

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2362

BY DELEGATES MILLER, SHOTT, CAMPBELL, LOVEJOY,
CANESTRARO, MAYNARD, HORNBUCKLE, SUMMERS AND
ROBINSON

[Passed March 6, 2019; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §3-3-1 and §3-3-5c of the Code of West Virginia, 1931, as
2 amended, all relating to emergency absentee ballots; providing that persons who become
3 confined to a particular location on or after the seventh day preceding an election, because
4 of illness, injury, physical disability, immobility due to extreme advanced age, or other
5 medical reason, may vote an emergency absentee ballot; providing that a county
6 commission may adopt a policy extending emergency absentee voting procedures to
7 qualified voters who are eligible to vote an emergency absentee ballot; and providing that
8 a county clerk may require written confirmation by certain licensed medical professionals
9 that a voter meets the criteria to vote an emergency absentee ballot based on
10 confinement.

Be it enacted by the Legislature of West Virginia:

PREAMBLE: The Act shall be known as the “Ardala Miller Memorial Act.”

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

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

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

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

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

9 (C) Incarceration or home detention: *Provided*, That the underlying conviction is not for a
10 crime which is a felony or a violation of §3-9-12, §3-9-13, or §3-9-16 of this code involving bribery
11 in an election;

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

14 (A) Personal or business travel;

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

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

18 (3) Any voter absent from the county throughout the period and available hours for voting
19 in person and who is an absent uniformed services voter or overseas voter, as defined by 42
20 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986,
21 including members of the uniformed services on active duty, members of the merchant marine,
22 spouses and dependents of those members on active duty and persons who reside outside the
23 United States and are qualified to vote in the last place in which the person was domiciled before
24 leaving the United States;

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

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

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

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

33 (6) Any voter who is participating in the Address Confidentiality Program as established
34 by §48-28A-103 of this code.

35 (c) Registered voters and other qualified voters in the county may, in the following
36 circumstances, vote an emergency absentee ballot, subject to the availability of the services as
37 provided in this article:

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

41 (2) Any voter who resides in a nursing home within the county of residence and would be
42 otherwise unable to vote in person, providing the county commission has authorized the services
43 if the voter has resided in the nursing home for a period of less than 30 days;

44 (3) Any voter who becomes confined, on or after the seventh day preceding an election,
45 to a specific location within the county because of illness, injury, physical disability, immobility due
46 to advanced age, or another medical reason: *Provided*, That the county clerk may require a written
47 confirmation by a licensed physician, physician's assistant, or advanced practice registered nurse
48 that the voter meets the criteria of this subdivision before permitting such voter to vote an
49 emergency absentee ballot; and

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

§3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.

1 (a) Notwithstanding any other provision of this chapter, a person qualified to vote an
2 emergency absentee ballot, as provided in §3-3-1(c) of this code, may vote an emergency
3 absentee ballot under the procedures established in this section. The county commission may
4 adopt a policy extending the emergency absentee voting procedures to: (1) Qualified voters in
5 hospitals or other duly licensed health care facilities within an adjacent county or within 35 miles
6 of the county seat; (2) qualified voters in nursing homes within the county; or (3) qualified voters
7 who become confined, on or after the seventh day preceding an election, to a specific location
8 within the county because of illness, injury, physical disability, immobility due to advanced age,
9 or another medical reason: *Provided*, That the policy is to be adopted by the county commission

10 at least 90 days prior to the election that will be affected and a copy of the policy is to be filed with
11 the Secretary of State.

12 (b) On or before the 56th day preceding the date on which any election is to be held, the
13 official designated to supervise and conduct absentee voting shall notify the county commission
14 of the number of sets of emergency absentee ballot commissioners which he or she determines
15 necessary to perform the duties and functions pursuant to this section.

16 (c) A set of emergency absentee ballot commissioners at-large shall consist of two
17 persons with different political party affiliations appointed by the county commission in accordance
18 with the procedure prescribed for the appointment of election commissioners under the provisions
19 of §3-1-1 *et seq.* of this code. Emergency absentee ballot commissioners have the same
20 qualifications and rights and take the same oath required under the provisions of this chapter for
21 commissioners of elections. Emergency absentee ballot commissioners are to be compensated
22 for services and expenses in the same manner as commissioners of election or poll clerks
23 obtaining and delivering election supplies under the provisions of §3-1-44 of this code.

24 (d) Upon request of the voter or a member of the voter's immediate family or, when the
25 county commission has adopted a policy to provide emergency absentee voting services to
26 nursing home residents within the county, upon request of a staff member of the nursing home,
27 the official designated to supervise and conduct absentee voting, upon receiving a proper request
28 for voting an emergency absentee ballot no earlier than the seventh day next preceding the
29 election and no later than noon of election day shall supply to the emergency absentee ballot
30 commissioners the application for voting an emergency absentee ballot and the balloting
31 materials. The emergency absentee ballot application is to be prescribed by the Secretary of State
32 and is to include the name, residence address and political party affiliation of the voter, the date,
33 location and reason for confinement in the case of an emergency, and the name of the attending
34 physician.

35 (e) The application for an emergency absentee ballot is to be signed by the person
36 applying. If the person applying for an emergency absentee ballot is unable to sign his or her
37 application because of illiteracy or physical disability, he or she is to make his or her mark on the
38 signature line provided for an illiterate or disabled applicant, the mark is to be witnessed. The
39 person assisting the voter and witnessing the mark of the voter shall sign his or her name in the
40 space provided.

41 (f) A declaration is to be completed and signed by each of the emergency absentee ballot
42 commissioners, stating their names, the date on which they appeared at the place of confinement
43 of the person applying for an emergency absentee ballot, and the particulars of the confinement.

44 (g) At least one of the emergency absentee ballot commissioners receiving the balloting
45 materials shall sign a receipt which is to be attached to the application form. Each of the
46 emergency absentee ballot commissioners shall deliver the materials to the absent voter, await
47 his or her completion of the application and ballot and return the application and the ballot to the
48 official designated to supervise and conduct absentee voting. Upon delivering the application and
49 the voted ballot to the official, the emergency absentee ballot commissioners shall sign an oath
50 that no person other than the absent voter voted the ballot. The application and the voted ballot
51 are to be returned to the official designated to supervise and conduct absentee voting prior to the
52 close of the polls on election day. Any ballots received by the official after the time that delivery
53 may reasonably be made but before the closing of the polls are to be delivered to the canvassing
54 board along with the absentee ballots challenged in accordance with the provisions of §3-3-10 of
55 this code.

56 (h) Upon receiving the application and emergency absentee ballot, the official designated
57 to supervise and conduct absentee voting shall ascertain whether the application is complete,
58 whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the
59 voter is properly registered to vote with the office of the clerk of the county commission. If the
60 voter is found to be properly registered in the precinct shown on the application, the ballot is to be

61 delivered to the precinct election commissioner pursuant to §3-3-7 of this code. If the voter is
62 found not to be registered or is otherwise ineligible to vote an emergency ballot, the ballot is to be
63 challenged for the appropriate reason provided for in §3-3-10 of this code.

64 (i) If either or both of the emergency absentee ballot commissioners refuse to sign any
65 application for voting an emergency absentee ballot, the voter may vote as an emergency
66 absentee and the ballot will be challenged in accordance with the provisions of §3-3-10 of this
67 code, in addition to those absentee ballots subject to challenge as provided in that section.

68 (j) Any voter who receives assistance in voting an emergency absentee ballot shall comply
69 with the provisions of §3-3-6 of this code. Any other provisions of this chapter relating to absentee
70 ballots not altered by the provisions of this section are to govern the treatment of emergency
71 absentee ballots.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2019.

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Governor