

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3495

By Delegate Holstein

[Introduced February 14, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §3-2-6, §3-2-10, §3-2-13, §3-2-25, §3-2-32, and §3-2-34 of the Code
 2 of West Virginia, 1931, as amended; and to amend and reenact §3-3-3 and §3-3-9 of said
 3 code, all relating to general modifications to early voting procedures; registration by mail;
 4 voter registration services; unlawful registration or rejection of voter; alteration or
 5 destruction of records; early in-person voting; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-6. Time of registration application before an election.

1 (a) Voter registration before an election closes at 11:59 p. m. on the 21st day before the
 2 election or on the first day thereafter which is not a Saturday, Sunday or legal holiday.

3 (b) An application for voter registration, transfer of registration, change of name or change
 4 of political party affiliation submitted by an eligible voter by the close of voter registration is
 5 effective for any subsequent primary, general or special election if the following conditions are met:

6 (1) The application contains the information required by §3-3-5(c) of this code. Incomplete
 7 applications for registration containing information which are submitted within the required time
 8 may be corrected within four business days after the close of registration if the applicant provides
 9 the required information; and

10 (2) The application is received by the appropriate clerk of the county commission no later
 11 than the hour of the close of registration or is otherwise submitted by the following deadlines:

12 (A) If mailed, the application shall be addressed to the appropriate clerk of the county
 13 commission and is postmarked by the postal service no later than the date of the close of
 14 registration. If the postmark is missing or illegible, the application is presumed to have been mailed
 15 no later than the close of registration if it is received by the appropriate clerk of the county
 16 commission no later than the third day following the close of registration;

17 (B) If accepted by a designated agency or motor vehicle licensing office, the application is
 18 received by that agency or office no later than the close of registration;

19 (C) If accepted through a registration outreach program, the application is received by the
20 clerk, deputy clerk or registrar no later than the close of registration;

21 (D) If accepted through an approved electronic voter registration system, the application is
22 received by the clerk of the county commission or other entity designated by the Secretary of State
23 no later than ~~the close of business~~ 11:59 p. m. on the final day of registration; and

24 (3) The verification notice by the provisions of §3-2-16 of this code mailed to the voter at
25 the residence indicated on the application is not returned as undeliverable.

§3-2-10. Application for registration by mail.

1 (a) Any qualified person may apply to register, change, transfer or correct his or her voter
2 registration by mail. Application shall be made on a prescribed form as provided by §3-2-5 of this
3 code.

4 (b) To the extent possible, with funds allocated annually for such purpose, the Secretary of
5 State shall make state mail registration forms available for distribution through governmental and
6 private entities and organized voter registration programs. The Secretary of State shall make a
7 record of all requests by entities or organizations for 200 or more forms with a description of the
8 dates and locations in which the proposed registration drive is to be conducted. The Secretary of
9 State shall also require the entity or organization requesting the forms to provide contact
10 information on a form prescribed by the Secretary of State. The Secretary of State may limit the
11 distribution to a reasonable amount per group.

12 (c) The clerk of the county commission shall provide up to four mail registration forms to
13 any resident of the county upon request. To the extent possible with funds allocated annually for
14 the purpose, the clerk of the county commission shall make state mail registration forms available
15 for distribution through organized voter registration programs within the county. The clerk of the
16 county commission shall make a record of all requests by entities or organizations for ten or more
17 forms with a description of the dates and locations in which the proposed registration drive is to be
18 conducted. The clerk may limit the distribution to a reasonable amount per group.

19 (d) The applicant shall provide all required information and, only after completing the
20 information, sign the prescribed applicant's oath under penalty of perjury as provided in §3-2-36 of
21 this code. No person may alter or add any entry or make any mark which would alter any material
22 information on the voter registration application after the applicant has signed the oath: *Provided,*
23 That the clerk of the county commission may correct any entry upon the request of the applicant
24 provided the request is properly documented and the correction is dated and initialed by the clerk.

25 (e) Completed applications shall be mailed or delivered to the clerk of the county
26 commission of the county in which the voter resides. If a clerk receives a completed mail
27 application form from a voter whose residence address is located in another county, the clerk shall
28 forward that application within three days to the clerk of the county commission of the county of the
29 applicant's residence.

30 (f) Upon receipt of the application for registration by the appropriate clerk of the county
31 commission, the clerk shall:

32 (1) Attempt to establish whether the residence address given is within the boundaries of an
33 incorporated municipality and, if so, make the proper entry required for municipal residents to be
34 properly identified for municipal voter registration purposes; and

35 (2) Immediately begin the verification process required by the provisions of §3-2-16 of this
36 code.

37 (g) Any person who registers by mail pursuant to this section and who has not previously
38 voted in an election in the state shall be required to present the following forms of identification to
39 the Secretary of State or clerk of the county commission:

40 (1) In the case of an individual who votes in person, a current and valid photo identification;
41 or a copy of a current utility bill, bank statement, government check, paycheck or other
42 government document that shows the name and address of the voter;

43 (2) In the case of an individual who votes by mail, a copy of a current and valid photo
44 identification or a copy of a current utility bill, bank statement, government check, paycheck or

45 other government document that shows the name and address of the voter, submitted with the
46 ballot.

47 (h) An individual who desires to vote in person or by mail, but who does not meet the
48 requirements of subsection (g) of this section, may cast a provisional ballot.

49 (i) Subsection (g) of this section does not apply in the case of a person:

50 (1) Who registers to vote by mail under 42 U.S.C. §1973gg-4, *et seq.*, and submits as part
51 of his or her registration either a copy of a current and valid photo identification or a copy of a
52 current utility bill, bank statement, government check, paycheck or government document that
53 shows the name and address of the voter;

54 (2) (A) Who registers to vote by mail under 42 U.S.C. §1973gg-4, *et seq.*, and submits with
55 his or her registration either a driver's license number or at least the last four digits of the
56 individual's social security number; and (B) with respect to whom the Secretary of State or clerk of
57 the county commission matches the information submitted under paragraph (A) of this subdivision
58 with an existing state identification record bearing the same number, name and date of birth as
59 provided in the registration; or

60 (3) Who is: (A) Entitled to vote by absentee ballot under 42 U.S.C. §1973ff-1, *et seq.*, the
61 Uniformed and Overseas Citizens Absentee Voting Act; (B) provided the right to vote otherwise
62 than in person under 42 U.S.C. §1973ee-1(b)(2)(B)(ii); or 25 (iii), section 3(b)(2)(B)(ii) of the Voting
63 Accessibility for the Elderly and Handicapped Act; (C) entitled to vote otherwise than in person
64 under any other federal law: *Provided*, That any person who has applied for an absentee ballot
65 pursuant to the provisions of §3-3-1(b)(1) of this code; §3-3-1(c)(2) (B) of this code; §3-3-1 (3) of
66 this code; or §3-3-1(c) of his code may not have his or her ballot in that election challenged for
67 failure to appear in person or for failure to present identification.

68 (j) Any person who submits a state mail voter registration application to the clerk of the
69 county commission in the county in which he or she is currently registered for the purpose of
70 entering a change of address within the county, making a change of party affiliation or recording a

71 change of legal name shall may not be required to make his or her first vote in person or to present
72 identification or proof of age.

73 (k) On and after July 1, 2006, any person who agrees to mail or to deliver a signed voter
74 registration application to the Secretary of State or the clerk of the county commission and who
75 intentionally interferes with the applicant's effort to register either by destroying the application or
76 by failing to mail or to deliver the application in a timely manner is guilty of a misdemeanor and,
77 upon conviction thereof, shall be fined not more than \$1,000, or confined in a jail for not more than
78 one year, or both fined and confined. For purposes of this subsection, the mailing or delivery of an
79 application is timely if it is mailed or delivered within 15 days after the applicant signs the
80 application or in accordance with the provisions of §3-2-1 et seq. of this code for processing before
81 the closing of the registration records for the pending election, whichever comes first.

82 (l) On or after July 1, 2006, any person who intentionally solicits multiple registrations from
83 any one person or who intentionally falsifies a registration application is guilty of a misdemeanor
84 and, upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more
85 than one year, or both fined and confined.

86 (m) On or after July 1, 2023, any person who intentionally coerces or offers payment in
87 exchange for a registration application from any one person is guilty of a misdemeanor and, upon
88 conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than one
89 year, or both fined and confined.

§3-2-13. Agencies to provide voter registration services; designation of responsible employees; forms; prohibitions; confidentiality.

1 (a) For the purposes of this article, "agency" means a department, division or office of state
2 or local government, or a program supported by state funds, which is designated under this
3 section to provide voter registration services, but does not include departments, divisions or
4 offices required by other sections of this article to provide voter registration services.

5 (b) The following agencies shall provide voter registration services pursuant to the

6 provisions of this article:

7 (1) Those state agencies which administer or provide services under the food stamp
8 program, the Aid to Families with Dependent Children (AFDC) program, the Women, Infants and
9 Children (WIC) program and the Medicaid program;

10 (2) Those state-funded agencies primarily engaged in providing services to persons with
11 disabilities;

12 (3) County marriage license offices;

13 (4) Armed services recruitment offices, as required by federal law; and

14 (5) The Department of Revenue, if it provides a check box on any form provided to the
15 general public authorizing the Department of Revenue to request a voter registration application
16 by mail from the Secretary of State on behalf of the applicant.

17 (c) No later than October 1, 1994, the Secretary of State shall, in conjunction with a
18 designated representative of each of the appropriate state agencies, review those programs and
19 offices established and operating with state funds which administer or provide public assistance or
20 services to persons with disabilities and shall promulgate an emergency rule pursuant to the
21 provisions of chapter 29A of this code designating the specific programs and offices required to
22 provide voter registration services in order to comply with the requirements of this section and the
23 requirements of the National Voter Registration Act of 1993 (42 U.S.C. §1973gg, *et seq.*). The
24 offices and programs so designated shall begin providing voter registration services on January 1,
25 1995.

26 (d) In each even-numbered year, the Secretary of State shall, in conjunction with the
27 designated representatives of the appropriate state agencies, perform the review as required by
28 the provisions of subsection (c) of this section. The Secretary of State shall periodically review and
29 revise, if necessary, the legislative rule designating the specific agencies required to provide voter
30 registration services.

31 (e) Each state agency required to provide services pursuant to the provisions of this article

32 shall designate a current employee of that agency to serve as a state supervisor to administer
33 voter registration services required in all programs under the agency's jurisdiction. Each state
34 supervisor is responsible for coordination with the Secretary of State, overall operation of the
35 program in conjunction with services within the agency, designation and supervision of local
36 coordinators and for the review of any complaints filed against employees relating to voter
37 registration as provided in this chapter.

38 (f) The state supervisor shall designate a current employee as a local coordinator for voter
39 registration services for each office or program delivery center who shall be responsible for the
40 proper conduct of voter registration services, timely return of completed voter registration
41 applications, proper handling of declinations and reporting requirements. Notice of the designation
42 of these persons shall be made upon request of the Secretary of State and within five days
43 following any change of designation. Each local coordinator shall receive biannual training
44 provided by the Secretary of State.

45 (g) The registration application forms used for agency registration shall be issued pursuant
46 to the provisions of §3-2-5 of this code.

47 (h) The Secretary of State, in conjunction with those agencies designated to provide voter
48 registration services pursuant to the provisions of this section, shall prescribe the form or portion of
49 the appropriate agency form required by the provisions of 42 U.S.C. §1973gg, *et seq.*, section
50 7(a)(6)(B) of the National Voter Registration Act of 1993, containing the required notices and
51 providing boxes for the applicant to check to indicate whether the applicant would like to register or
52 decline to register to vote. The form or portion of the form is designated the "declination form".

53 (i) A person who provides voter registration services may not:

54 (1) Seek to influence an applicant's political preference or party registration;

55 (2) Display to any applicant any political preference or party allegiance;

56 (3) Make any statement to an applicant or take any action the purpose or effect of which is
57 to discourage the applicant from registering to vote; or

58 (4) Make any statement to an applicant or take any action the purpose or effect of which is
59 to lead the applicant to believe that a decision to register or not to register has any bearing on the
60 availability of services or benefits.

61 (5) Intentionally coerce or offer payment in exchange for a registration application from any
62 one person.

63 (j) No information relating to the identity of a voter registration agency through which any
64 particular voter is registered or to a declination to register to vote in connection with an application
65 made at any designated agency may be used for any purpose other than voter registration.

**§3-2-25. Systematic purging program for removal of ineligible voters from active voter
registration files; comparison of data records; confirmation notices; public
inspection list.**

1 (a) The systematic purging program provided in this section shall begin no earlier than
2 October 1 of each odd-numbered year and shall be completed no later than February 1 of the
3 following year. The clerk of the county commission shall transmit or mail to the Secretary of State a
4 certification that the systematic purging program has been completed and all voters identified as
5 no longer eligible to vote have been canceled in the statewide voter registration database in
6 accordance with the law no later than February 15 in the year in which the purging program is
7 completed.

8 (b) The Secretary of State shall provide for the comparison of data records of all counties.
9 The Secretary of State shall, based on the comparison, prepare a list for each county which shall
10 include the voter registration record for each voter shown on that county's list who appears to have
11 registered or to have updated a voter registration in another county at a subsequent date. The
12 resulting lists shall be returned to the appropriate county and the clerk of the county commission
13 shall proceed with the confirmation procedure for those voters as prescribed in §3-2-26 of this
14 code.

15 (c) The Secretary of State may provide for the comparison of data records of counties with

16 the data records of the Division of Motor Vehicles, the registrar of vital statistics and with the data
17 records of any other state agency which maintains records of residents of the state, if the
18 procedure is practical and the agency agrees to participate. Any resulting information regarding
19 potentially ineligible voters shall be returned to the appropriate county and the clerk of the county
20 commission shall proceed with the confirmation procedure as prescribed in section twenty-six of
21 this article.

22 (d) The records of all voters not identified pursuant to the procedures set forth in
23 subsections (b) and (c) of this section shall be combined for comparison with United States Postal
24 Service change of address information, as described in section 8(c)(A) of the National Voter
25 Registration Act of 1993 (42 U. S. C. §1973gg, *et seq.*). The Secretary of State shall contract with
26 an authorized vendor of the United States Postal Service to perform the comparison. The cost of
27 the change of address comparison procedure shall be paid for from the combined voter
28 registration and licensing fund established in §3-2-12 of this code and the cost of the confirmation
29 notices, labels and postage shall be paid for by the counties.

30 (e) The Secretary of State shall return to each county the identified matches of the county
31 voter registration records and the postal service change of address records.

32 (1) When the change of address information indicates the voter has moved to a new
33 address within the county, the clerk of the county commission shall enter the new address on the
34 voter record and assign the proper precinct.

35 (2) The clerk of the county commission shall then mail to each voter who appears to have
36 moved from the residence address shown on the registration records a confirmation notice
37 pursuant to §3-2-26 of this code and of section 8(d)(2) of the National Voter Registration Act of
38 1993 (42 U. S. C. §1973gg, *et seq.*). The notice shall be mailed, no later than December 31, to the
39 new address provided by the postal service records or to the old address if a new address is not
40 available.

41 (f) The clerk of the county commission shall indicate in the statewide voter registration

42 database the name and address of each voter to whom a confirmation notice was mailed and the
43 date on which the notice was mailed.

44 (g) Upon receipt of any response or returned mailing sent pursuant to the provisions of
45 subsection (e) of this section, the clerk shall immediately enter the date and type of response
46 received in the statewide voter registration database and shall then proceed in accordance with
47 the provisions of §3-3-26 of this code.

48 (h) For purposes of complying with the record keeping and public inspection requirements
49 of the National Voter Registration Act of 1993 (42 U. S. C. §1973gg, *et seq.*), and with the
50 provisions of §3-2-27 of this code, the public inspection lists shall be maintained either in printed
51 form kept in a binder prepared for such purpose and available for public inspection during regular
52 business hours at the office of the clerk of the county commission or in read-only data format
53 available for public inspection on computer terminals set aside and available for regular use by the
54 general public. Information concerning whether or not each person has responded to the notice
55 shall be entered into the statewide voter registration database upon receipt and shall be available
56 for public inspection as of the date the information is received.

57 (i) Any voter to whom a confirmation notice was mailed pursuant to the provisions of
58 subsection (e) of this section who fails to respond to the notice or to update his or her voter
59 registration address by February 1 immediately following the completion of the program, shall be
60 designated inactive in the statewide voter registration database. Any voter designated inactive
61 shall be required to affirm his or her current residence address, on a form prescribed by the
62 Secretary of State, upon appearing at the polls to vote.

63 (j) In addition to the preceding purging procedures, all counties using the change of
64 address information of the United States Postal Service shall also, once each four years during the
65 period established for systematic purging in the year following a presidential election year, conduct
66 the same procedure by mailing a confirmation notice to those persons not identified as potentially
67 ineligible through the change of address comparison procedure but who have not updated their

68 voter registration records and have not voted in any election during the preceding four calendar
69 years. The purpose of this additional systematic confirmation procedure shall be to identify those
70 voters who may have moved without filing a forwarding address, moved with a forwarding address
71 under another name, died in a another county or state so that the certificate of death was not
72 returned to the clerk of the county commission, or who otherwise have become ineligible.

§3-2-32. Unlawful registration or rejection of voter; penalties.

1 (a) Any registrar or clerk of the county commission who knowingly registers or permits to
2 be registered a person not lawfully entitled to be registered, or who knowingly refuses to register a
3 person entitled to be registered, or who knowingly assists in preventing such person from being
4 registered, or who inserts or intentionally permits to be inserted a name or other entry in any
5 registration form or file, or intentionally coerces or offers payment in exchange for an unlawful
6 registration application from any one person, knowing or having reason to know that the entry
7 should not be made, shall be guilty of a misdemeanor and, upon conviction, shall be fined not
8 more than one \$1,000 or confined in the county jail for not more than one year, or both, in the
9 discretion of the court.

10 (b) Any person who registers or applies to be registered, or persuades or assists another to
11 be registered, or who applies for a change of residence address, knowing or having reason to
12 know that he or she is not entitled to be registered or to have his or her residence address changed
13 on the registration record, or any person who declares an address known not to be his or her legal
14 residence or who impersonates another in an application for registration, or intentionally coerces
15 or offers payment in exchange for an unlawful registration application from any one person, shall
16 be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or confined
17 in the county jail for not more than one year, or both, fined and confined. ~~in the discretion of the~~
18 ~~court~~

§3-2-34. Alteration or destruction of records; penalties.

1 (a) Any person who wrongfully and intentionally inserts, ~~or~~ offers payment in exchange for,

2 or permits to be wrongfully inserted any name or material entry on any registration form, file or any
 3 other record in connection with registration, or who wrongfully alters or destroys an entry which
 4 has been duly made, or who wrongfully takes and removes any such registration form, or any
 5 other record authorized or required in connection with registration from the custody of any person
 6 having lawful charge thereof, shall be guilty of a misdemeanor and, upon conviction, shall be fined
 7 not more than \$1,000 or confined in the county jail for not more than one year, or both, in the
 8 discretion of the court.

9 (b) Any person, in the absence of specific authority provided under the provisions of this
 10 article, who destroys or attempts to destroy any registration document or record, or who removes
 11 or attempts to remove such registration document or record, shall be guilty of a misdemeanor and,
 12 upon conviction, shall be fined not less than \$100 nor more than \$1,000 or confined in the county
 13 jail for not more than one year, or both, fined and confined. ~~in the discretion of the court~~

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-3. Early voting in person.

1 (a) The voting period for early in-person voting is to be conducted during regular business
 2 hours beginning on the thirteenth day before the election and continuing through the third day
 3 before the election. Additionally, early in-person voting is to be available from 9:00 a.m. to 5:00
 4 p.m. on Saturdays during the early voting period.

5 (b) Any person desiring to vote during the period of early in-person voting shall, upon
 6 entering the election room, clearly state his or her name and residence to the official or
 7 representative designated to supervise and conduct ~~absentee~~ early in-person voting. If that
 8 person is found to be duly registered as a voter in the precinct of his or her residence, he or she is
 9 required to sign his or her name in the space marked "signature of voter" on the pollbook. If the
 10 voter is unable to sign his or her name due to illiteracy or physical disability, the person assisting
 11 the voter and witnessing the mark of the voter shall sign his or her name in the space provided. No
 12 ballot may be given to the person until he or she signs his or her name on the pollbook.

13 (c) When the voter's signature or mark is properly on the pollbook, two qualified
14 representatives of the official designated to supervise and conduct ~~absentee~~ early in-person
15 voting shall sign their names in the places indicated on the back of the official ballot.

16 (d) If the official designated to supervise and conduct absentee voting determines that the
17 voter is not properly registered in the precinct where he or she resides, the clerk or his or her
18 representative shall challenge the voter's absentee ballot as provided in this article.

19 (e) The official designated to supervise and conduct ~~absentee~~ early in-person voting shall
20 provide each person voting an absentee ballot in person the following items to be printed as
21 prescribed by the Secretary of State:

22 (1) In counties using paper ballots, one of each type of official absentee ballot the voter is
23 eligible to vote, prepared according to law;

24 (2) In counties using punch card systems, one of each type of official absentee ballot the
25 voter is eligible to vote, prepared according to law, and a gray secrecy envelope;

26 (3) In counties using optical scan systems, one of each type of official absentee ballot the
27 voter is eligible to vote, prepared according to law, and a secrecy sleeve; or

28 (4) For direct recording election systems, access to the voting equipment in the voting
29 booth.

30 (f) The voter shall enter the voting booth alone and there mark the ballot: *Provided*, That
31 the voter may have assistance in voting according to the provisions of section four of this article.
32 After the voter has voted the ballot or ballots, the ~~absentee~~ early in-person voter shall: Place the
33 ballot or ballots in the gray secrecy envelope and return the ballot or ballots to the official
34 designated to supervise and conduct the ~~absentee~~ early in-person voting: *Provided, however*,
35 That in direct recording election systems, once the voter has cast his or her ballot, the voter shall
36 exit the polling place.

37 (g) Upon receipt of the voted ballot, representatives of the official designated to supervise
38 and conduct the ~~absentee~~ early in-person voting shall:

39 (1) Remove the ballot stub;

40 (2) Place punch card ballots and paper ballots into one envelope which shall not have any
41 marks except the precinct number and seal the envelope; and

42 (3) Place ballots for all voting systems into a ballot box that is secured by two locks with a
43 key to one lock kept by the president of the county commission and a key to the other lock kept by
44 the county clerk.

**§3-3-9. Voting in person after having received and after having voted an absent voter's
ballot; penalties.**

1 (a) Any person who has applied for and received an ~~absent voter's~~ absentee ballot but has
2 not voted and returned the same to the official designated to supervise and conduct absentee
3 voting may vote in person at the polls on election day provided he or she returns the ~~absent voter's~~
4 absentee ballot to the election commissioners at the polling place. Upon return of the ~~absent~~
5 ~~voter's~~ absentee ballot the election commissioners shall destroy the ballot in the presence of the
6 voter, and one of the poll clerks shall make a notation of this fact as directed by instructions issued
7 by the Secretary of State. ~~In the event~~ If the person does not return the ~~absent voter's~~ absentee
8 ballot, he or she will have his or her vote challenged by one or more of the election commissioners
9 or poll clerks.

10 (b) No person who has voted an ~~absent voter's~~ absentee ballot may vote in person on the
11 day of the election. If any person, knowingly and willfully violates subsection (b) of this article and
12 casts a vote in person on the day of the election after having voted an absentee ballot, then that
13 person shall be guilty of a felony and, on conviction thereof, shall be fined not more than \$10,000
14 or imprisoned in a state correctional facility not less than one year but not more than 10 years, or
15 both fined and imprisoned.

NOTE: The purpose of this bill is to make general modifications to early voting procedures; registration by mail; voter registration services; unlawful registration or rejection of voter; alteration or destruction of records; early in person voting; and criminal penalties.

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