

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 4293**

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 absentee ballots; requiring applications for absentee ballots to be available at the office of  
3 the county clerk and online at the Secretary of State’s official website; permitting first  
4 responders to vote by electronic absentee ballot in certain emergency circumstances;  
5 defining “qualified first responder” and providing examples; providing for submittal and  
6 acceptance of qualified first responder absentee voting applications; providing for  
7 transmittal of ballots to qualified first responders; providing for processing of received  
8 electronic absentee ballots cast by qualified first responders; prohibiting an election official  
9 from providing an unsolicited application for absentee voting to any voter; prohibiting any  
10 person from providing more than 10 unsolicited applications for absentee voting to any  
11 voter; creating a misdemeanor penalty upon conviction for such prohibited activity; and  
12 providing exceptions.

*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. The voter shall complete and sign the application in his or her own handwriting or, if the  
6 voter is unable to complete the application because of illiteracy or physical disability, or, if the  
7 voter is a qualified first responder as defined in §3-3-1(c)(3) of this code:

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

10 (2) The person, if eligible to vote by electronic absentee ballot due to physical disability or  
11 is a qualified first responder as defined in §3-3-1(c)(3) of this code, may complete and verify the  
12 application by available electronic means prescribed by the Secretary of State.

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

16 (1) For persons eligible to vote an absentee ballot under the provisions of §3-3-1(b)(3) of  
17 this code, relating to absent uniformed services and overseas voters, not earlier than January 1  
18 of an election year or 84 days preceding the election, whichever is earlier, and not later than the  
19 sixth day preceding the election, which application is to, upon the voter's request, be accepted as  
20 an application for the ballots for all elections in the calendar year; and

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

24 (3) For qualified first responders as defined in §3-3-1(c)(3) of this code, not earlier than  
25 the 13th day preceding the election, and not later than 5:00 p.m. on the day before the election.

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

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

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

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

33 (4) The address to which a ballot is to be mailed is an address outside the county if the  
34 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-  
35 1(b)(3), or §3-3-1(b)(4) of this code;

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

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

42 (d) (1) If the official designated to supervise and conduct absentee voting determines that  
43 the required conditions have been met for voting an absentee ballot by mail, two representatives  
44 that are registered to vote with different political party affiliations shall sign their names in the  
45 places indicated on the back of the official ballot. If the official designated to supervise and conduct  
46 absentee voting determines the required conditions have not been met or has evidence that any  
47 of the information contained in the application is not true, the official shall give notice to the voter  
48 that the voter's absentee ballot will be challenged as provided in this article and shall enter that  
49 challenge.

50 (2) If the official designated to supervise and conduct electronic voting determines that a  
51 voter is eligible to submit an electronic ballot because the voter is an absent uniformed services  
52 voter or overseas voter or a person with a physical disability, or a qualified first responder as  
53 defined in §3-3-1(c)(3) of this code, the official designated to supervise absentee voting shall  
54 cause the absentee ballot to be transmitted electronically in the manner required for the electronic  
55 ballot marking tool or other electronic means.

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

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

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

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

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

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

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

73 (2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42  
74 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or is  
75 a qualified first responder as defined in §3-3-1(c)(3) of this code the official designated to  
76 supervise and conduct absentee voting shall transmit the ballot to the voter via mail, or  
77 electronically, as requested by the voter. If the voter does not designate a preference for  
78 transmittal, the clerk may select either method of transmittal for the ballot. If the ballot is  
79 transmitted electronically pursuant to this subdivision, the official designated to supervise and  
80 conduct absentee voting shall also transmit electronically:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

111 (i) Voted ballots submitted electronically are to be accepted if the ballot is received by the  
112 official designated to supervise and conduct absentee voting no later than the close of polls on  
113 election day: *Provided*, That for uniform services and overseas voters, the Secretary of State's  
114 office shall enter into an agreement with the Federal Voting Assistance Program of the United  
115 States Department of Defense to transmit the ballots to the county clerks at a time when two  
116 individuals of opposite political parties are available to process the received ballots. For persons  
117 casting absentee ballots electronically due to physical disability or by qualified first responders as  
118 defined in §3-3-1(c)(3) of this code, the county clerk shall designate two individuals of opposite  
119 political parties to process the received ballots in the manner required by the particular electronic  
120 ballot marking tool or other electronic means of returning the electronic absentee ballot.

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

124 (k) Absentee ballots which are hand delivered are to be accepted if they are received by  
125 the official designated to supervise and conduct absentee voting no later than the day preceding  
126 the election: *Provided*, That no person may hand deliver more than two absentee ballots in any  
127 election and any person hand delivering an absentee ballot is required to certify that he or she  
128 has not examined or altered the ballot. Any person who makes a false certification violates ~~the~~  
129 ~~provisions of~~ §3-9-1 *et seq.* of this code and is subject to those provisions.

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

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

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

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



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

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

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

148 (o) (1) If any election official knowingly and intentionally mails or delivers an application  
149 for an absentee ballot to any voter without the specific request of that voter, that person shall be  
150 guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than \$500 or  
151 imprisoned in a state correctional facility for a period of not more than six months, or both fined  
152 and imprisoned.

153 (2) If any person, not an election official, knowingly and intentionally mails or delivers more  
154 than 10 applications for an absentee ballot to a group of voters without the specific request of  
155 those voters, that person shall be guilty of a misdemeanor and, upon conviction thereof, shall be  
156 fined not more than \$500 or imprisoned in a state correctional facility for a period of not more than  
157 six months, 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.