

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

House Bill 4312

BY DELEGATES HOLSTEIN, HANNA, BRIDGES, TULLY,
BARNHART, MAYNOR, HONAKER, CROUSE AND B. WARD

[Passed February 24, 2022; in effect ninety days from passage.]

1 AN ACT to amend and reenact §3-3-1 and §3-3-5 of the Code of West Virginia, 1931, as
2 amended, all relating to permitting first responders to vote by electronic absentee ballot in
3 certain emergency circumstances; defining “qualified first responder” and providing
4 examples; providing for submittal and acceptance of qualified first responder absentee
5 voting applications; providing for transmittal of ballots to qualified first responders; and
6 providing for processing of received electronic absentee ballots cast by qualified first
7 responders.

Be it enacted by the Legislature of West Virginia:

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 vote an absentee ballot
2 during the period of early voting in person.

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

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

7 (A) Disability, illness, injury, or other medical reason;

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

9 (C) Incarceration or home detention: *Provided*, That the underlying conviction is not for a
10 crime which is a felony or a violation of §3-9-12, §3-9-13, or §3-9-16 of this code involving bribery
11 in an election;

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

14 (A) Personal or business travel;

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

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

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

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

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

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

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

33 (6) Any voter who is participating in the Address Confidentiality Program as established
34 by §48-28A-103 of this code.

35 (c) Registered voters and other qualified voters in the county are authorized to vote an
36 electronic absentee ballot in the following circumstances:

37 (1) The voter has a physical disability, as defined in §3-3-1a of this code;

38 (2) The voter is absent from the county throughout the period and available hours for
39 voting in person and is an absent uniformed services voter or overseas voter, as defined by 42
40 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986,
41 including members of the uniformed services on active duty, members of the merchant marine,

42 spouses and dependents of those members on active duty, and persons who reside outside the
43 United States and are qualified to vote in the last place in which the person was domiciled before
44 leaving the United States; or

45 (3) The voter is a qualified first responder called away on duty to respond to an emergency
46 outside the voter's county of residence, which prevents the voter from participating in the election
47 by in-person and mail-in absentee voting. For purposes of this section, "qualified first responder"
48 means a person with specialized training who arrives and provides aid at the scene of an
49 emergency, such as an accident, natural disaster, or act of terrorism. First responders typically
50 include emergency medical technicians, firefighters, law-enforcement officers, neighborhood
51 assistance officers, and paramedics.

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

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

58 (2) Any voter who resides in a nursing home within the county of residence and would be
59 otherwise unable to vote in person, providing the county commission has authorized the services
60 if the voter has resided in the nursing home for a period of less than 30 days;

61 (3) Any voter who becomes confined, on or after the 7th day preceding an election, to a
62 specific location within the county because of illness, injury, physical disability, immobility due to
63 advanced age, or another medical reason: *Provided*, That the county clerk may require a written
64 confirmation by a licensed physician, physician's assistant, or advanced practice registered nurse
65 that the voter meets the criteria of this subdivision before permitting such voter to vote an
66 emergency absentee ballot; and

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

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

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

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

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

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

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

23 (3) For qualified first responders as defined in §3-3-1(c)(3) of this code, not earlier than
24 the 13th day preceding the election, and not later than 5:00 p.m. on the day before 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 §3-3-1(b)(2)(A), §3-3-1(b)(2)(B), §3-3-1(b)(3), or §3-3-
34 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, or a qualified first responder as
52 defined in §3-3-1(c)(3) of this code, the official designated to supervise absentee voting shall
53 cause the absentee ballot to be transmitted electronically in the manner required for the electronic
54 ballot marking tool or other electronic means.

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

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

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

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

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

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

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

72 (2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42
73 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or is
74 a qualified first responder as defined in §3-3-1(c)(3) of this code the official designated to

75 supervise and conduct absentee voting shall transmit the ballot to the voter via mail, or
76 electronically, as requested by the voter. If the voter does not designate a preference for
77 transmittal, the clerk may select either method of transmittal for the ballot. If the ballot is
78 transmitted electronically pursuant to this subdivision, the official designated to supervise and
79 conduct absentee voting shall also transmit electronically:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

123 (k) Absentee ballots which are hand delivered are to be accepted if they are received by
124 the official designated to supervise and conduct absentee voting no later than the day preceding
125 the election: *Provided*, That no person may hand deliver more than two absentee ballots in any
126 election and any person hand delivering an absentee ballot is required to certify that he or she

127 has not examined or altered the ballot. Any person who makes a false certification violates §3-9-
128 1 *et seq.* of this code and is subject to those provisions.

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

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

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

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

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

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

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

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor