

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4312**

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

[Introduced January 21, 2022; referred to the  
Committee on the Judiciary]



1 A BILL to amend and reenact §3-3-1 and §3-3-5 of the Code of West Virginia, 1931, as amended,  
2 relating to permitting first responders to vote by electronic absentee ballot in certain  
3 emergency circumstances.

*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; ~~or~~

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:

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

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

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

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

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

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

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

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

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

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

31           (4) The address to which a ballot is to be mailed is an address outside the county if the  
32 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-  
33 1(b)(3), or §3-3-1(b)(4) of this code;

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

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

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

48           (2) If the official designated to supervise and conduct electronic voting determines that a  
49 voter is eligible to submit an electronic ballot because the voter is an absent uniformed services  
50 voter or overseas voter or a person with a physical disability, or a qualified first responder as  
51 defined in §3-3-1(c)(3) of this code, the official designated to supervise absentee voting shall  
52 cause the absentee ballot to be transmitted electronically in the manner required for the electronic  
53 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, or is  
73 a qualified first responder as defined in §3-3-1(c)(3) of this code the official designated to  
74 supervise and conduct absentee voting shall transmit the ballot to the voter via mail, or  
75 electronically, as requested by the voter. If the voter does not designate a preference for  
76 transmittal, the clerk may select either method of transmittal for the ballot. If the ballot is  
77 transmitted electronically pursuant to this subdivision, the official designated to supervise and  
78 conduct absentee voting shall also transmit electronically:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

104 (h) Absentee ballots received through the United States mail from persons eligible to vote  
105 an absentee ballot under ~~the provisions of~~ §3-3-1(b)(3) of this code, relating to uniform services

106 and overseas voters, are to be accepted if the ballot is received by the official designated to  
107 supervise and conduct absentee voting no later than the hour at which the board of canvassers  
108 convenes to begin the canvass.

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to allow first responders to vote by electronic absentee ballot in certain emergency circumstances.

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