

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 5401

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

(By Request of the Secretary of State)

[Originating in the Committee on the Judiciary;

Reported on February 26, 2026]

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 by certain persons residing overseas; and
3 providing definitions.

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 their county of residence throughout the period and
13 available hours for 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

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

(4) ~~Any voter who is required to dwell temporarily outside the county and is absent from the county throughout the time for voting in person because~~ citizen of the United States temporarily residing abroad who:

(A) ~~Serving as an elected or appointed federal or state officer; or~~ Immediately prior to their departure from the United States was domiciled in West Virginia and:

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

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

(iii) Serving in any other documented employment assignment of specific duration of four years or less Who is not registered or qualified to vote elsewhere in the United States;

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

(C) Who has not established permanent residency in any other state or country.

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

~~(6)~~ (5) Any voter who is participating in the Address Confidentiality Program as established by §48-28A-103 of this code.

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

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

(2) The voter is absent from the county throughout the period and available hours for voting in person and 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, including members of the uniformed services on active duty, members of the merchant marine, and spouses and dependents of those members on active duty ~~and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States;~~ or

(3) The voter is a citizen of the United States temporarily residing abroad according to the provisions of §3-3-1(b)(4) of this Code; or

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

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

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

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

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

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

(e) Any person meeting the qualifications of an overseas federal election voter may register to vote and may apply for and vote by mail-in ballot in any federal election held in the election district of this state in which the voter, or, alternatively, in the case of an overseas federal election voter who was born outside of the United States, in which the voter's parent, legal guardian, or spouse was formerly domiciled. A United States citizen who was never domiciled in West Virginia is not eligible to vote in any state, county, municipal, or special election.

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

§3-3-1a.

Definitions.

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

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

(2) "Federal election" means any general, special or primary held for the purpose of nominating or electing any candidate for the office of President or Vice President of the United States, Presidential elector, United States Senator or member of the United States House of 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 §3-3-1(b)(4) of this Code or an "overseas state
10 and federal voter" under §3-3-1a(4) of this Code, and, except for the residency requirement of
11 West Virginia, would otherwise satisfy the state's voter eligibility requirements, if the last place
12 where the parent, legal guardian, or spouse of the voter was, or would have been eligible to
13 register and vote before departure from the United States is within West Virginia, and the voter has
14 not previously registered to vote elsewhere in the United States.

15 (4) "Overseas state and federal voter" means a citizen of the United States residing abroad
16 who 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; or
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; and

22 (iii) Who is not registered or qualified to vote elsewhere in the United States;

23 (B) Holds a valid passport or passport card or other proof of citizenship issued under the
24 authority of the Secretary of State of the United States; and

25 (C) Who has not established permanent residency in any other state or country.

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

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