

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5125**

By Delegates Kump, Horst, C. Pritt, Phillips, Ridenour,

Mallow, Hite, Petitto, Householder, Kimble, and

Maynor

[Introduced January 25, 2024; 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 the requiring absentee ballots to be received by the time the polls close on election day.

*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 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 her  
8 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, or  
14 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 of  
17 an election year or 84 days preceding the election, whichever is earlier, and not later than the sixth  
18 day preceding the election, which application is to, upon the voter's request, be accepted as an  
19 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 the  
24 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 that  
40 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 of  
46 the information contained in the application is not true, the official shall give notice to the voter that  
47 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 to  
64 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 a

74 qualified first responder as defined in §3-3-1(c)(3) of this code the official designated to supervise  
75 and conduct absentee voting shall transmit the ballot to the voter via mail, or electronically, as  
76 requested by the voter. If the voter does not designate a preference for transmittal, the clerk may  
77 select either method of transmittal for the ballot. If the ballot is transmitted electronically pursuant  
78 to this subdivision, the official designated to supervise and conduct absentee voting shall also  
79 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 or  
84 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, along  
96 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 before the poles close on 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.~~ when the polls close on election day.

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.~~ when the polls close on election day.

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 has  
127 not examined or altered the ballot. Any person who makes a false certification violates §3-9-1 *et*  
128 *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 be  
144 tabulated in the manner prescribed for tabulating absentee ballots submitted by mail to the extent  
145 that those procedures are appropriate for the applicable voting system. The clerk of the county  
146 commission shall keep a record of absentee ballots sent and received electronically.

NOTE: The purpose of this bill is to require absentee ballots to be received by the time the  
polls close on election day.

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