WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1943

ENROLLED

HOUSE BILL No. 236

(By Mr. Davis)

PASSED March 13, 1943

In Effect ninety days from Passage
AN ACT to repeal section twenty-seven, and to amend and reenact sections twenty-four, twenty-six, twenty-nine, thirty-two, thirty-four, thirty-five, thirty-eight, article two; to amend and reenact section eighteen, article four; and to amend and reenact section twenty-nine, article five; sections three and seven, article six, all of chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and all relating to the registration of voters and the conduct of elections.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections twenty-four, twenty-six, twenty-nine, thirty-two, thirty-four, thirty-five and thirty-eight, article two; section eighteen, article four; and section twenty-nine, article five; sections three and seven, article
six, all of chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

CHAPTER III. ELECTIONS

Article 2. Registration of Voters.

Section 24. Absentee Registration.—Any person who possesses the qualifications for registration, but who is absent from the state or county on account of occupation, or for any other necessary cause, including service in the armed forces of the United States, may at any time except during the thirty days preceding any election, register by mail according to the procedure prescribed by the secretary of state: Provided, however, That any person serving in any branch of the armed forces of the United States may take and subscribe the oath or oaths required for absentee registration before any commissioned officer of any branch of the armed service of the United States. Such oath may be taken at any place either within or without the United States of America, or any territory, possession or dependency thereof. The certificate of such oath need not state the place where same
is taken and shall require no seal to be affixed thereto.

The officer taking and certifying such oath must state his rank, branch of military service, and identification number; and such certificate may be in form and effect as follows:

IN THE MILITARY SERVICE OF THE UNITED STATES:

I, ............................................... ..., being duly sworn on oath (affirmation) do swear (affirm) that the statements herein contained are, to the best of my knowledge and belief, true, and that I am legally qualified to vote.

.................................................................

Signature of Applicant.

Subscribed and sworn to before me this the ...... .......... day of ............................................, 19.....

.................................................................

Signature of officer, Rank and Identification Number.

Sec. 26. Registration Procedure in Office of the Clerk of the County Court.—The clerk of the county court may register any qualified person by filling in the prescribed
registration form or forms, as the case may be, and having them signed by the applicant under oath or affirmation, except as is otherwise provided in this article. Upon proper proof, the registration record of any voter may be altered, amended, corrected, or cancelled by the clerk of the county court.

The aforesaid registration or alteration, correction, or cancellation of registration records shall be carried on throughout the year, except during the thirty days preceding any election. For the initial registration the county court may, at its discretion, order the clerk of the county court to maintain additional office hours in the evening.

Sec. 29. Disability Suffered Since Registration.—Any voter who has since the time of registration suffered a physical disability which renders him unable to sign his name, may at any time, except the thirty days immediately preceding any election, personally make application under oath to the clerk of the county court to have such fact entered on his registration record, together with a statement of the exact nature of his physical disability, and such entry shall be made accordingly. If such applicant
is physically unable to appear before the clerk of the
county court to cause such change to be made on the
registration record, he may request the clerk of the county
court to mail him the necessary forms, and the clerk of
the county court upon receipt of such forms properly
filled, together with a physician's certificate affirming
such disability, shall alter the registration record of the
voter accordingly: Provided, That when the clerk of the
county court shall ascertain that any voter who has de-
clared himself physically disabled or illiterate, no longer
suffers from such physical disability or illiteracy, he shall
forthwith cancel on the registration record the entry
relating to physical disability or illiteracy, and shall no-
tify such elector by mail of his action.

Sec. 32. Challenge of Right to Register.—Any person
claiming the right to register may be challenged by the
clerk of the county court or by any registrar, or, pro-
vided they appear in person at the office of the clerk of
the county court, by the chairman of a political party or
any other qualified voter. Such challenge shall be en-
tered upon a form prescribed by the secretary of state
and shall be filed as a matter of record in the office of
the clerk of the county court. Upon receipt of such form
the clerk of the county court shall mail to the person
challenged a notice, the form of which shall be prescribed
by the secretary of state. Any person so challenged may
appear at the office of the clerk of the county court at
any time, except during the thirty days immediately
preceding any election, to show cause why the challenge
should be removed. Failure to appear shall automatically
constitute a cancellation of such person's registration
record: Provided, That in no case shall such registration
record be cancelled unless such person receives notice of
such challenge by registered mail with return receipt re-
quested at least five weeks preceding any election.

Sec. 34. Time of Transfer.—Transfers of the registra-
tion record may be made throughout the year except
during the thirty days immediately preceding any elec-
tion, and if any voter shall move from one place to an-
other within the county within the thirty-day period, he
shall, for that election only, vote in the precinct from
which he moved.
Sec. 35. Change of Name.—Whenever an elector, previously registered, shall change his name, such person shall be required to register again. For this purpose such person may register by mail in the same manner as an absentee registrant, according to the procedure of section twenty-four of this article. Upon such registration the clerk of the county court shall cancel the registration record bearing the voter's former name. When such a change of name is made during the thirty days immediately preceding any election, such elector, if duly registered, may vote at the election under his former name.

Sec. 38. Time of Hearings Before County Court.—The county court shall hold such hearings as shall be necessary for the purpose of reviewing any case pertaining to registration: Provided, That no such hearings shall be held within the thirty days immediately preceding the election in which the person whose registration is affected seeks to vote.

Sec. 18. Ascertainment of Result of Primary; Certificates.—When the polls are closed, the commissioners of election and the poll clerks shall proceed to ascertain the result of the election as follows:

(a) The commissioners shall ascertain the number of ballots destroyed during the election and the number of ballots remaining not voted;

(b) The commissioners and clerks shall also ascertain from the poll books, and set down therein the total number of ballots of each party cast. The commissioners shall report, over their signatures, to the clerk of the county court, the number of votes of each party cast, the number of ballots destroyed during the election, and the number of ballots not voted. All unused ballots shall at the same time be returned to the clerk of the county court, who shall immediately destroy them by fire or otherwise.

Each commissioner who is a member of an election board which fails to account for every ballot delivered
to it shall be guilty of a misdemeanor, and upon con-

viction thereof shall be fined not more than one thou-
sand dollars or confined in the county jail for not more
than one year, or both;

(c) The ballot box shall be opened and one of the
commissioners shall take therefrom one ballot at a
time, in the presence of all the other officers, and shall
announce what political party's ballot it is, and shall
read therefrom the result of the vote on such ballot for
each office, and hand the ballot to another of the com-
misioners differing in politics from himself, who, if
satisfied that it is correctly read, shall string the same on
thread. The ballots of each party shall be strung on
separate threads. Each poll clerk shall keep an ac-
curate tally of the contents of each ballot of each party
on tally paper, which shall be provided for the pur-
pose, so as to show the number of votes received by
every person for any office. The ballots shall be
counted as they are strung upon the thread, and, when-
ever the number counted for any party shall equal the
number of votes entered upon the poll book of that
party, any other ballot of such party found in the ballot box shall be immediately destroyed by fire or otherwise, without unfolding the same, or allowing any one to examine or know the contents thereof;

(d) As soon as the results at the precinct are ascertained, the commissioners and clerks shall make out and sign four certificates, for each party represented, of the vote for all candidates of such party, in the following form:

Certificate of result for ............................................ party candidates.

We, the undersigned commissioners and poll clerks of the primary election held at precinct No. ......................... of ......................... district of ......................... county, W. Va., on the ....... day of ................., 19 ..., do hereby certify that, having been first duly sworn, we have carefully and impartially ascertained the result of said election at said precinct for the candidates on the official ballot of the ............................................ party, and the same is as follows:

For the office of governor, A. B. received ............. votes.
For the office of governor, E. F. received ............... votes.

For the office of governor, G. H. received ............... votes.

(And so on as to each office for which any candidate was voted for, stating in words and figures the number of votes cast for each candidate.)

Given under our hands this ........... day of ........... 

19 ........... 

Three of such certificates of result of election, for each party, shall then be sealed in separately addressed envelopes, furnished for the purpose, and shall be disposed of by the precinct commissioners as follows: One certificate for each party shall be returned, under seal, to the clerk of the county court, with the election returns; one for each party shall be delivered by the commissioners to the clerk of the circuit court of the county; and one for each party shall be sent by registered mail to the secretary of state: Provided, however, That it shall not be necessary for the precinct commissioners and clerks to include, in the certificates to the secretary of state, the votes cast for any candidates for county and
district offices, other than for members of the Legislature. The one not sealed up shall be posted on the outside of the front door of the polling place in said precinct.

All ballots voted for candidates of each party shall be sealed up in separate envelopes and the commissioners and clerks shall each sign his name across the seal.

In all precincts in which a receiving board and a counting board of election officers are appointed, the work of counting the votes and of ascertaining and certifying the result shall be divided between the two boards, and be performed by them, respectively, in the same manner provided in article five of this chapter for counting the votes and ascertaining and certifying the result of a general election.

Article 5. Conducting Election; Ascertaining and Certifying the Result.

Sec. 29. Counting of Ballots Not Voted; Recordation of Number of Voters; Return to County Clerk.—Immediately on closing the polls, the commissioners of elec-
tion shall ascertain the number of ballots destroyed during the election and the number of ballots remaining not voted. The commissioners of election shall also ascertain from the poll books the number of persons who voted and shall report, over their signatures, to the clerk of the county court, the number of votes cast, the number of ballots destroyed during the election, and the number of ballots not voted. All unused ballots shall at the same time be returned to the clerk of the county court, who shall immediately destroy them by fire or otherwise.

Each commissioner who is a member of an election board which fails to account for every ballot delivered to it shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both.

Article 6. Voting by Absentees.

Section 3. Blanks Furnished by Clerks; Oath.—Application for an absent voter's ballot shall be made in person or by mail, on a blank to be furnished by the clerk
of the circuit court of the county in which the applicant is a qualified elector. Such blank shall, upon request, be sent to the applicant by mail by such clerk, or delivered to such applicant in person upon his appearance at the office of such clerk. Application for an absent voter’s ballot shall be substantially in the following form, and shall be signed and sworn to by the applicant, as hereinafter provided, before some officer authorized by law to administer oaths, and having an official seal. If the applicant appears in person at the office of the clerk of the circuit court, such clerk shall administer the necessary oath.

VERIFIED APPLICATION FOR ABSENT VOTER’S BALLOT

State of....................................................
County of................................................., to-wit:

I,.........................................................., solemnly swear (or affirm) that I am now, or will have been, a resident of the state of West Virginia for twelve months, and of the county of ............................................. for sixty days, next preceding the date of the ensuing election; that I am now a resident
of election precinct No. ................, in the magisterial
district of ............................, in said county; that I
am a duly qualified elector entitled to vote in such elec-
tion; that I am registered in the precinct of my residence
as provided by law; that I am ........ ..........................
(stating business), and because of the nature of my busi-
ness or employment, or for the following reasons........
..................... (relating unavoidable cause of absence), I
expect to be absent from the state of my residence on the
date of such election, and I hereby make application for
an official ballot (or ballots if more than one is to be used)
to be voted by me at such election; and that I will return
such ballot (or ballots) to the officer issuing them not
later than four days prior to the day of such election.
(If application is made for a primary ballot, the ap-
licant shall also designate the party whose candidates he
expects to vote for.)

Signed..........................................

Home address of applicant.......................................
P. O. address to which ballot is to be sent ............

Subscribed and sworn to before me, as witness my hand
and seal this day of , 19...

My commission expires...

Provided, however, That when such absent voter is a person serving in any branch of the armed forces of the United States he may take and subscribe the oath to the above application before any commissioned officer of any branch of the armed services of the United States, under the same provisions and in the same form as required in section twenty-four, article two of this act.

Sec. 7. Affidavit of Absent Voter; Marking and Return of Ballot.—Such absent voter shall make and subscribe to the affidavit provided for in section six of this article before any officer authorized by law to administer oaths and having an official seal, and such voter shall thereupon, in the presence of such officer, and of no other person, mark such ballot or ballots, but in such manner that such officer cannot know how such ballot or ballots, are marked, and such ballot or ballots shall then, in the presence of such officer, be folded by such voter so that
each ballot will be separate and so as to conceal the marking, and shall, in the presence of such officer, be inclosed in such envelope, together with any unused ballot, and the envelope shall be securely sealed. The envelope shall then be mailed by such voter by registered mail, postage prepaid, to the officer issuing the ballot, or, if more convenient, it may be delivered in person. Any such ballot to be valid shall be received by the clerk of the circuit court of the county in time for him to deliver the same to the election commissioners before the closing of the polls: Provided, however, That when such absent voter is a person serving in any branch of the armed forces of the United States he may take and subscribe the oath to the above application before any commissioned officer of any branch of the armed services of the United States, under the same provisions and in the same form as required in section twenty-four, article two of this act.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Rod F. Johnson
Chairman Senate Committee

Fred L. Robroff
Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Fred A. Weatherby
Clerk of the Senate

Clerk of the House of Delegates

James Pauze
President of the Senate

John J. Johnson
Speaker House of Delegates

The within approved this the 19th day of March, 1943.

Matthew Neely
Governor

Filed in the office of the Secretary of State of West Virginia MAR 19 1943

Wm. S. O'Brien, Secretary of State