

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

House Bill 2117

By Delegates D. Smith, Hornby, Chiarelli, Phillips,

Hite, and Crouse

[Originating in the Committee on the Judiciary;

Reported on February 26, 2025]

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;
12 providing exceptions; and changing the date when mail in ballots are due.

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 in either physical form or online at the office of the county clerk and online at the
5 official website of the Secretary of State. It is unlawful for any person, including any election
6 official, to mail or deliver an application for an absentee ballot to any voter except when specifically
7 requested by

8 1) the voter;

9 2) a member of the voter's immediate family; or

10 3) a caregiver of the voter.

11 The voter shall complete and sign the application in his or her own handwriting or, if the
12 voter is unable to complete the application because of illiteracy or physical disability:

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

15 (2) The person, if eligible to vote by electronic absentee ballot due to physical disability or
16 by reason of being an absent uniformed services voter or overseas voter or a qualified first
17 responder as defined in §3-3-1(c)(3) of this code, may complete and verify the application by
18 available electronic means prescribed by the Secretary of State.

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

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

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

30 (3) For qualified first responders as defined in §3-3-1(c)(3) of this code, not earlier than the
31 13th day preceding the election, and not later than 5:00 p.m. on the day before the election.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) The ballot is received by the official designated to supervise and conduct absentee voting no later than the day after the election; or~~ 7:30 P.M. on the date of the election.

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

(h) Absentee ballots received through the United States mail from persons eligible to vote an absentee ballot under the provisions of §3-3-1(b)(3) of this code, relating to uniform services

and overseas voters, are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

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

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

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

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

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

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

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

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

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

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

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

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