

COMMITTEE SUBSTITUTE

FOR

H. B. 4238

(BY DELEGATES POORE, MARSHALL,
FLEISCHAUER AND BOGGS)
[BY REQUEST OF THE SECRETARY OF STATE]

(Originating in the Committee on the Judiciary)
[January 24, 2012]

A BILL to amend and reenact §3-3-1, §3-3-2 and §3-3-2b of the Code of West Virginia, 1931, as amended, relating to the provision of absentee ballots to participants of the Address Confidentiality Program; authorizing program participants to vote an absentee ballot by mail; authorizing the placement of program participants on special absentee voting list; describing duties of the office of the Secretary of State and county officials designated to supervise and conduct absentee voting; and providing for the removal of program participants from the special absentee voting list.

Be it enacted by the Legislature of West Virginia:

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

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
2 may vote an absentee ballot during the period of early voting
3 in person.

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

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

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

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

13 (C) Incarceration or home detention: *Provided*, That the
14 underlying conviction is not for a crime which is a felony or

15 a violation of section twelve, thirteen or sixteen, article nine
16 of this chapter involving bribery in an election;

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

20 (A) Personal or business travel;

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

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

26 (3) Any voter absent from the county throughout the
27 period and available hours for voting in person and who is an
28 absent uniformed services voter or overseas voter, as defined
29 by 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas
30 Citizens Absentee Voting Act of 1986, including members of
31 the uniformed services on active duty, members of the
32 merchant marine, spouses and dependents of those members
33 on active duty and persons who reside outside the United

34 States and are qualified to vote in the last place in which the
35 person was domiciled before leaving the United States;

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

39 (A) Serving as an elected or appointed federal or state
40 officer; or

41 (B) Serving in any other documented employment
42 assignment of specific duration of four years or less; ~~and~~

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

47 (6) Any voter who is participating in the Address
48 Confidentiality Program as established by section one
49 hundred ten, article twenty-eight-a, chapter forty-eight of this
50 code.

51 (c) Registered voters and other qualified voters in the
52 county may, in the following circumstances, vote an

53 emergency absentee ballot, subject to the availability of the
54 services as provided in this article:

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

59 (2) Any voter who resides in a nursing home within the
60 county of residence and would be otherwise unable to vote in
61 person, providing the county commission has authorized the
62 services if the voter has resided in the nursing home for a
63 period of less than thirty days; and

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

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

1 (a) Absentee voting is to be supervised and conducted by
2 the proper official for the political division in which the

3 election is held, in conjunction with the ballot commissioners
4 appointed from each political party, as follows:

5 (1) For any election held throughout the county, within
6 a political subdivision or territory other than a municipality,
7 or within a municipality when the municipal election is
8 conducted in conjunction with a county election, the clerk of
9 the county commission; or

10 (2) The municipal recorder or other officer authorized by
11 charter or ordinance provisions to conduct absentee voting,
12 for any election held entirely within the municipality, or in
13 the case of annexation elections, within the area affected.
14 The terms "clerk" or "clerk of the county commission" or
15 "official designated to supervise and conduct absentee
16 voting" used elsewhere in this article means municipal
17 recorder or other officer in the case of municipal elections.

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

22 (1) The completed application is to be on a form
23 prescribed by the Secretary of State and is to contain the
24 name, date of birth and political affiliation of the voter,
25 residence address within the county, the address to which the
26 ballot is to be mailed, the authorized reason, if any, for which
27 the absentee ballot is requested and, if the reason is illness or
28 hospitalization, the name and telephone number of the
29 attending physician, the signature of the voter to a declaration
30 made under the penalties for false swearing as provided in
31 section three, article nine of this chapter that the statements
32 and declarations contained in the application are true, any
33 additional information which the voter is required to supply,
34 any affidavit which may be required and an indication as to
35 whether it is an application for voting in person or by mail;
36 or

37 (2) For any person authorized to vote an absentee ballot
38 under the provisions of 42 U.S.C. §1973, *et seq.*, the
39 Uniformed and Overseas Citizens Absentee Voting Act of
40 1986, the completed application may be on the federal

41 postcard application for absentee ballot form issued under
42 authority of that act, submitted by mail or electronically; or

43 (3) For any person unable to obtain the official form for
44 absentee balloting at a reasonable time before the deadline
45 for an application for an absentee ballot by mail is to be
46 received by the proper official, the completed application
47 may be in a form set out by the voter, provided all
48 information required to meet the provisions of this article is
49 set forth and the application is signed by the voter requesting
50 the ballot; or

51 (4) A person authorized to vote an absentee ballot who is
52 participating in the Address Confidentiality Program as
53 established by section one hundred ten, article twenty-eight-
54 a, chapter forty-eight of this code, may apply to the program
55 manager within the office of the Secretary of State to vote a
56 mail-in absentee ballot. The program manager will notify the
57 designated county contact to coordinate the application and
58 the provision of an absentee ballot to the program participant.

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

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

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

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

18 (1) the voter's name and signature,

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

23 (3) (A) a statement that the voter is permanently and
24 totally physically disabled and would be unable to vote in
25 person at the polls in any election, a description of the nature
26 of that disability, and a statement signed by a physician to
27 that effect; or

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

30 (⌘) (d) Upon receipt of a properly completed application,
31 the official designated to supervise and conduct absentee
32 voting shall enter the name on the special absentee voting
33 list, which is to be maintained in a secure and permanent
34 record. The person's name will remain active on the list until:

35 (1) The person requests in writing that his or her name be
36 removed; (2) the person removes his or her residence from
37 the county, is purged from the voter registration books or

38 otherwise becomes ineligible to vote; (3) a ballot mailed to
39 the address provided on the application is returned
40 undeliverable by the United States postal service; ~~or~~ (4) the
41 death of the person; or (5) in the case of a Address
42 Confidentiality Program participant, withdrawal or removal
43 from that program.

44 (d) (e) The official designated to supervise and conduct
45 absentee voting shall mail an ~~application for an~~ absentee
46 ballot by mail to each person active on the special absentee
47 voting list due to disability not later than forty-six days
48 before each election. The Address Confidentiality Program
49 manager shall, in coordination with the designated county
50 contact, mail to each person on the special absentee voting
51 list due to participation in the Address Confidentiality
52 Program an absentee ballot by mail not later than forty-six
53 days before each election.