

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 61**

By Senators Tarr and Thorne

[Reported January 28, 2026, from 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 prohibiting the acceptance and counting of illegal ballots; prohibiting  
3 counting of ballot cast in incorrect precinct and providing exception; prohibiting counting of  
4 provisional ballots on election day; removing county commission discretion to disregard  
5 technical errors, omissions, or oversights in certain circumstances; and providing criminal  
6 penalties for failing to reject ballots or counting ballots in certain circumstances.

*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) A ballot cast in any manner except as expressly provided in this chapter shall not be  
2 counted in any election. ~~It is the duty of the~~ Members of the receiving board, jointly or severally, to  
3 shall 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 34 of this~~  
9 ~~article §3-1-34 of this code;~~ or

10 (5) If any ~~other~~ valid challenge exists ~~against the voter pursuant to section 10, article three~~  
11 ~~of this chapter §3-3-10 of this code.~~

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 therefor, 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

envelope marked "provisional ballots".

(c) At the time that an individual casts a provisional ballot, the poll clerk shall give the individual written information stating that an individual who casts a provisional ballot will be able to ascertain under the free access system established in this section whether the vote was counted 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. Under no circumstances shall any ballot cast by a voter in the incorrect precinct be counted: *Provided*, That a ballot shall be counted if it was cast in an incorrect precinct by a handicapped person whose polling location is not handicap accessible as set forth in §3-1-34(b) of this code.

(e) Provisional ballots ~~may~~ shall not be counted by the election officials on election day. 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: *Provided*, That any ballot submitted that does not comply with the procedures set forth in this chapter and the rules concerning election procedures, including failure to follow the requirements for correctly submitting a ballot in person at the correct polling location or as prescribed in §3-3-1 et seq. of this code, for absentee voting, shall not be considered a technical

error, omission, or oversight and the ballot shall be rejected without discretion. Any person who, with the intent to commit fraud, knowingly and intentionally violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$10,000, imprisoned in a state correctional facility for not more than one year, or both fined and imprisoned.

(f) Any person duly appointed as an election commissioner or clerk under the provisions of ~~section 28 of this article~~ §3-1-28 of this code 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.

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

## **ARTICLE 9. OFFENSES AND PENALTIES.**

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

(a) Any person who, with the intent to commit fraud, obtains, removes, or disseminates an absent voter's ballot, intimidates an absent voter, or completes or alters an absent voter's ballot, is 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 §3-3-1 *et seq.*, or who shall otherwise willfully violate any of the provisions of §3-3-1 *et*  
9 *seq.*, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$250 or  
10 confined in jail for not more than three months. If the clerk of the county commission of any county,  
11 or any member of the board of ballot commissioners, or any member of the board of canvassers  
12 refuses or neglects to perform any of the duties required of him or her by any of the provisions of  
13 §3-3-1, *et seq.*, §3-5-1, *et seq.*, and §3-6-1, *et seq.* relating to voting by absentees or discloses to  
14 any other person or persons how any absent voter voted, he or she ~~shall~~, in each instance, be is  
15 guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or  
16 confined in jail for not more than six months.

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