

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

ENROLLED

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)

[Passed March 14, 2026; in effect 90 days from
passage (June 12, 2026)]

1 AN ACT to amend and reenact §3-3-1 and §3-3-1a of the Code of West Virginia, 1931, as
2 amended, relating to modifying the eligibility to vote in certain elections of certain persons
3 residing abroad or overseas; defining terms; and providing effective date.

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 in
2 person during the period of early voting.

3 (b) Registered voters and other qualified voters in the county may vote an absentee ballot
4 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 if the underlying conviction is not for a crime which is
10 a felony or a violation of §3-9-12, §3-9-13, or §3-9-16 of this code involving bribery in an election;

11 (2) Any voter who is absent from his or her county of residence throughout the period and
12 available hours for voting in person because of:

13 (A) Personal or business travel;

14 (B) Attendance at a college, university, or other place of education or training; or

15 (C) Employment which because of hours worked and distance from the county seat make
16 voting in person impossible;

17 (3) Any voter absent from the county throughout the period and available hours for voting
18 in person and who is an absent uniformed services voter or overseas voter, as defined by 42
19 U.S.C. § 1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986,

20 including members of the uniformed services on active duty, members of the merchant marine,
21 and spouses and dependents of those members on active duty;

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

23 (A) Immediately prior to their departure from the United States was domiciled in West
24 Virginia and:

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

26 (ii) Would have been eligible to register and vote in West Virginia except that the citizen
27 had not reached 18 years of age, but has since reached 18 years of age; and

28 (iii) Is not registered or qualified to vote elsewhere in the United States;

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

31 (C) Has not established permanent residency in any other state or country.

32

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

35 (c) Registered voters and other qualified voters in the county may vote an electronic
36 absentee ballot in the following circumstances:

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

38 (2) The voter is absent from the county throughout the period and available hours for
39 voting in person and is an absent uniformed services voter or overseas voter, as defined by 42
40 U.S.C. § 1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986,
41 including members of the uniformed services on active duty, members of the merchant marine,
42 and spouses and dependents of those members on active duty;

43 (3) The voter is a citizen of the United States, temporarily residing abroad, who meets the
44 conditions in subdivision (4), subsection (b) of this section for voting an absentee ballot by mail;

45 or

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

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

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

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

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

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

71 (e) Any overseas federal election voter may register to vote and may apply for and vote
72 an absentee ballot by mail in any federal election held in the election district of this state in which
73 the voter was formerly domiciled.

74 (f) Any overseas federal election voter who was born outside the United States may
75 register to vote and may apply for and vote an absentee ballot by mail in any federal election held
76 in the election district of this state in which the voter's parent, legal guardian, or spouse was
77 formerly domiciled.

78 (g) A United States citizen who was never domiciled in West Virginia is not eligible to vote
79 in any state, county, municipal, or special election.

80 (h) Any overseas state and federal voter may register to vote and may apply for and vote
81 an absentee ballot by mail in a state election and a federal election held in the election district of
82 this state in which the voter was formerly domiciled.

83 (i) The amendments to this section enacted during the 2026 regular session of the
84 Legislature are effective January 1, 2027.

§3-3-1a. Definitions.

1 (a) For the purposes of this article, the following terms and phrases have the meanings
2 ascribed to them.

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

5 (2) "Federal election" means any general, special, or primary election held for the purpose
6 of nominating or electing any candidate for President or Vice President of the United States,
7 Presidential elector, United States Senate, or United States House of Representatives.

8 (3) "Overseas federal election voter" means any citizen of the United States who:

9 (A) Was born outside the United States;

10 (B) Is not a voter under subdivision (4), subsection (b) of this section or an "overseas state
11 and federal voter" under subdivision (4) of this section;

12 (C) Would otherwise satisfy the state's voter eligibility requirements, except for the West
13 Virginia residency requirement, if the last place where the parent, legal guardian, or spouse of the
14 voter was, or would have been eligible to register and vote before departure from the United
15 States is within West Virginia; and

16 (D) Has not previously registered to vote elsewhere in the United States.

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

19 (A) Immediately prior to departure from the United States was domiciled in West Virginia;
20 and

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

22 (ii) Would have been eligible to register and vote in West Virginia except that the citizen
23 had not reached 18 years of age, but has since reached 18 years of age; and

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

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

27 (C) Has not established permanent residency in any other state or country.

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

30 (6) "State election" means any general, special, or primary election held for the purpose
31 of:

32 (A) Nominating or electing a candidate as:

33 (i) Governor, Secretary of State, Attorney General, Treasurer, Auditor, or Commissioner
34 of Agriculture; or

35 (ii) A member of the State Senate or the House of Delegates; or

36 (B) Approving or rejecting any amendment to the West Virginia Constitution.

37 (b) The amendments to this section enacted during the 2026 regular session of the
38 Legislature are effective January 1, 2027.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect 90 days from passage.

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Speaker of the House of Delegates

.....
President of the Senate

The within is this the.....
Day of, 2026.

.....
Governor