

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 163

By Senator Caputo

[Introduced January 13, 2023; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §3-3-1 and §3-3-2 of the Code of West Virginia, 1931, as amended,
 2 all relating to absentee voting; removing specifications for permission to vote by absentee
 3 ballot; and allowing all voters to request and vote by absentee ballot.

Be it enacted by the Legislature of West Virginia:

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) Disability, 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 in
 19 person and who is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C.
 20 § 1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including~~

21 ~~members of the uniformed services on active duty, members of the merchant marine, spouses and~~
22 ~~dependents of those members on active duty, and persons who reside outside the United States~~
23 ~~and are qualified to vote in the last place in which the person was domiciled before leaving the~~
24 ~~United States;~~

25 ~~(4) Any voter who is required to dwell temporarily outside the county and is absent from the~~
26 ~~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 by~~
34 ~~§48-28A-103 of this code~~

35 (c) Registered voters and other qualified voters in the county are authorized to vote an
36 electronic absentee ballot in the following circumstances:

37 (1) The voter has a physical disability, as defined in §3-3-1a of this code;

38 (2) The voter is absent from the county throughout the period and available hours for voting
39 in person and is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. §
40 1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including
41 members of the uniformed services on active duty, members of the merchant marine, spouses and
42 dependents of those members on active duty, and persons who reside outside the United States
43 and are qualified to vote in the last place in which the person was domiciled before leaving the
44 United States; or

45 (3) The voter is a qualified first responder called away on duty to respond to an emergency
46 outside the voter's county of residence, which prevents the voter from participating in the election

47 by in-person and mail-in absentee voting. For purposes of this section, "qualified first responder"
48 means a person with specialized training who arrives and provides aid at the scene of an
49 emergency, such as an accident, natural disaster, or act of terrorism. First responders typically
50 include emergency medical technicians, firefighters, law-enforcement officers, neighborhood
51 assistance officers, and paramedics.

52 (d) Registered voters and other qualified voters in the county may, in the following
53 circumstances, vote an emergency absentee ballot, subject to the availability of the services as
54 provided in this article:

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

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

61 (3) Any voter who becomes confined, on or after the 7th day preceding an election, to a
62 specific location within the county because of illness, injury, physical disability, immobility due to
63 advanced age, or another medical reason: *Provided*, That the county clerk may require a written
64 confirmation by a licensed physician, physician's assistant, or advanced practice registered nurse
65 that the voter meets the criteria of this subdivision before permitting such voter to vote an
66 emergency absentee ballot; and

67 (4) Any voter who is working as a replacement poll worker and is assigned to a precinct out
68 of his or her voting district, if the assignment was made after the period for voting an absentee
69 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 the proper official for the political
2 division in which the election is held, in conjunction with the ballot commissioners appointed from

3 each political party, as follows:

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

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

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

15 (1) The completed application is to be on a form prescribed by the Secretary of State and is
16 to contain the name, date of birth, and political affiliation of the voter, residence address within the
17 county, the address to which the ballot is to be mailed, ~~the authorized reason, if any, for which the~~
18 ~~absentee ballot is requested and, if the reason is illness or hospitalization, the name and~~
19 ~~telephone number of the attending physician~~ the signature of the voter to a declaration made
20 under the penalties for false swearing as provided in §3-3-9 of this code that the statements and
21 declarations contained in the application are true, any additional information which the voter is
22 required to supply, any affidavit which may be required, and an indication as to whether it is an
23 application for voting in person, by mail, or electronically;

24 (2) For any person authorized to vote an absentee ballot under the provisions of 42 U.S.C.
25 §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the completed
26 application may be on the federal postcard application for absentee ballot form issued under
27 authority of that act, submitted by mail or electronically; and

28 (3) For any voter with a physical disability, the completed application may be submitted by

29 mail or electronically, in a form prescribed by the Secretary of State;

30 (4) For any person unable to obtain the official form for absentee balloting at a reasonable
31 time before the deadline by which an application for an absentee ballot is to be received by the
32 proper official, the completed application may be in a form set out by the voter, containing all
33 information that would otherwise be required on the appropriate application and the signature of
34 the voter requesting the ballot; or

35 (5) For any person authorized to vote an absentee ballot who is participating in the Address
36 Confidentiality Program as established by §48-28A-103 of this code, application may be made to
37 the program manager within the office of the Secretary of State to vote a mail-in absentee ballot.
38 The program manager will notify the designated county contact to coordinate the application and
39 the provision of an absentee ballot to the program participant.

NOTE: The purpose of this bill is to permit registered voters to vote an absentee ballot by mail in all circumstances.

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