

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENGROSSED

House Bill 2709

By Delegates Akers, Crouse, Leavitt, Petitto,
Shamblin, Hall, Drennan, Jeffries, J. Cannon, and
Hornby

[Introduced February 20, 2025; referred to the
Committee on the Judiciary]

1 AN ACT

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS._

§3-1-41. Challenged and provisional voter procedures; counting of provisional voters' ballots; ballots of election officials.

1 (a) It is the duty of the members of the receiving board, jointly or severally, to challenge the
2 right of any person requesting a ballot to vote in any election:

3 (1) If the person's registration record is not available at the time of the election;

4 (2) If the signature written by the person in the poll book does not correspond with the
5 signature purported to be his or hers on the registration record;

6 (3) If the registration record of the person indicates any other legal disqualification;

7 (4) If the person fails to present a valid identifying document pursuant to section ~~thirty-four~~
8 34 of this article; or

9 (5) If any other valid challenge exists against the voter pursuant to section ~~ten~~ 10, article
10 three of this chapter.

11 (b) Any person challenged shall nevertheless be permitted to vote in the election. He or
12 she shall be furnished an official ballot not endorsed by the poll clerks. In lieu of the
13 endorsements, the poll clerks shall complete and sign an appropriate form indicating the
14 challenge, the reason ~~thereof~~ therefor, and the name or names of the challengers. The form shall
15 be securely attached to the voter's ballot and deposited together with the ballot in a separate box
16 or envelope marked "provisional ballots".

17 (c) At the time that an individual casts a provisional ballot, the poll clerk shall give the
18 individual written information stating that an individual who casts a provisional ballot will be able to
19 ascertain under the free access system established in this section whether the vote was counted
20 and, if the vote was not counted, the reason that the vote was not counted.

(d) Before an individual casts a provisional ballot, the poll clerk shall provide the individual written instructions, supplied by the board of ballot commissioners, stating that if the voter is casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election: *Provided*, That if the voter is found to be in the incorrect precinct, then the poll worker shall attempt to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter the information if ascertainable.

(e) Provisional ballots may not be counted by the election officials. The county commission shall, on its own motion, at the time of canvassing of the election returns, sit in session to determine the validity of any challenges according to the provisions of this chapter. If the county commission determines that the challenges are unfounded, each provisional ballot of each challenged voter, if otherwise valid, shall be counted and tallied together with the regular ballots cast in the election. The county commission, as the board of canvassers, shall protect the privacy of each provisional ballot cast. The county commission shall disregard technical errors, omissions or oversights if it can reasonably be ascertained that the challenged voter was entitled to vote.

(f) Any person duly appointed as an Election Commissioner or clerk under the provisions of section ~~twenty-eight~~ 28 of this article who serves in that capacity in a precinct other than the precinct in which the person is legally entitled to vote may cast a provisional ballot in the precinct in which the person is serving as a commissioner or clerk. The ballot is not invalid for the sole reason of having been cast in a precinct other than the precinct in which the person is legally entitled to vote. The county commission shall record the provisional ballot on the voter's permanent registration record: *Provided*, That the county commission may count only the votes for the offices that the voter was legally authorized to vote for in his or her own precinct.

(g) The Secretary of State shall establish a free access system, which may include a toll-free telephone number or an Internet website, that may be accessed by any individual who casts a provisional ballot to discover whether his or her vote was counted and, if not, the reason that the vote was not counted.

47 (h) During the early in-person voting period, and in the case of a voter's address change
48 within the county, the voter may vote in the precinct serving their new address without casting a
49 provisional ballot if the voter shows proof of new address and the change is completed in the state-
50 wide voter registration system by the county clerk prior to canvass.

ARTICLE 2. REGISTRATION OF VOTERS._

**§3-2-31. Rules pertaining to voting after registration or change of address within the
county.**

1 (a) A voter who designates a political affiliation with a major party on a registration
2 application filed no later than the close of voter registration before the primary may vote the ballot
3 of that political party in the primary election. Political parties, through the official action of their state
4 executive committees, shall be permitted to determine whether unaffiliated voters or voters of
5 other parties shall be allowed to vote that party's primary election ballot upon request.

6 (b) A voter whose registration record lists one residence address but the voter has since
7 moved to another residence address within the precinct shall be permitted to update the
8 registration at the polling place and vote without challenge for that reason.

9 (c) A voter whose registration record lists one residence address but the voter has since
10 moved to another residence address in a different precinct in the same county shall be permitted to
11 update the registration at the polling place serving the new precinct.~~and~~ The voter shall be
12 permitted to vote as follows:

13 (1) The voter may cast a challenged or provisional ballot at the new polling place if the
14 voter's registration is found on the registration records within the county during the canvass and no
15 other challenge of eligibility was entered on election day, the challenge shall be removed and the
16 ballot shall be counted;

17 (2) During the early in-person voting period, the voter may vote in the precinct serving their
18 new address without casting a provisional ballot if the voter shows proof of new address and the

change is completed in the state-wide voter registration system by the county clerk prior to canvass.

(d) A voter whose registration record has been placed on an inactive status or transferred to an inactive file and who has not responded to a confirmation notice sent pursuant to the provisions of section ~~twenty-four, twenty-five or twenty-six~~ 24, 25, or 26 of this article and who offers to vote at the polling place where he or she is registered to vote shall be required to affirm his or her present residence address under penalty of perjury, as provided in section ~~thirty-six~~ 36 of this article.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-3. Early voting in person.

(a) The voting period for early in-person voting is to be conducted during regular business hours beginning on the ~~thirteenth~~ 13th day before the election and continuing through the third day before the election. Additionally, early in-person voting is to be available from 9:00 a.m. to 5:00 p.m. on Saturdays during the early voting period.

(b) Any person desiring to vote during the period of early in-person voting shall, upon entering the election room, clearly state his or her name and residence to the official or representative designated to supervise and conduct absentee voting. If that person is found to be duly registered as a voter in the precinct of his or her residence, he or she is required to sign his or her name in the space marked "signature of voter" on the pollbook. If the voter is unable to sign his or her name due to illiteracy or physical disability, the person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided. ~~No ballot may~~ A ballot may not be given to the person until he or she signs his or her name on the pollbook.

(c) When the voter's signature or mark is properly on the pollbook, two qualified representatives of the official designated to supervise and conduct absentee voting shall sign their names in the places indicated on the back of the official ballot.

(d) If the official designated to supervise and conduct absentee voting determines that the voter is not properly registered in the precinct where he or she resides, the clerk or his or her representative shall challenge the voter's absentee ballot as provided in this article: *Provided, That the clerk or his or her representative may not challenge the voter's absentee ballot if the voter has had an address change within the county, shows proof of new address, and the address change is completed in the state-wide voter registration system by the county clerk prior to canvass.*

(e) The official designated to supervise and conduct absentee voting shall provide each person voting an absentee ballot in person the following items to be printed as prescribed by the Secretary of State:

(1) In counties using paper ballots, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(2) In counties using punch card systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a gray secrecy envelope;

(3) In counties using optical scan systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a secrecy sleeve; or

(4) For direct recording election systems, access to the voting equipment in the voting booth.

(f) The voter shall enter the voting booth alone and there mark the ballot: *Provided, That the voter may have assistance in voting according to the provisions of section four of this article. After the voter has voted the ballot or ballots, the absentee voter shall: Place the ballot or ballots in the gray secrecy envelope and return the ballot or ballots to the official designated to supervise and conduct the absentee voting: Provided, however, That in direct recording election systems, once the voter has cast his or her ballot, the voter shall exit the polling place.*

(g) Upon receipt of the voted ballot, representatives of the official designated to supervise and conduct the absentee voting shall:

(1) Remove the ballot stub;

42 (2) Place punch card ballots and paper ballots into one envelope which shall not have any
43 marks except the precinct number and seal the envelope; and

44 (3) Place ballots for all voting systems into a ballot box that is secured by two locks with a
45 key to one lock kept by the president of the county commission and a key to the other lock kept by
46 the county clerk

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