

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3393

By Delegates Holstein and Mazzocchi

[Introduced February 13, 2023; 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 absentee ballots; requiring applications for absentee ballots to be available at the office of
 3 the county clerk and online at the Secretary of State's official website; permitting first
 4 responders to vote by electronic absentee ballot in certain emergency circumstances;
 5 defining "qualified first responder" and providing examples; providing for submittal and
 6 acceptance of qualified first responder absentee voting applications; providing for
 7 transmittal of ballots to qualified first responders; providing for processing of received
 8 electronic absentee ballots cast by qualified first responders; prohibiting an election official
 9 from providing an unsolicited application for absentee voting to any voter; prohibiting any
 10 person from providing more than 10 unsolicited applications for absentee voting to any
 11 voter; creating a misdemeanor penalty upon conviction for such prohibited activity; and
 12 providing exceptions.

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 application for voting absentee shall
 4 be available at the office of the county clerk and online at the official website of the Secretary of
 5 State. It is unlawful for any person, including any election official, to mail or deliver an application
 6 for an absentee ballot to any voter except when specifically requested by that voter. The voter shall
 7 complete and sign the application in his or her own handwriting or, if the voter is unable to
 8 complete the application because of illiteracy or physical disability, or if the voter is a qualified first
 9 responder as defined in §3-3-1(c)(3) of this code:

10 (1) The person assisting the voter and witnessing the mark of the voter shall sign his or her
 11 name in the space provided; or

12 (2) The person, if eligible to vote by electronic absentee ballot due to physical disability or
13 is a qualified first responder as defined in §3-3-1(c)(3) of this code, may complete and verify the
14 application by available electronic means prescribed by the Secretary of State.

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

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

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

26 (3) For qualified first responders as defined in §3-3-1(c)(3) of this code, not earlier than the
27 13th day preceding the election, and not later than 5:00 p.m. on the day before the election.

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

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

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

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

35 (4) The address to which a ballot is to be mailed is an address outside the county if the
36 voter is applying to vote by mail under ~~the provisions of~~ §3-3-1(b)(2)(A), §3-3-1(b)(2)(B), §3-3-
37 1(b)(3), or §3-3-1(b)(4) of this code;

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

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

44 (d) (1) If the official designated to supervise and conduct absentee voting determines that
45 the required conditions have been met for voting an absentee ballot by mail, two representatives
46 that are registered to vote with different political party affiliations shall sign their names in the
47 places indicated on the back of the official ballot. If the official designated to supervise and conduct
48 absentee voting determines the required conditions have not been met or has evidence that any of
49 the information contained in the application is not true, the official shall give notice to the voter that
50 the voter's absentee ballot will be challenged as provided in this article and shall enter that
51 challenge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

150 (o)(1) If any election official knowingly and intentionally mails or delivers an application for
151 an absentee ballot to any voter without the specific request of that voter, that person shall be guilty
152 of a misdemeanor, and upon conviction thereof, shall be fined not more than \$500 or imprisoned in
153 a state correctional facility for a period of not more than six months, or both fined and imprisoned.

154 (2) If any person, not an election official, knowingly and intentionally mails or delivers more
155 than 10 applications for an absentee ballot to a group of voters without the specific request of
156 those voters, that person shall be guilty of a misdemeanor and, upon conviction thereof, shall be
157 fined not more than \$500 or imprisoned in a state correctional facility for a period of not more than
158 six months, or both fined and imprisoned.

NOTE: The purpose of this bill is to prohibit the delivery of unsolicited absentee ballot applications to any person who has not specifically requested one from the county clerk.

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