) Upon receipt of a ballot submitted electronically pursuant to subdivision (2), subsection
137 (f) of this section, the official designated to supervise and conduct absentee voting shall place the
138 ballot in an envelope marked "Absentee by Electronic Means" with the completed waiver when
139 appropriate: Provided, That no ballots are to be processed without the presence of two individuals
140 of opposite political parties.

141 (n) All ballots received electronically prior to the close of the polls on election day are to
142 be tabulated in the manner prescribed for tabulating absentee ballots submitted by mail to the
143 extent that those procedures are appropriate for the applicable voting system. The clerk of the
144 county commission shall keep a record of absentee ballots sent and received electronically.

145 (o) If any person, including any election official, mails or delivers an application for an
146 absentee ballot to any voter without the specific request of that voter, that person shall be guilty
147 of a felony and, upon conviction thereof, shall be fined not less than \$5,000 or imprisoned in a
148 state correctional facility for a period of not less than one year, or both fined and imprisoned.

NOTE: The purpose of this bill is to prohibit the delivery of unsolicited absentee ballot applications to any person who has not specifically requested one from the county clerk.

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