

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 4238**

5 (By Delegates Poore, Marshall, Fleischauer  
6 and Boggs)

7 (By request of the Secretary of State)

8 [Passed March 6, 2012; in effect ninety days from passage.]

9

10 AN ACT to amend and reenact §3-3-1, §3-3-2 and §3-3-2b of the Code  
11 of West Virginia, 1931, as amended, relating to providing  
12 absentee ballots to participants of the Address  
13 Confidentiality Program; authorizing program participants to  
14 vote an absentee ballot by mail; authorizing the placement of  
15 program participants on special absentee voting list;  
16 describing duties of the office of the Secretary of State and  
17 county officials designated to supervise and conduct absentee  
18 voting; and providing for the removal of program participants  
19 from the special absentee voting list.

20 *Be it enacted by the Legislature of West Virginia:*

21 That §3-3-1, §3-3-2 and §3-3-2b of the Code of West Virginia,  
22 1931, as amended, be amended and reenacted, to read as follows:

23 **ARTICLE 3. VOTING BY ABSENTEES.**

24 **§3-3-1. Persons eligible to vote absentee ballots.**

1 (a) All registered and other qualified voters of the county  
2 may vote an absentee ballot during the period of early voting in  
3 person.

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

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

10 (A) Illness, injury or other medical reason;

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

13 (C) Incarceration or home detention: *Provided*, That the  
14 underlying conviction is not for a crime which is a felony or a  
15 violation of section twelve, thirteen or sixteen, article nine of  
16 this chapter involving bribery in an election;

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

19 (A) Personal or business travel;

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

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

24 (3) Any voter absent from the county throughout the period and

1 available hours for voting in person and who is an absent uniformed  
2 services voter or overseas voter, as defined by 42 U.S.C. §1973, et  
3 seq., the Uniformed and Overseas Citizens Absentee Voting Act of  
4 1986, including members of the uniformed services on active duty,  
5 members of the merchant marine, spouses and dependents of those  
6 members on active duty and persons who reside outside the United  
7 States and are qualified to vote in the last place in which the  
8 person was domiciled before leaving the United States;

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

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

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

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

20 (6) Any voter who is participating in the Address  
21 Confidentiality Program as established by section one hundred  
22 three, article twenty-eight-a, chapter forty-eight of this code.

23 (c) Registered voters and other qualified voters in the county  
24 may, in the following circumstances, vote an emergency absentee

1 ballot, subject to the availability of the services as provided in  
2 this article:

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

7 (2) Any voter who resides in a nursing home within the county  
8 of residence and would be otherwise unable to vote in person,  
9 providing the county commission has authorized the services if the  
10 voter has resided in the nursing home for a period of less than  
11 thirty days; and

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

16 **§3-3-2. Authority to conduct absentee voting; absentee voting**  
17 **application; form.**

18 (a) Absentee voting is to be supervised and conducted by the  
19 proper official for the political division in which the election is  
20 held, in conjunction with the ballot commissioners appointed from  
21 each political party, as follows:

22 (1) For any election held throughout the county, within a  
23 political subdivision or territory other than a municipality, or  
24 within a municipality when the municipal election is conducted in

1 conjunction with a county election, the clerk of the county  
2 commission; or

3       (2) The municipal recorder or other officer authorized by  
4 charter or ordinance provisions to conduct absentee voting, for any  
5 election held entirely within the municipality, or in the case of  
6 annexation elections, within the area affected. The terms "clerk"  
7 or "clerk of the county commission" or "official designated to  
8 supervise and conduct absentee voting" used elsewhere in this  
9 article means municipal recorder or other officer in the case of  
10 municipal elections.

11       (b) A person authorized and desiring to vote a mail-in  
12 absentee ballot in any primary, general or special election is to  
13 make application in writing in the proper form to the proper  
14 official as follows:

15       (1) The completed application is to be on a form prescribed by  
16 the Secretary of State and is to contain the name, date of birth  
17 and political affiliation of the voter, residence address within  
18 the county, the address to which the ballot is to be mailed, the  
19 authorized reason, if any, for which the absentee ballot is  
20 requested and, if the reason is illness or hospitalization, the  
21 name and telephone number of the attending physician, the signature  
22 of the voter to a declaration made under the penalties for false  
23 swearing as provided in section three, article nine of this chapter  
24 that the statements and declarations contained in the application

1 are true, any additional information which the voter is required to  
2 supply, any affidavit which may be required and an indication as to  
3 whether it is an application for voting in person or by mail; or

4       (2) For any person authorized to vote an absentee ballot under  
5 the provisions of 42 U.S.C. §1973, *et seq.*, the Uniformed and  
6 Overseas Citizens Absentee Voting Act of 1986, the completed  
7 application may be on the federal postcard application for absentee  
8 ballot form issued under authority of that act, submitted by mail  
9 or electronically;

10       (3) For any person unable to obtain the official form for  
11 absentee balloting at a reasonable time before the deadline for an  
12 application for an absentee ballot by mail is to be received by the  
13 proper official, the completed application may be in a form set out  
14 by the voter, provided all information required to meet the  
15 provisions of this article is set forth and the application is  
16 signed by the voter requesting the ballot; or

17       (4) A person authorized to vote an absentee ballot who is  
18 participating in the Address Confidentiality Program as established  
19 by section one hundred three, article twenty-eight-a, chapter  
20 forty-eight of this code, may apply to the program manager within  
21 the office of the Secretary of State to vote a mail-in absentee  
22 ballot. The program manager will notify the designated county  
23 contact to coordinate the application and the provision of an  
24 absentee ballot to the program participant.

1 **§3-3-2b. Special absentee voting list.**

2 (a) Any person who is registered and otherwise qualified to  
3 vote and who is permanently and totally physically disabled and who  
4 is unable to vote in person at the polls in an election may apply  
5 to the official designated to supervise and conduct absentee voting  
6 for placement on the special absentee voting list.

7 (b) Any person who is registered and otherwise qualified to  
8 vote and who is participating in the Address Confidentiality  
9 Program as established by section one hundred three, article  
10 twenty-eight-a, chapter forty-eight of this code, may apply to the  
11 program manager within the office of the Secretary of State for  
12 placement on the special absentee voting list. The program manager  
13 will notify the designated county contact to coordinate the  
14 provision of an absentee ballot to the program participant.

15 (c) The application is to be on a form prescribed by the  
16 Secretary of State which is to include:

17 (1) The voter's name and signature,

18 (2) Residence address unless the applicant is a participant in  
19 the Address Confidentiality Program as established by section one  
20 hundred three, article twenty-eight-a, chapter forty-eight of this  
21 code, and

22 (3) (A) A statement that the voter is permanently and totally  
23 physically disabled and would be unable to vote in person at the  
24 polls in any election, a description of the nature of that

1 disability, and a statement signed by a physician to that effect;  
2 or

3 (B) a statement that the voter is a program participant in the  
4 Address Confidentiality Program.

5 (d) Upon receipt of a properly completed application, the  
6 official designated to supervise and conduct absentee voting shall  
7 enter the name on the special absentee voting list, which is to be  
8 maintained in a secure and permanent record. The person's name will  
9 remain active on the list until: (1) The person requests in writing  
10 that his or her name be removed; (2) the person removes his or her  
11 residence from the county, is purged from the voter registration  
12 books or otherwise becomes ineligible to vote; (3) a ballot mailed  
13 to the address provided on the application is returned  
14 undeliverable by the United States postal service; (4) the death of  
15 the person; or (5) in the case of a Address Confidentiality Program  
16 participant, withdrawal or removal from that program.

17 (e) The official designated to supervise and conduct absentee  
18 voting shall mail an absentee ballot by mail to each person active  
19 on the special absentee voting list due to disability not later  
20 than forty-six days before each election. The Address  
21 Confidentiality Program manager shall, in coordination with the  
22 designated county contact, mail to each person on the special  
23 absentee voting list due to participation in the Address  
24 Confidentiality Program an absentee ballot by mail not later than

1 forty-six days before each election.

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