WEST VIRGINIA CODE CHAPTER 3 ARTICLE 3

WV Legislature

§3-3-1. Persons eligible to vote absentee ballots.

(a) All registered and other qualified voters of the county may vote an absentee ballot in person during the period of early voting.

(b) Registered voters and other qualified voters in the county may vote an absentee ballot by mail in the following circumstances:

(1) Any voter who is confined to a specific location and prevented from voting in person throughout the period of voting in person because of:

(A) Disability, illness, injury, or other medical reason;

(B) Physical disability or immobility due to extreme advanced age; or

(C) Incarceration or home detention if the underlying conviction is not for a crime which is a felony or a violation of §3-9-12, §3-9-13, or §3-9-16 of this code involving bribery in an election;

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

(A) Personal or business travel;

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

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

(3) Any voter absent from the county throughout the period and available hours for voting in person and who 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;

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

(A) 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 reached 18 years of age, but has since reached 18 years of age; and

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

WV Legislature

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

(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 may 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;

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

WV Legislature

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

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

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

(h) Any overseas state and federal voter may register to vote and may apply for and vote an absentee ballot 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.

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

WV Legislature

§3-3-1a. Definitions.

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

(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 election held for the purpose of nominating or electing any candidate for President or Vice President of the United States, Presidential elector, United States Senate, or United States House of Representatives.

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

(A) Was born outside the United States;

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

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

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

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

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

(i) Was 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 reached 18 years of age, but has since reached 18 years of age; and

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

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

WV Legislature

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

(A) Nominating or electing a candidate as:

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

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

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

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

WV Legislature

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

(a) Absentee voting is to be supervised and conducted by the proper official for the political division in which the election is held, in conjunction with the ballot commissioners appointed from each political party, as follows:

(1) For any election held throughout the county, within a political subdivision or territory other than a municipality, or within a municipality when the municipal election is conducted in conjunction with a county election, the clerk of the county commission; or

(2) The municipal recorder or other officer authorized by charter or ordinance provisions to conduct absentee voting, for any election held entirely within the municipality, or in the case of annexation elections, within the area affected. The terms "clerk" or "clerk of the county commission" or "official designated to supervise and conduct absentee voting" used elsewhere in this article means municipal recorder or other officer in the case of municipal elections.

(b) A person authorized and desiring to vote a mail-in absentee ballot or an electronic absentee ballot in any primary, general, or special election is to make application in the proper form to the proper official as follows:

(1) The completed application is to be on a form prescribed by the Secretary of State and is to contain the name, date of birth, and political affiliation of the voter, residence address within the county, the address to which the ballot is to be mailed, the authorized reason, if any, for which the absentee ballot is requested and, if the reason is illness or hospitalization, the name and telephone number of the attending physician, the signature of the voter to a declaration made under the penalties for false swearing as provided in §3-3-9 of this code that the statements and declarations contained in the application are true, any additional information which the voter is required to supply, any affidavit which may be required, and an indication as to whether it is an application for voting in person, by mail, or electronically;

(2) For any person authorized to vote an absentee ballot under the provisions of 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the completed application may be on the federal postcard application for absentee ballot form issued under authority of that act, submitted by mail or electronically; and

(3) For any voter with a physical disability, the completed application may be submitted by mail or electronically, in a form prescribed by the Secretary of State;

(4) For any person unable to obtain the official form for absentee balloting at a reasonable time before the deadline by which an application for an absentee ballot is to be received by the proper official, the completed application may be in a form set out by the voter, containing all information that would otherwise be required on the appropriate application and the signature of the voter requesting the ballot; or

WVLegislature

(5) For any person authorized to vote an absentee ballot who is participating in the Address Confidentiality Program as established by §48-28A-103 of this code, application may be made to the program manager within the office of the Secretary of State to vote a mail-in absentee ballot. The program manager will notify the designated county contact to coordinate the application and the provision of an absentee ballot to the program participant.

WV Legislature

§3-3-2a. Early voting areas; prohibition against display of campaign material.

(a) The county commission shall designate the courthouse or annex to the courthouse as the primary location for early in-person voting and, in addition, the commission may designate other locations as provided in subsection (b) of this section.

(b) The county commission may, with the approval of the county clerk or other official charged with the administration of elections, designate community voting locations for early in-person voting, other than the county courthouse or courthouse annex, by a majority of the members of the county commission voting to adopt the same at a public meeting called for that purpose.

(1) The county commission shall publish a notice of its intent to designate a community voting location at least 30 days prior to the designation. Notice shall be by publication as a Class II-0 legal advertisement in compliance with provisions of §59-3-1 *et seq*. of this code. The publication area is the county in which the community voting location or locations are designated;

(2) Community voting locations shall comply with requirements of this article for early in-person voting, criteria prescribed by the Secretary of State, and the following criteria:

(A) The location can be scheduled for use during the early voting period;

(B) The location has the physical facilities necessary to accommodate early voting requirements;

(C) The location has adequate space for voting equipment, poll workers, and voters; and

(D) The location has adequate security, public accessibility, and parking.

(3) The county executive committees of the two major political parties may nominate sites to be used as community voting locations during the early voting period;

(4) Upon the designation of a community voting location, the county clerk shall, not less than 30 days prior to an election, give notice of the community voting location address and the dates and times when the location will be open for early voting by publication as a Class II-0 legal advertisement in compliance with provisions of §59-3-1 *et seq*. of this code;

(5) Voting shall be conducted at each designated community voting location for a period of not less than five consecutive days during the early in-person voting period authorized by §3-3-3 of this code, but need not be conducted at each location for the entire period of early in-person voting;

(6) The county commission, with the approval of the county clerk, may authorize community voting locations on a rotating basis, wherein a community voting location may be used for less than the full period of early in-person voting.

WV Legislature

(7) If more than one community voting location is designated, each location shall be used for an equal number of voting days and permit voting for the same number of hours per day; and

(8) Once a community voting location is designated it may continue to be used in subsequent elections without complying with the public notice requirements of subdivision (1) of this subsection if the county commission finds, and the county clerk agrees, at least 50 days, but not more than 80 days prior to the election, that the location continues to qualify under this section.

(c) The Secretary of State shall propose legislative and emergency rules in accordance with the provisions of §29A-3-1 *et seq*. of this code as may be necessary to implement the provisions of this section. The rules shall include establishment of criteria to assure neutrality and security in the selection of community voting locations.

(d) Throughout the period of early in-person voting, the official designated to supervise and conduct early in-person voting shall make the following provisions for voting:

(1) The official shall provide a sufficient number of voting booths or devices appropriate to the voting system at which voters may prepare their ballots. The booths or devices are to be in an area separate from, but within clear view of, the public entrance area of the official's office or other area designated by the county commission for early in-person voting and are to be arranged to ensure the voter complete privacy in casting the ballot.

(2) The official shall make the voting area secure from interference with the voter and shall ensure that voted and unvoted ballots are at all times secure from tampering. No person, other than a person lawfully assisting the voter according to the provisions of this chapter, may be permitted to come within five feet of the voting booth while the voter is voting. No person, other than the officials or employees of the official designated to supervise and conduct early in-person voting or members of the board of ballot commissioners assigned to conduct early in-person voting, may enter the area or room set aside for voting.

(3) (A) The official designated to supervise and conduct early in-person voting shall request the county commission designate another area within the county courthouse, any annex of the courthouse or any other designated as early in-person community voting locations within the county, as a portion of the official's office, for the purpose of early in-person voting in the following circumstances:

(i) If the voting area is not accessible to voters with physical disabilities;

(ii) If the voting area is not within clear view of the public entrance of the office of the official designated to supervise and conduct early in-person voting; or

(iii) If there is no suitable area for early in-person voting within the office.

(B) Any designated area is subject to the same requirements as the primary location for early

WV Legislature

in-person voting.

(4) The official designated to supervise and conduct early in-person voting shall have at least two representatives to assist with early in-person voting: *Provided,* That the two representatives may not be registered with the same political party affiliation or be two persons registered with no political party affiliation. The representatives may be full-time employees, temporary employees hired for the period of early in-person voting in person, or volunteers.

(5) No person may do any electioneering nor may any person display or distribute in any manner, or authorize the display or distribution of, any literature, posters, or material of any kind which tends to influence the voting for or against any candidate or any public question on the property of the county courthouse, any annex facilities, or within 100 feet of the outside entrance of any other designated early voting locations within the county during the entire period of regular early in-person voting. The official designated to supervise and conduct early in-person voting is authorized to remove the material and to direct the sheriff of the county to enforce the prohibition.

WV Legislature

§3-3-2b. Special absentee voting list.

(a) Any person who is registered and otherwise qualified to vote and who is physically disabled and unable to vote in person at the polls in an election may apply to the official designated to supervise and conduct absentee voting for placement on the special absentee voting list.

(b) Any person who is registered and otherwise qualified to vote and who is participating in the Address Confidentiality Program, as established by §48-28A-103 of this code, may apply to the program manager within the office of the Secretary of State for placement on the special absentee voting list. The program manager will notify the designated county contact to coordinate the provision of an absentee ballot to the program participant.

(c) The application is to be on a form prescribed by the Secretary of State which is to include:

(1) The voter's name and signature;

(2) The voter's residence address, unless the applicant is a participant in the Address Confidentiality Program as established by §48-28A-103 of this code;

(3) (A) A statement that the voter has a physical disability and would be unable to vote in person at the polls in any election, a description of the nature of that disability, and a statement signed by a physician to that effect; or

(B) A statement that the voter is a program participant in the Address Confidentiality Program; and

(4) If the voter has a physical disability, whether the voter requests a mail-in absentee ballot or an electronic absentee ballot.

(d) Upon receipt of a properly completed application, the official designated to supervise and conduct absentee voting shall enter the name on the special absentee voting list which is to be maintained in a secure and permanent record. The person's name will remain active on the list until: (1) The person requests in writing that his or her name be removed; (2) the person is no longer a resident of the county, is purged from the voter registration books, or otherwise becomes ineligible to vote; (3) a ballot mailed to the address provided on the application is returned undeliverable by the United States Postal Service; (4) the person no longer has a physical disability; (5) the person dies; or (6) in the case of an Address Confidentiality Program participant, the person withdraws or is removed from that program.

(e) The official designated to supervise and conduct absentee voting shall, not later than 46 days before each election:

(1) Deliver an absentee ballot by mail to each voter active on the special absentee voting list due to a physical disability who requested a mail-in absentee ballot on the application; and

WV Legislature

(2) Electronically transmit an absentee ballot to each voter on the special absentee voting list due to a physical disability who requested an electronic absentee ballot on the application.

(f) The Address Confidentiality Program manager shall, in coordination with the designated county contact, mail to each person on the special absentee voting list due to participation in the Address Confidentiality Program an absentee ballot by mail not later than 46 days before each election.

WV Legislature

§3-3-3. Early voting in person.

(a) The voting period for early in-person voting is to be conducted during regular business hours beginning on the 13th day before the election and continuing through the third day before the election. Additionally, early in-person voting is to be available from 9:00 a.m. to 5:00 p.m. on Saturdays during the early voting period.

(b) Any person desiring to vote during the period of early in-person voting shall, upon entering the election room, clearly state his or her name and residence to the official or representative designated to supervise and conduct absentee voting. If that person is found to be duly registered as a voter in the precinct of his or her residence, he or she is required to sign his or her name in the space marked "signature of voter" on the pollbook. If the voter is unable to sign his or her name due to illiteracy or physical disability, the person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided. A ballot may not be given to the person until he or she signs his or her name on the pollbook.

(c) When the voter's signature or mark is properly on the pollbook, two qualified representatives of the official designated to supervise and conduct absentee voting shall sign their names in the places indicated on the back of the official ballot.

(d) If the official designated to supervise and conduct absentee voting determines that the voter is not properly registered in the precinct where he or she resides, the clerk or his or her representative shall challenge the voter's absentee ballot as provided in this article: *Provided*, That the clerk or his or her representative may not challenge the voter’s absentee ballot if the voter has had an address change within the county, shows proof of new address, and the address change is completed in the state-wide voter registration system by the county clerk prior to canvass.

(e) The official designated to supervise and conduct absentee voting shall provide each person voting an absentee ballot in person the following items to be printed as prescribed by the Secretary of State:

(1) In counties using paper ballots, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(2) In counties using punch card systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a gray secrecy envelope;

(3) In counties using optical scan systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a secrecy sleeve; or

(4) For direct recording election systems, access to the voting equipment in the voting booth.

(f) The voter shall enter the voting booth alone and there mark the ballot: *Provided*, That the

WV Legislature

voter may have assistance in voting according to the provisions of section four of this article. After the voter has voted the ballot or ballots, the absentee voter shall: Place the ballot or ballots in the gray secrecy envelope and return the ballot or ballots to the official designated to supervise and conduct the absentee voting: *Provided, however*, That in direct recording election systems, once the voter has cast his or her ballot, the voter shall exit the polling place.

(g) Upon receipt of the voted ballot, representatives of the official designated to supervise and conduct the absentee voting shall:

(1) Remove the ballot stub;

(2) Place punch card ballots and paper ballots into one envelope which shall not have any marks except the precinct number and seal the envelope; and

(3) Place ballots for all voting systems into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk

WV Legislature

§3-3-3a. Voting absent voter's ballot by personal appearance in Saturday elections for religious reasons.

(a) In addition to the persons declared eligible to vote absent voters' ballots pursuant to the provisions of section one of this article, duly registered and otherwise qualified voters who are members of a religious denomination with an established history of observing Saturday as the sabbath may vote absentee by personal appearance in any election to be held on a Saturday.

(b) Application for an absent voter's ballot authorized by the provisions of this section shall be made on a form prescribed by the Secretary of State. The procedures for voting by personal appearance set forth in section three of this article, to the extent not in conflict with the provisions of this section, shall otherwise govern the procedures herein.

WV Legislature

§3-3-4. Assistance to voter in voting an absentee ballot by personal appearance; penalties.

(a) Any registered voter who requires assistance to vote by reason of blindness, physical disability, advanced age, or inability to read and write may be given assistance by a person of the voter's choice: *Provided*, That the assistance may not be given by the voter's present or former employer or agent of that employer, by the officer or agent of a labor union of which the voter is a past or present member, or by a candidate on the ballot.

(b) Any voter who requests assistance in voting an absentee ballot but who is determined by the official designated to supervise and conduct absentee voting not to be qualified for assistance under the provisions of this section and §3-1-34 of this code may vote a provisional absentee ballot with the assistance of any person authorized to render assistance pursuant to this section. The official designated to supervise and conduct absentee voting shall, in this case, challenge the absentee ballot on the basis of his or her determination that the voter is not qualified for assistance.

(c) Any one or more of the election commissioners or poll clerks in the precinct to which an absentee ballot has been sent may challenge the ballot on the grounds that the voter received assistance in voting the ballot when in his or their opinion: (1) The person who received the assistance in voting the absentee ballot did not require assistance; or (2) the person who provided the assistance in voting did not make an affidavit as required by this section. The election commissioner or poll clerk or commissioners or poll clerks making a challenge shall enter the challenge and reason for the challenge on the form and in the manner prescribed or authorized by this article.

(d) Before entering the voting booth or compartment, the person who intends to provide a voter assistance in voting by personal appearance shall make an affidavit, the form of which is to be prescribed by the Secretary of State, that he or she will not in any manner request, seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question; that he or she will not keep or make any memorandum or entry of anything occurring within the voting booth or compartment; and that he or she will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, which ticket the voter voted, how the voter voted on any public question, or anything occurring within the voting booth, compartment, or voting machine booth, except when required, pursuant to law, in a judicial proceeding.

(e) In accordance with instructions issued by the Secretary of State, the official designated to supervise and conduct absentee voting shall complete a form entitled "List of Assisted Voters", which list is to be divided into two parts, as follows:

(1) Part A is to be entitled "Unchallenged Assisted Voters"; and Part B is to be entitled "Challenged Assisted Voters".

(2) Under Part A, the official designated to supervise and conduct absentee voting shall

WV Legislature

enter the name of each voter receiving unchallenged assistance in voting an absentee ballot, the address of the voter assisted, the nature of the disability which qualified the voter for assistance in voting an absentee ballot, the name of the person providing the voter with assistance in voting an absentee ballot, the fact that the person rendering the assistance in voting made and subscribed the affidavit required by this section, and the signature of the official designated to supervise and conduct absentee voting, certifying to the fact that he or she had determined that the voter who received assistance in voting an absentee ballot was qualified to receive the assistance under the provisions of this section.

(3) Under Part B, the official designated to supervise and conduct absentee voting shall enter the name of each voter receiving challenged assistance in voting, the address of the voter receiving challenged assistance, the reason for the challenge, and the name of the person providing the challenged voter with assistance in voting. At the close of the period provided for voting an absentee ballot by personal appearance, the official designated to supervise and conduct absentee voting shall make and subscribe to an oath on the list that the list is correct in all particulars.

(4) If no voter has been assisted in voting an absentee ballot as provided in this section, the official designated to supervise and conduct absentee voting shall make and subscribe to an oath of that fact on the list.

(5) The "List of Assisted Voters" is to be available for public inspection in the office of the official designated to supervise and conduct absentee voting during regular business hours throughout the period provided for voting an absentee ballot by personal appearance and, unless otherwise directed by the Secretary of State, the official shall transmit the list, together with the affidavits, applications, and absentee ballots, to the precincts on election day.

(f) Following the election, the affidavits required by this section from persons providing assistance in voting, together with the "List of Assisted Voters", are to be returned by the election commissioners to the clerk of the county commission, along with the election supplies, records, and returns. The clerk shall make the oaths and the "List of Assisted Voters" available for public inspection and shall preserve the oaths and list for 22 months or, if under order of the court, until their destruction or other disposition is authorized or directed by the court.

(g) Any person making an affidavit required under the provisions of this section who knowingly swears falsely in the affidavit or any person who counsels or advises, aids, or abets another in the commission of false swearing under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for a period of not more than one year, or both fined and confined.

(h) Any person who provides a voter assistance in voting an absentee ballot in the office of the official designated to supervise and conduct absentee voting who is not qualified or permitted by this section to provide assistance is guilty of a misdemeanor and, upon

WV Legislature

conviction thereof, shall be fined not more than $1,000 or confined in jail for a period of not more than one year, or both fined and confined.

(i) Any official designated to supervise and conduct absentee voting, election commissioner, or poll clerk who authorizes or allows a voter to receive or to have received unchallenged assistance in voting an absentee ballot when the voter is known to the official designated to supervise and conduct absentee voting or election commissioner or poll clerk not to be or have been authorized by the provisions of this section to receive or to have received assistance in voting is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for a period of not more than one year, or both fined and confined.

WV Legislature

§3-3-5. Voting an absentee ballot by mail or electronically; penalties.

(a) Upon oral or written request, the official designated to supervise and conduct absentee voting shall provide to any voter of the county, in person, by mail, or electronically, the appropriate application for voting absentee as provided in this article. The voter shall complete and sign the application in his or her own handwriting or, if the voter is unable to complete the application because of illiteracy or physical disability or if the voter is a qualified first responder as defined in §3-3-1(c)(3) of this code:

(1) The person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided; or

(2) The person, if eligible to vote by electronic absentee ballot due to physical disability or is a qualified first responder as defined in §3-3-1(c)(3) of this code, may complete and verify the application by available electronic means prescribed by the Secretary of State.

(b) Completed applications for voting an absentee ballot by mail are to be accepted when received by the official designated to supervise and conduct absentee voting in person, by mail, or electronically within the following times:

(1) For persons eligible to vote an absentee ballot under the provisions of §3-3-1(b)(3) of this code, relating to absent uniformed services and overseas voters, not earlier than January 1 of an election year or 84 days preceding the election, whichever is earlier, and not later than the sixth day preceding the election, which application is to, upon the voter's request, be accepted as an application for the ballots for all elections in the calendar year; and

(2) For all other persons eligible to vote an absentee ballot by mail or electronically, except qualified first responders, not earlier than January 1 of an election year or 84 days preceding the election, whichever is earlier, and not later than the sixth day preceding the election; and

(3) For qualified first responders as defined in §3-3-1(c)(3) of this code, not earlier than the 13th day preceding the election, and not later than 5:00 p.m. on the day before the election.

(c) Upon acceptance of a completed application, the official designated to supervise and conduct absentee voting shall determine whether the following requirements have been met:

(1) The application has been completed as required by law;

(2) The applicant is duly registered to vote in the precinct of his or her residence and, in a primary election, is qualified to vote the ballot of the political party requested;

(3) The applicant is authorized for the reasons given in the application to vote an absentee ballot by mail or electronically;

(4) The address to which a ballot is to be mailed is an address outside the county if the voter

WV Legislature

is applying to vote by mail under §3-3-1(b)(2)(A), §3-3-1(b)(2)(B), §3-3-1(b)(3), or §3-3-1(b)(4) of this code;

(5) The applicant is not making his or her first vote after having registered by postcard registration or, if the applicant is making his or her first vote after having registered by postcard registration, the applicant is subject to one of the exceptions provided in §3-2-10 of this code; and

(6) No regular and repeated pattern of applications for an absentee ballot by mail for the reason of being out of the county during the entire period of voting in person exists to suggest that the applicant is no longer a resident of the county.

(d) (1) If the official designated to supervise and conduct absentee voting determines that the required conditions have been met for voting an absentee ballot by mail, two representatives that are registered to vote with different political party affiliations shall sign their names in the places indicated on the back of the official ballot. If the official designated to supervise and conduct absentee voting determines the required conditions have not been met or has evidence that any of the information contained in the application is not true, the official shall give notice to the voter that the voter's absentee ballot will be challenged as provided in this article and shall enter that challenge.

(2) If the official designated to supervise and conduct electronic voting determines that a voter is eligible to submit an electronic ballot because the voter is an absent uniformed services voter or overseas voter or a person with a physical disability, or a qualified first responder as defined in §3-3-1(c)(3) of this code, the official designated to supervise absentee voting shall cause the absentee ballot to be transmitted electronically in the manner required for the electronic ballot marking tool or other electronic means.

(e)(1) Beginning on the 46th day prior to election day, within one day after the official designated to supervise and conduct absentee voting has both the completed application and the ballot, the official shall provide to the voter at the address given on the application, or by the appropriate electronic delivery method, the following items as required and as prescribed by the Secretary of State:

(A) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(B) For persons voting absentee ballot by mail, one envelope, unsealed, which may have no marks except the designation "Absent Voter's Ballot Envelope No. 1" and printed instructions to the voter;

(C) For persons voting absentee ballot by mail, one postage paid envelope, unsealed, designated "Absent Voter's Ballot Envelope No. 2";

(D) Instructions for voting absentee by mail or electronically;

www.Legislature

(E) For electronic systems or transmission, an electronic means by which eligible voters with physical disabilities may mark the absentee ballot without assistance, as prescribed by the Secretary of State; and

(F) Notice that a list of write-in candidates is available upon request.

(2) If the voter 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, or is a qualified first responder as defined in §3-3-1(c)(3) of this code the official designated to supervise and conduct absentee voting shall transmit the ballot to the voter via mail, or electronically, as requested by the voter. If the voter does not designate a preference for transmittal, the clerk may select either method of transmittal for the ballot. If the ballot is transmitted electronically pursuant to this subdivision, the official designated to supervise and conduct absentee voting shall also transmit electronically:

(A) A waiver of privacy form, to be promulgated by the Secretary of State;

(B) Instructions for voting absentee by mail or electronically;

(C) Notice that a list of write-in candidates is available upon request; and

(D) A statement of the voter affirming the voter's current name and address and whether or not he or she received assistance in voting.

(f) The voter shall mark the ballot alone: *Provided*, That the voter may have assistance in voting according to the provisions of §3-3-6 of this code.

(1) After the voter has voted the ballot or ballots to be returned by mail, the voter shall:

(A) Place the ballot or ballots in envelope no. 1 and seal that envelope;

(B) Place the sealed envelope no. 1 in envelope no. 2 and seal that envelope;

(C) Complete and sign the forms on envelope no. 2; and

(D) Return that envelope to the official designated to supervise and conduct absentee voting.

(2) If the ballot was transmitted electronically as provided in subdivisions (1) or (2), subsection (e) of this section, the voter shall return the ballot electronically, in the manner prescribed by the Secretary of State, or the voter may return the ballot by United States mail, along with a signed privacy waiver form.

(g) Except as provided in subsection (h) of this section, absentee ballots returned by United States mail or other express shipping service are to be accepted if:

(1) The ballot is received by the official designated to supervise and conduct absentee voting

WV Legislature

no later than the day after the election; or

(2) The ballot bears a postmark of the United States Postal Service dated no later than election day and the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(h) Absentee ballots received through the United States mail from persons eligible to vote an absentee ballot under §3-3-1(b)(3) of this code, relating to uniform services and overseas voters, are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(i) Voted ballots submitted electronically are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the close of polls on election day: *Provided*, That for uniform services and overseas voters, the Secretary of State's office shall enter into an agreement with the Federal Voting Assistance Program of the United States Department of Defense to transmit the ballots to the county clerks at a time when two individuals of opposite political parties are available to process the received ballots. For persons casting absentee ballots electronically due to physical disability or by qualified first responders as defined in §3-3-1(c)(3) of this code, the county clerk shall designate two individuals of opposite political parties to process the received ballots in the manner required by the particular electronic ballot marking tool or other electronic means of returning the electronic absentee ballot.

(j) Ballots received after the proper time which cannot be accepted are to be placed unopened in an envelope marked for the purpose and kept secure for 22 months following the election, after which time they are to be destroyed without being opened.

(k) Absentee ballots which are hand delivered are to be accepted if they are received by the official designated to supervise and conduct absentee voting no later than the day preceding the election: *Provided*, That no person may hand deliver more than two absentee ballots in any election and any person hand delivering an absentee ballot is required to certify that he or she has not examined or altered the ballot. Any person who makes a false certification violates §3-9-1 *et seq*. of this code and is subject to those provisions.

(l) Upon receipt of the sealed envelope, the official designated to supervise and conduct absentee voting shall:

(1) Enter onto the envelope any other required information;

(2) Enter the challenge, if any, to the ballot;

(3) Enter the required information into the permanent record of persons applying for and voting an absentee ballot in person; and

WV Legislature

(4) Place the sealed envelope into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk.

(m) Upon receipt of a ballot submitted electronically pursuant to subdivision (2), subsection (f) of this section, the official designated to supervise and conduct absentee voting shall place the ballot in an envelope marked "Absentee by Electronic Means" with the completed waiver when appropriate: *Provided*, That no ballots are to be processed without the presence of two individuals of opposite political parties.

(n) All ballots received electronically prior to the close of the polls on election day are to be tabulated in the manner prescribed for tabulating absentee ballots submitted by mail to the extent that those procedures are appropriate for the applicable voting system. The clerk of the county commission shall keep a record of absentee ballots sent and received electronically.

WV Legislature

§3-3-5a. Processing federal postcard applications.

When a federal postcard registration and absentee ballot request (FPCA), as defined in subdivision (2), subsection (b), section two of this article, is received by the official designated to supervise and conduct absentee voting, the official shall examine the application and take the following steps:

(1) The official shall first enter the name of the applicant in the permanent absentee voter's record for each election for which a ballot is requested, make a photocopy of the application for each election for which a ballot is requested and place the separate copies in secure files to be maintained for use in the various elections.

(2) The official designated to supervise and conduct absentee voting shall determine if the applicant is registered to vote at the residence address listed in the voting residence section of the application. If the applicant is not registered, or not registered at the address given, the official shall deliver the original FPCA to the clerk of the county commission for processing, and the clerk of the county commission shall process the application as an application for registration and, if the application is received after the close of voter registration for the next succeeding election, the official shall challenge the absentee ballot for that election.

(3) Except as provided in subdivision (2) of this section, the federal application for an absentee ballot received from a person qualified to use the application as provided in section two of this article is to be processed as all other applications and the ballot or ballots for each election for which ballots are requested by the applicant is to be mailed to the voter on the first day on which both the application and the ballot are available.

WV Legislature

§3-3-5b. Procedures for voting a special write-in absentee ballot by qualified persons.

(a) Notwithstanding any other provisions of this chapter, a person qualified to vote an absentee ballot in accordance with subdivision (3), subsection (d), section one of this article may apply not earlier than January 1, of an election year for a special write-in absentee ballot for a primary or general election, in conjunction with the application for a regular absentee ballot or ballots. If the application is received after the forty-ninth day preceding the election, the official designated to supervise and conduct absentee voting shall honor only the application for local, state and federal offices in general, special and primary elections.

(b) The application for a special write-in absentee ballot may be made on the federal postcard application form.

(c) In order to qualify for a special write-in absentee ballot, the voter must state that he or she is unable to vote by regular absentee ballot or in person due to requirements of military service or due to living in isolated areas or extremely remote areas of the world. This statement may be made on the federal postcard application or on a form prepared by the Secretary of State and supplied and returned with the special write-in absentee ballot.

(d) Upon receipt of the application within the time required, the official designated to supervise and conduct absentee voting shall issue the special write-in absentee ballot which is to be the same ballot issued under the provisions of 42 U.S.C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986. The ballot is to permit the elector to vote in a primary election by indicating his or her political party affiliation and the names of the specific candidates for each office, and in a general election by writing in a party preference for each office, the names of specific candidates for each office, or the name of the person whom the voter prefers for each office.

(e) When a special federal write-in ballot is received by the official designated to supervise and conduct absentee voting from a voter: (1) Who mailed the write-in ballot from any location within the United States; (2) who did not apply for a regular absentee ballot; (3) who did not apply for a regular absentee ballot by mail; or (4) whose application for a regular absentee ballot by mail was received less than thirty days before the election, the write-in ballot may not be counted.

(f) Any write-in absentee ballot must be received by the official designated to supervise and conduct absentee voting prior to the close of the polls on election day or it may not be counted.

WV Legislature

§3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.

(a) Notwithstanding any other provision of this chapter, a person qualified to vote an emergency absentee ballot, as provided in §3-3-1(c) of this code, may vote an emergency absentee ballot under the procedures established in this section. The county commission may adopt a policy extending the emergency absentee voting procedures to: (1) Qualified voters in hospitals or other duly licensed health care facilities within an adjacent county or within 35 miles of the county seat; (2) qualified voters in nursing homes within the county; or (3) qualified voters who become confined, on or after the seventh 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 policy is to be adopted by the county commission at least 90 days prior to the election that will be affected and a copy of the policy is to be filed with the Secretary of State.

(b) On or before the 56th day preceding the date on which any election is to be held, the official designated to supervise and conduct absentee voting shall notify the county commission of the number of sets of emergency absentee ballot commissioners which he or she determines necessary to perform the duties and functions pursuant to this section.

(c) A set of emergency absentee ballot commissioners at-large shall consist of two persons with different political party affiliations appointed by the county commission in accordance with the procedure prescribed for the appointment of election commissioners under the provisions of §3-1-1 et seq. of this code. Emergency absentee ballot commissioners have the same qualifications and rights and take the same oath required under the provisions of this chapter for commissioners of elections. Emergency absentee ballot commissioners are to be compensated for services and expenses in the same manner as commissioners of election or poll clerks obtaining and delivering election supplies under the provisions of §3-1-44 of this code.

(d) Upon request of the voter or a member of the voter's immediate family or, when the county commission has adopted a policy to provide emergency absentee voting services to nursing home residents within the county, upon request of a staff member of the nursing home, the official designated to supervise and conduct absentee voting, upon receiving a proper request for voting an emergency absentee ballot no earlier than the seventh day next preceding the election and no later than noon of election day shall supply to the emergency absentee ballot commissioners the application for voting an emergency absentee ballot and the balloting materials. The emergency absentee ballot application is to be prescribed by the Secretary of State and is to include the name, residence address and political party affiliation of the voter, the date, location and reason for confinement in the case of an emergency, and the name of the attending physician.

(e) The application for an emergency absentee ballot is to be signed by the person applying. If the person applying for an emergency absentee ballot is unable to sign his or her application because of illiteracy or physical disability, he or she is to make his or her mark on the signature line provided for an illiterate or disabled applicant, the mark is to be

WV Legislature

witnessed. The person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided.

(f) A declaration is to be completed and signed by each of the emergency absentee ballot commissioners, stating their names, the date on which they appeared at the place of confinement of the person applying for an emergency absentee ballot, and the particulars of the confinement.

(g) At least one of the emergency absentee ballot commissioners receiving the balloting materials shall sign a receipt which is to be attached to the application form. Each of the emergency absentee ballot commissioners shall deliver the materials to the absent voter, await his or her completion of the application and ballot and return the application and the ballot to the official designated to supervise and conduct absentee voting. Upon delivering the application and the voted ballot to the official, the emergency absentee ballot commissioners shall sign an oath that no person other than the absent voter voted the ballot. The application and the voted ballot are to be returned to the official designated to supervise and conduct absentee voting prior to the close of the polls on election day. Any ballots received by the official after the time that delivery may reasonably be made but before the closing of the polls are to be delivered to the canvassing board along with the absentee ballots challenged in accordance with the provisions of §3-3-10 of this code.

(h) Upon receiving the application and emergency absentee ballot, the official designated to supervise and conduct absentee voting shall ascertain whether the application is complete, whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the voter is properly registered to vote with the office of the clerk of the county commission. If the voter is found to be properly registered in the precinct shown on the application, the ballot is to be delivered to the precinct election commissioner pursuant to §3-3-7 of this code. If the voter is found not to be registered or is otherwise ineligible to vote an emergency ballot, the ballot is to be challenged for the appropriate reason provided for in §3-3-10 of this code.

(i) If either or both of the emergency absentee ballot commissioners refuse to sign any application for voting an emergency absentee ballot, the voter may vote as an emergency absentee and the ballot will be challenged in accordance with the provisions of §3-3-10 of this code, in addition to those absentee ballots subject to challenge as provided in that section.

(j) Any voter who receives assistance in voting an emergency absentee ballot shall comply with the provisions of §3-3-6 of this code. Any other provisions of this chapter relating to absentee ballots not altered by the provisions of this section are to govern the treatment of emergency absentee ballots.

WV Legislature

§3-3-6. Assistance to voter in voting an absentee ballot by mail.

(a) No voter shall receive any assistance in voting an absentee ballot by mail unless he or she shall make a declaration at the time he or she makes application for an absentee ballot that because of blindness, physical disability, advanced age, or inability to read or write he or she requires assistance in voting an absentee ballot.

(b) Upon receipt of an absentee ballot by mail, the voter who requires assistance in voting such ballot and who has indicated he or she requires such assistance and the reasons therefor on the application may select any eligible person to assist him or her in voting.

(c) The person providing assistance in voting an absentee ballot by mail shall make an affidavit on a form as may be prescribed by the Secretary of State, that he or she will not in any manner request, seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question; that he or she will not keep or make any memorandum or entry of anything occurring within the voting booth or compartment; and that he or she will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, which ticket the voter voted, or how the voter voted on any public question, or anything occurring within the voting booth, compartment, or voting machine booth, except when required, pursuant to law, in a judicial proceeding.

(d) The term “assistance in voting”, as used in this section, means assistance in physically marking the official absentee ballot for a voter or reading or directing the voter’s attention to any part of the official absentee ballot.

WV Legislature

§3-3-7. Delivery of absentee ballots to polling places.

(a) Except as otherwise provided in this article, in counties using paper ballots systems or voting machines, the absentee ballots of each precinct, together with the applications for the absentee ballots, the affidavits made in connection with assistance in voting and any forms, lists and records as may be designated by the Secretary of State, are to be delivered in a sealed carrier envelope to the election commissioner of the precinct at the time he or she picks up the official ballots and other election supplies as provided in section twenty-four, article one of this chapter.

(b) Absentee ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct are to be delivered to the election commissioner of the precinct who has been designated pursuant to section twenty-four, article one of this chapter, by the official designated to supervise and conduct absentee voting in person or by messenger before the closing of the polls, provided the ballots are received by the official in time to make the delivery. Any ballots received by the official after the time that delivery may reasonably be made but within the time required as provided in subsection (g), section five of this article are to be delivered to the board of canvassers along with the provisional ballots.

WV Legislature

§3-3-8. Disposition and counting of absent voters' ballots.

(a) In counties using paper ballots, all absentee ballots shall be processed as follows:

(1) The ballot boxes containing the absentee ballots shall be opened in the presence of the clerk of the county commission and two representatives of opposite political parties;

(2) The ballots shall be separated by precincts as stated on the sealed envelopes containing the ballots; and

(3) Absentee ballots shall be delivered to the polls to be opened and counted in accordance with section thirty-three, article one of this chapter, section fifteen, article five of this chapter; and section six, article six of this chapter. Disclosure of any results before the voting has been closed and the precinct returns posted on the door of the polling place shall be a per se violation of the oath taken by the counting board. In all other counties, counting is to begin immediately after closing of the polls.

(b) In counties using optical scan systems, the absentee ballots shall be processed as follows:

(1) On election day, the ballot boxes containing the absentee ballots shall be delivered to the central counting center and opened in the presence of the clerk of the county commission and two representatives of opposite political parties; and

(2) The absentee ballots shall be counted in accordance with section twenty-seven, article four-a of this chapter.

(c) In counties using direct recording elections systems, the absentee ballots shall be counted as follows:

(1) On election day, the ballot boxes containing the paper absentee ballots shall be delivered to the central counting center and opened in the presence of the clerk of the county commission and two representatives of opposite political parties; and

(2) Each absentee ballot shall be recorded on a direct recording voting terminal designated by the clerk of the county commission as the terminal for absentee tabulations, after being read aloud by a separate team of two representatives of opposite political parties; and

(3) The ballot shall be verified by both teams as being accurately printed on the paper receipt before the ballot is tabulated; and

(4) The appropriate election officials shall follow the procedures set out in subsections (a), (b), (d) and (e), section twenty-seven, article four-a of this chapter and subdivisions (3), (4), (5) and (6), subsection (c) of said section.

(d) The provisional ballots shall be deposited in a provisional ballot envelope and delivered to the board of canvassers.

WV Legislature

(e) Any election official who determines a person has voted an absent voter's ballot and has also voted at the polls on election day must report the fact to the prosecuting attorney of the county in which the votes were cast.

WV Legislature

§3-3-9. Voting in person after having received and after having voted an absent voter's ballot.

(a) Any person who has applied for and received an absent voter's ballot but has not voted and returned the same to the official designated to supervise and conduct absentee voting may vote in person at the polls on election day provided he or she returns the absent voter's ballot to the election commissioners at the polling place. Upon return of the absent voter's ballot the election commissioners shall destroy the ballot in the presence of the voter, and one of the poll clerks shall make a notation of this fact as directed by instructions issued by the Secretary of State. In the event the person does not return the absent voter's ballot, he or she will have his or her vote challenged by one or more of the election commissioners or poll clerks.

(b) No person who has voted an absent voter's ballot may vote in person on the day of the election.

WV Legislature

§3-3-10. Challenging of absent voters' ballots.

(a) The official designated to supervise and conduct absentee voting may challenge an absent voter's ballot on any of the following grounds:

(1) That the application for an absent voter's ballot has not been completed as required by law;

(2) That any statement or declaration contained in the application for an absent voter's ballot is not true;

(3) That the applicant for an absent voter's ballot is not registered to vote in the precinct of his or her residence as provided by law;

(4) That the person voting an absent voter's ballot by personal appearance in his or her office had assistance in voting the ballot when the person was not qualified for voting assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this article; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she is not so physically disabled as to have been unable to see or mark the absent voter's ballot;

(5) That the person who voted an absent voter's ballot by mail and received assistance in voting the ballot was not qualified under the provisions of this article for assistance; and

(6) That the person has voted absentee by mail as a result of being out of the county more than four consecutive times: Provided, That the determination as to whether the person has voted more than four consecutive times does not apply if the person is a citizen residing out of the United States; or a member, spouse or dependent of a member serving in the uniformed services; or a college student living outside of his or her home county.

(b) Any one or more of the election commissioners or poll clerks in a precinct may challenge an absent voter's ballot on any of the following grounds:

(1) That the application for an absent voter's ballot was not completed as required by law;

(2) That any statement or declaration contained in the application for an absent voter's ballot is not true;

(3) That the person voting an absent voter's ballot is not registered to vote in the precinct of his or her residence as provided by law;

(4) That the signatures of the person voting an absent voter's ballot as they appear on his or her registration record, his or her application for an absent voter's ballot and the absent voter's ballot envelope are not in the same handwriting;

WVLegislature

(5) That the person voting an absent voter's ballot by personal appearance had assistance in voting the ballot when the person was not qualified for assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this article; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she was not so physically disabled as to have been unable to see or mark the absent voter's ballot;

(6) That the person voted an absent voter's ballot by mail and received assistance in voting the ballot when not qualified under the provisions of this article for assistance;

(7) That the person who voted the absent voter's ballot voted in person at the polls on election day;

(8) That the person voted an absent voter's ballot under authority of subdivision (3), subsection (b), section one of this article and is or was present in the county in which he or she is registered to vote between the opening and closing of the polls on election day; and

(9) On any other ground or for any reason on which or for which the ballot of a voter voting in person at the polls on election day may be challenged.

No challenge may be made to any absent voter ballot if the voter was registered and qualified to vote pursuant to the provisions of subsection (a), section one of this article.

(c) Forms for, and the manner of, challenging an absent voter's ballot under the provisions of this article are to be prescribed by the Secretary of State.

(d) Absent voters' ballots challenged by the official designated to supervise and conduct absentee voting under the provisions of this article are to be transmitted by the official directly to the county commission sitting as a board of canvassers. The absent voters' ballots challenged by the election commissioners and poll clerks under the provisions of this article may not be counted by the election officials but are to be transmitted by them to the county commission sitting as a board of canvassers. Action by the board of canvassers on challenged absent voters' ballots is to be governed by the provisions of section forty-one, article one of this chapter.

WVLegislature

§3-3-11. Preparation, number and handling of absent voters' ballots.

(a) Absent voters' ballots are to be in all respects like other ballots. Not less than seventy days before the date on which any primary, general or special election is to be held, unless a lesser number of days is provided in any specific election law in which case the lesser number of days applies, the clerks of the county commissions of the several counties shall estimate and determine the number of absent voters' ballots of all kinds which will be required in their respective counties for that election. The ballots for the election of all officers, or the ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, are to be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one of this chapter. The several county boards of ballot commissioners shall prepare and have printed, in the number they may determine, absent voters' ballots that are to be printed under their directions as provided in this chapter and those ballots are to be delivered to the clerk of the county commission of the county not less than forty-six days before the day of the election at which they are to be used.

(b) The official designated to supervise and conduct absentee voting shall be responsible for the mailing, transmitting, receiving, delivering and otherwise handling of all absent voters' ballots. He or she shall keep a record, as may be prescribed by the Secretary of State, of all ballots delivered for the purpose of absentee voting, as well as all ballots, if any, marked before him or her and shall deliver to the commissioner of election a certificate stating the number of ballots delivered, transmitted, or mailed to absent voters and those marked before him or her, if any, and the names of the voters to whom those ballots have been delivered, transmitted, or mailed or by whom they have been marked, if marked before him or her.

WV Legislature

§3-3-12. Rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting.

(a) The Secretary of State shall make, amend and rescind rules, regulations, orders and instructions, and prescribe forms, lists and records, and consolidation of forms, lists and records as may be necessary to carry out the policy of the Legislature as contained in this article and as may be necessary to provide for an effective, efficient and orderly administration of the absentee voter law of this state. In the case of West Virginia voters residing outside the continental United States, the Secretary of State shall promulgate rules and regulations necessary to implement procedures relating to absentee voters contained in 42 U.S.C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986 and shall forward a copy of the act to all officials designated to supervise and conduct absentee voting before January 1, of each even-numbered year.

(b) The Secretary of State may establish special procedures to allow absentee voting for those categories of registered voters who, because of special circumstances, would otherwise be unable to vote in the election.

(c) It is the duty of all officials designated to supervise and conduct absentee voting, other county officers, and all election commissioners and poll clerks to abide by the rules, regulations, orders and instructions and to use the forms, lists and records which may include or relate to:

(1) The consolidation of the two application forms provided for in this article into one form;

(2) The size and form of absent voter's ballot envelope nos. 1 and 2, and carrier envelopes;

(3) The information which is to be placed on absent voter's ballot envelope no. 1 and the forms and information which are to be placed on absent voter's ballot envelope no. 2;

(4) The forms and manner of making the challenges to absentee ballots authorized by this article;

(5) The forms of, information to be contained in, and consolidation of lists and records pertaining to applications for, and voting of, absentee ballots and assistance to persons voting absentee ballots;

(6) The supplying of application forms, envelopes, challenge forms, lists, records and other forms; and

(7) The keeping and security of voted absentee ballots in the office of the official designated to supervise and conduct absentee voting.

WV Legislature

§3-3-13. Absentee voting in municipal elections.

The provisions of this article relating to absentee voting shall apply to all municipal elections, except where clearly not adaptable thereto, and the governing bodies of the several municipalities of the state shall by ordinance implement the provisions hereof so as to develop and provide a complete and satisfactory absentee voting system for municipal elections.

WV Legislature