

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5129

By Delegates Kump, Kimble, C. Pritt, Phillips, Horst,
Ridenour, Hite, Chiarelli, DeVault, Householder, and
Mallow

[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, related to
 2 banning the unsolicited distribution of absentee applications by third parties and election
 3 officials.

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 (3) There shall be a ban on the provision of absentee voting applications from third parties
 13 and election officials not specifically identified in this article.

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

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

21 application for the ballots for all elections in the calendar year; and

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

25 (3) For qualified first responders as defined in §3-3-1(c)(3) of this code, not earlier than the
26 13th day preceding the election, and not later than 5:00 p.m. on the day before the election.

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

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

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

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

34 (4) The address to which a ballot is to be mailed is an address outside the county if the
35 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-
36 1(b)(4) of this code;

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

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

43 (d)(1) If the official designated to supervise and conduct absentee voting determines that
44 the required conditions have been met for voting an absentee ballot by mail, two representatives
45 that are registered to vote with different political party affiliations shall sign their names in the
46 places indicated on the back of the official ballot. If the official designated to supervise and conduct

47 absentee voting determines the required conditions have not been met or has evidence that any of
48 the information contained in the application is not true, the official shall give notice to the voter that
49 the voter's absentee ballot will be challenged as provided in this article and shall enter that
50 challenge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to ban the unsolicited distribution of absentee applications

by third parties and election officials.

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