

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **Senate Bill 112**

By Senator Tarr

[Introduced February 12, 2025; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-1-41 and §3-9-19 of the Code of West Virginia, 1931, as  
 2 amended, relating to expressly prohibiting the acceptance of illegal ballots cast in any  
 3 election; and providing criminal penalties for intentionally and knowingly accepting an  
 4 absentee ballot that does not comply with state requirements for absentee voting.

*Be it enacted by the Legislature of West Virginia:*

**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) No ballot cast in any manner except as expressly provided in this chapter shall be  
 2 counted in any election. It is the duty of the members of the receiving board, jointly or severally, to  
 3 challenge the right of any person requesting a ballot to vote in any election:

- 4 (1) If the person's registration record is not available at the time of the election;
- 5 (2) If the signature written by the person in the poll book does not correspond with the  
 6 signature purported to be his or hers on the registration record;
- 7 (3) If the registration record of the person indicates any other legal disqualification;
- 8 (4) If the person fails to present a valid identifying document pursuant to section thirty-four  
 9 of this article; or
- 10 (5) If any other valid challenge exists. ~~against the voter pursuant to section ten, article three~~  
 11 ~~of this chapter~~

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

18 (c) At the time that an individual casts a provisional ballot, the poll clerk shall give the

19 individual written information stating that an individual who casts a provisional ballot will be able to  
20 ascertain under the free access system established in this section whether the vote was counted  
21 and, if the vote was not counted, the reason that the vote was not counted.

22 (d) Before an individual casts a provisional ballot, the poll clerk shall provide the individual  
23 written instructions, supplied by the board of ballot commissioners, stating that if the voter is  
24 casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election:  
25 *Provided*, That if the voter is found to be in the incorrect precinct, then the poll worker shall attempt  
26 to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter  
27 the information if ascertainable. Under no circumstances shall any ballot cast by a voter in the  
28 incorrect precinct be counted, except for a voter living with a disability whose polling location is not  
29 accessible.

30 (e) Provisional ballots ~~may~~ shall not be counted by the election officials on election day.  
31 The county commission shall, on its own motion, at the time of canvassing of the election returns,  
32 sit in session to determine the validity of any challenges according to the provisions of this chapter.  
33 If the county commission determines that the challenges are unfounded, each provisional ballot of  
34 each challenged voter, if otherwise valid, shall be counted and tallied together with the regular  
35 ballots cast in the election. The county commission, as the board of canvassers, shall protect the  
36 privacy of each provisional ballot cast. The county commission shall disregard technical errors,  
37 omissions or oversights if it can reasonably be ascertained that the challenged voter was entitled  
38 to vote: Provided, That any ballot submitted that does not comply with the procedures set forth in  
39 this chapter and the regulations concerning election procedures, including failure to follow the  
40 requirements for correctly submitting a ballot in person at the correct precinct or as prescribed in  
41 §3-3-1 et seq., for absentee voting, shall not be deemed a technical error, omission or oversight,  
42 which ballot shall be rejected without discretion. Any person who violates the provisions of this  
43 section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than  
44 \$1,000 nor more than \$10,000, imprisoned in a state correctional facility for not more than one

45 year, or both fined and imprisoned.

46 (f) Any person duly appointed as an Election Commissioner or clerk under the provisions of  
47 §3-1-28 who serves in that capacity in a precinct other than the precinct in which the person is  
48 legally entitled to vote may cast a provisional ballot in the precinct in which the person is serving as  
49 a commissioner or clerk. The ballot is not invalid for the sole reason of having been cast in a  
50 precinct other than the precinct in which the person is legally entitled to vote. The county  
51 commission shall record the provisional ballot on the voter's permanent registration record:  
52 *Provided*, That the county commission may count only the votes for the offices that the voter was  
53 legally authorized to vote for in his or her own precinct.

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

**ARTICLE 9. OFFENSES AND PENALTIES.**

**§3-9-19. Violations concerning absent voters' ballots; penalties.**

1 (a) Any person who, with the intent to commit fraud, obtains, removes, or disseminates an  
2 absent voter's ballot, intimidates an absent voter, or completes or alters an absent voter's ballot, is  
3 guilty of a felony and, upon conviction thereof, shall be fined not less than \$10,000 nor more than  
4 \$20,000, imprisoned in a state correctional facility for not less than one nor more than five years, or  
5 both fined and imprisoned.

6 (b) Notwithstanding subsection (a) of this section, any person who, having procured an  
7 absent voter's official ballot or ballots, shall willfully neglect or refuse to return the same as  
8 provided in article three of this chapter, or who shall otherwise willfully violate any of the provisions  
9 of said §3-3-1, *et seq.*, is guilty of a misdemeanor and, on conviction thereof, shall be fined not  
10 more than \$250, or confined in jail for not more than three months. If the clerk of the county  
11 commission of any county, or any member of the board of ballot commissioners, or any member of

12 the board of canvassers refuses or neglects to perform any of the duties required of him or her by  
13 any of the provisions of §3-3-1, *et seq.*, §3-5-1, *et seq.*, and §3-6-1, *et seq.* relating to voting by  
14 absentees or discloses to any other person or persons how any absent voter voted, he or she  
15 shall, in each instance, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not  
16 more than \$500, or confined in jail for not more than six months.

17 (c) Any person who knowingly and intentionally counts and includes in the official returns  
18 an absentee ballot that does not comply with the provisions of this chapter concerning absentee  
19 voting requirements including absentee ballots submitted after the statutory deadline or those that  
20 do not contain the signature of the absentee voter shall be guilty of a felony and, upon conviction  
21 thereof, shall be fined not less than \$10,000 nor more than \$20,000, imprisoned in a state  
22 correctional facility for not less than one year nor more than five years, or both fined and  
23 imprisoned.

NOTE: The purpose of this bill is to prohibit the acceptance of illegal ballots cast in any election and to provide criminal penalties for intentionally and knowingly accepting an absentee ballot that does not comply with state requirements for absentee voting.

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