

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **House Bill 5401**

By Delegates Funkhouser, Hillenbrand, Moore,  
Dittman, Mallow, Flanigan, Masters, Akers, Butler,  
Martin, and Roop

(By request of the Secretary of State)

[Introduced February 10, 2026; referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §3-3-1 and §3-3-1a of the Code of West Virginia, 1931, as amended,  
2 relating to voting in West Virginia elections while residing overseas.

*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, and spouses

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

25 (4) Any citizen of the United States temporarily residing abroad who:

26 (A) Immediately prior to departure from the United States was domiciled in West Virginia  
27 and:

28 (i) Was last registered to vote, or last eligible to register and vote, in West Virginia; or

29 (ii) Would have been eligible to register and vote in West Virginia except that the citizen  
30 had not attained 18 years of age the requirement of which has since been met; or

31 (iii) Would have been eligible to register and vote in West Virginia except that the citizen  
32 had not met the residency requirement;

33 (B) Is registered or qualified to vote elsewhere in the United States;

34 (C) Holds a valid passport or passport card or other proof of citizenship issued under the  
35 authority of the Secretary of State of the United States;

36 (D) Does not establish permanent residency in any other state or country; and

37 (E) Has the intent to return to West Virginia.

38 ~~(4)~~ (5) Any voter who is required to dwell temporarily outside the county and is absent from  
39 the county throughout the time for voting in person because of:

40 (A) Serving as an elected or appointed federal or state officer; or

41 (B) Serving in any other documented employment assignment of specific duration of four  
42 years or less;

43 ~~(5)~~ (6) Any voter for whom the designated area for absentee voting within the county  
44 courthouse or annex of the courthouse and the voter's assigned polling place are inaccessible  
45 because of his or her physical disability; and

46 ~~(6)~~ (7) Any voter who is participating in the Address Confidentiality Program as established  
47 by §48-28A-103 of this code.

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

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

51 (2) The voter is absent from the county throughout the period and available hours for voting  
52 in person and is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. §  
53 1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including  
54 members of the uniformed services on active duty, members of the merchant marine, and spouses  
55 and dependents of those members on active duty, ~~and persons who reside outside the United~~  
56 ~~States and are qualified to vote in the last place in which the person was domiciled before leaving~~  
57 ~~the United States; or~~

58 (3) The voter is a citizen of the United States temporarily residing abroad as set forth in  
59 subsection (b)(4) of this section; or

60 (4) The voter is a qualified first responder called away on duty to respond to an emergency  
61 outside the voter's county of residence, which prevents the voter from participating in the election  
62 by in-person and mail-in absentee voting. For purposes of this section, "qualified first responder"  
63 means a person with specialized training who arrives and provides aid at the scene of an  
64 emergency, such as an accident, natural disaster, or act of terrorism. First responders typically  
65 include emergency medical technicians, firefighters, law-enforcement officers, neighborhood  
66 assistance officers, and paramedics.

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

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

73 (2) Any voter who resides in a nursing home within the county of residence and would be

74 otherwise unable to vote in person, providing the county commission has authorized the services if  
75 the voter has resided in the nursing home for a period of less than 30 days;

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

82 (4) Any voter who is working as a replacement poll worker and is assigned to a precinct out  
83 of his or her voting district, if the assignment was made after the period for voting an absentee  
84 ballot in person has expired.

85 (e) Any person meeting the qualifications of an overseas federal election voter may  
86 register to vote and may apply for and vote by mail-in ballot in any federal election held in the  
87 election district of this state in which the voter, or in the case of an overseas federal election voter  
88 who was born outside of the United States, in which the voter’s parent, legal guardian, or spouse  
89 was formerly domiciled.

90 (f) Any person meeting the qualifications of an overseas state and federal voter may  
91 register to vote and may apply for and vote by mail in a state election and a federal election held in  
92 the election district of this state in which the voter was formerly domiciled.

**§3-3-1a.**

**Definitions.**

1 For the purposes of this article, the following terms have the following definitions:

2 (1) "Disability" means a physical or mental impairment that substantially limits one or more  
3 major life activities.

4 (2) "Federal election" means any general, special or primary held for the purpose of  
5 nominating or electing any candidate for the office of President or Vice President of the United  
6 States, Presidential elector, United States Senator or member of the United States House of

7 Representatives.

8 (3) "Overseas federal election voter" means any citizen of the United States who was born  
9 outside of the United States, is not a voter under §3-1-1(b)(4) or an "overseas state and federal  
10 voter" under subsection (4) of this section, and, except for the residency requirement of West  
11 Virginia, otherwise satisfies the state's voter eligibility requirements, if the last place where a  
12 parent, legal guardian, or spouse of the voter was, or would have been eligible to register and vote  
13 before departure from the United States is within West Virginia and the voter has not previously  
14 registered to vote elsewhere in the United States.

15 (4) "Overseas and federal voter" means a citizen of the United States residing abroad who  
16 does not intend to return or whose intent to return is uncertain and who:

17 (A) Immediately prior to departure from the United States was domiciled in West Virginia  
18 and

19 (i) Was registered to vote, or last eligible to register and vote, in West Virginia;

20 (ii) Would have been eligible to register and vote in West Virginia except that the citizen  
21 had not attained 18 years of age the requirement of which has since been met; or

22 (iii) Would have been eligible to register and vote in West Virginia except that the citizen  
23 had not met the residency requirement;

24 (B) Is not registered or qualified to vote elsewhere in the United States; and

25 (C) Holds a valid passport or passport card or other proof of citizenship issued under  
26 authority of the Secretary of State of the United States.

27 (5) "Physical disability" means a physical impairment that substantially limits one or more  
28 major life activities and renders a person unable to vote in person, at the polls, without assistance.

29 (6) "State election" means any general, special, or primary election held for the purpose of  
30 nominating or electing the office of Governor, Secretary of State, Attorney General, Treasurer,  
31 Auditor, Commissioner of Agriculture, State Senate, or House of Delegates, or amendments to the  
32 West Virginia Constitution.

NOTE: The purpose of this bill relates to voting in West Virginia elections while residing overseas.

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