

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1943



ENROLLED

HOUSE BILL No. 236

(By Mr. Davis)



PASSED March 13, 1943

In Effect ninety days from Passage

928

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article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections twenty-four, twenty-six, twenty-nine, thirty-two, thirty-four, thirty-five and thirty-eight, article two; section eighteen, article four;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
2 possesses the qualifications for registration, but who is
3 absent from the state or county on account of occupa-
4 tion, or for any other necessary cause, including service
5 in the armed forces of the United States, may at any time
6 except during the thirty days preceding any election,
7 register by mail according to the procedure prescribed by
8 the secretary of state: *Provided, however,* That any per-
9 son serving in any branch of the armed forces of the
10 United States may take and subscribe the oath or oaths
11 required for absentee registration before any commis-
12 sioned officer of any branch of the armed service of the
13 United States. Such oath may be taken at any place either
14 within or without the United States of America, or any
15 territory, possession or dependency thereof. The certi-
16 ficate of such oath need not state the place where same

17 is taken and shall require no seal to be affixed thereto.
 18 The officer taking and certifying such oath must state
 19 his rank, branch of military service, and identification
 20 number; and such certificate may be in form and effect as
 21 follows:

22 IN THE MILITARY SERVICE OF THE UNITED
 23 STATES:

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

28

29 Signature of Applicant.

30 Subscribed and sworn to before me this the.....

31 day of, 19....

32

33 Signature of officer, Rank and

34 Identification Number.

Sec. 26. *Registration Procedure in Office of the Clerk*
 2 of the County Court.—The clerk of the county court may
 3 register any qualified person by filling in the prescribed

4 registration form or forms, as the case may be, and having
5 them signed by the applicant under oath or affirmation,
6 except as is otherwise provided in this article. Upon
7 proper proof, the registration record of any voter may be
8 altered, amended, corrected, or cancelled by the clerk of
9 the county court.

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

Sec. 29. *Disability Suffered Since Registration.*—Any
2 voter who has since the time of registration suffered a
3 physical disability which renders him unable to sign his
4 name, may at any time, except the thirty days immediately
5 preceding any election, personally make application under
6 oath to the clerk of the county court to have such fact
7 entered on his registration record, together with a state-
8 ment of the exact nature of his physical disability, and
9 such entry shall be made accordingly. If such applicant

10 is physically unable to appear before the clerk of the
11 county court to cause such change to be made on the
12 registration record, he may request the clerk of the county
13 court to mail him the necessary forms, and the clerk of
14 the county court upon receipt of such forms properly
15 filled, together with a physician's certificate affirming
16 such disability, shall alter the registration record of the
17 voter accordingly: *Provided*, That when the clerk of the
18 county court shall ascertain that any voter who has de-
19 clared himself physically disabled or illiterate, no longer
20 suffers from such physical disability or illiteracy, he shall
21 forthwith cancel on the registration record the entry
22 relating to physical disability or illiteracy, and shall no-
23 tify such elector by mail of his action.

Sec. 32. *Challenge of Right to Register.*—Any person
2 claiming the right to register may be challenged by the
3 clerk of the county court or by any registrar, or, pro-
4 vided they appear in person at the office of the clerk of
5 the county court, by the chairman of a political party or
6 any other qualified voter. Such challenge shall be en-
7 tered upon a form prescribed by the secretary of state

8 and shall be filed as a matter of record in the office of
9 the clerk of the county court. Upon receipt of such form
10 the clerk of the county court shall mail to the person
11 challenged a notice, the form of which shall be prescribed
12 by the secretary of state. Any person so challenged may
13 appear at the office of the clerk of the county court at
14 any time, except during the thirty days immediately
15 preceding any election, to show cause why the challenge
16 should be removed. Failure to appear shall automatically
17 constitute a cancellation of such person's registration
18 record: *Provided*, That in no case shall such registration
19 record be cancelled unless such person receives notice of
20 such challenge by registered mail with return receipt re-
21 quested at least five weeks preceding any election.

Sec. 34. *Time of Transfer*.—Transfers of the registra-
2 tion record may be made throughout the year except
3 during the thirty days immediately preceding any elec-
4 tion, and if any voter shall move from one place to an-
5 other within the county within the thirty-day period, he
6 shall, for that election only, vote in the precinct from
7 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.

Article 4. Nomination of Candidates.

Sec. 18. *Ascertainment of Result of Primary; Certifi-*
2 *cates.*—When the polls are closed, the commissioners of
3 election and the poll clerks shall proceed to ascertain
4 the result of the election as follows:

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

8 (b) The commissioners and clerks shall also ascer-
9 tain from the poll books, and set down therein the
10 total number of ballots of each party cast. The
11 commissioners shall report, over their signatures, to
12 the clerk of the county court, the number of votes
13 of each party cast, the number of ballots destroyed
14 during the election, and the number of ballots not
15 voted. All unused ballots shall at the same time
16 be returned to the clerk of the county court,
17 who shall immediately destroy them by fire or other-
18 wise.

19 Each commissioner who is a member of an election
20 board which fails to account for every ballot delivered

21 to it shall be guilty of a misdemeanor, and upon con-
22 viction thereof shall be fined not more than one thou-
23 sand dollars or confined in the county jail for not more
24 than one year, or both;

25 (c) The ballot box shall be opened and one of the
26 commissioners shall take therefrom one ballot at a
27 time, in the presence of all the other officers, and shall
28 announce what political party's ballot it is, and shall
29 read therefrom the result of the vote on such ballot for
30 each office, and hand the ballot to another of the com-
31 missioners differing in politics from himself, who, if
32 satisfied that it is correctly read, shall string the same on
33 thread. The ballots of each party shall be strung on
34 separate threads. Each poll clerk shall keep an ac-
35 curate tally of the contents of each ballot of each party
36 on tally paper, which shall be provided for the pur-
37 pose, so as to show the number of votes received by
38 every person for any office. The ballots shall be
39 counted as they are strung upon the thread, and, when-
40 ever the number counted for any party shall equal the
41 number of votes entered upon the poll book of that

42 party, any other ballot of such party found in the bal-
43 lot box shall be immediately destroyed by fire or other-
44 wise, without unfolding the same, or allowing any one
45 to examine or know the contents thereof;

46 (d) As soon as the results at the precinct are ascer-
47 tained, the commissioners and clerks shall make out
48 and sign four certificates, for each party represented,
49 of the vote for all candidates of such party, in the fol-
50 lowing form:

51 Certificate of result for.....party
52 candidates.

53 We, the undersigned commissioners and poll clerks of
54 the primary election held at precinct No.....
55 ofdistrict of..... county, W.
56 Va., on the..... day of....., 19, do hereby
57 certify that, having been first duly sworn, we have care-
58 fully and impartially ascertained the result of said elec-
59 tion at said precinct for the candidates on the official
60 ballot of the.....party, and the same is as fol-
61 lows:

62 For the office of governor, A. B. receivedvotes.

63 For the office of governor, E. F. received.....votes.

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

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

68 Given under our hands this day of

69 19.....

70

71 Three of such certificates of result of election, for each
72 party, shall then be sealed in separately addressed en-
73 velopes, furnished for the purpose, and shall be dis-
74 posed of by the precinct commissioners as follows: One
75 certificate for each party shall be returned, under seal,
76 to the clerk of the county court, with the election re-
77 turns; one for each party shall be delivered by the com-
78 missioners to the clerk of the circuit court of the county;
79 and one for each party shall be sent by registered mail
80 to the secretary of state: *Provided, however,* That it shall
81 not be necessary for the precinct commissioners and
82 clerks to include, in the certificates to the secretary of
83 state, the votes cast for any candidates for county and

84 district offices, other than for members of the Legisla-
85 ture. The one not sealed up shall be posted on the out-
86 side of the front door of the polling place in said pre-
87 cinct.

88 All ballots voted for candidates of each party shall
89 be sealed up in separate envelopes and the commission-
90 ers and clerks shall each sign his name across the
91 seal.

92 In all precincts in which a receiving board and a count-
93 ing board of election officers are appointed, the work
94 of counting the votes and of ascertaining and certifying
95 the result shall be divided between the two boards, and
96 be performed by them, respectively, in the same manner
97 provided in article five of this chapter for counting the
98 votes and ascertaining and certifying the result of a
99 general election.

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

Sec. 29. *Counting of Ballots Not Voted; Recordation of
2 Number of Voters; Return to County Clerk.*—Imme-
3 diately on closing the polls, the commissioners of elec-

4 tion shall ascertain the number of ballots destroyed dur-
5 ing the election and the number of ballots remaining not
6 voted. The commissioners of election shall also ascer-
7 tain from the poll books the number of persons who
8 voted and shall report, over their signatures, to the clerk
9 of the county court, the number of votes cast, the num-
10 ber of ballots destroyed during the election, and the
11 number of ballots not voted. All unused ballots shall
12 at the same time be returned to the clerk of the county
13 court, who shall immediately destroy them by fire or
14 otherwise.

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

Article 6. Voting by Absentees.

Section 3. *Blanks Furnished by Clerks; Oath.*—Appli-
2 cation for an absent voter's ballot shall be made in per-
3 son or by mail, on a blank to be furnished by the clerk

4 of the circuit court of the county in which the applicant
5 is a qualified elector. Such blank shall, upon request, be
6 sent to the applicant by mail by such clerk, or delivered
7 to such applicant in person upon his appearance at the
8 office of such clerk. Application for an absent voter's
9 ballot shall be substantially in the following form, and
10 shall be signed and sworn to by the applicant, as here-
11 inafter provided, before some officer authorized by law
12 to administer oaths, and having an official seal. If the
13 applicant appears in person at the office of the clerk of
14 the circuit court, such clerk shall administer the necessary
15 oath.

16 VERIFIED APPLICATION FOR ABSENT VOTER'S
17 BALLOT

18 State of.....,

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

20 I,, solemnly swear (or affirm)
21 that I am now, or will have been, a resident of the state
22 of West Virginia for twelve months, and of the county
23 of for sixty days, next preceding
24 the date of the ensuing election; that I am now a resident

25 of election precinct No. _____, in the magisterial
 26 district of _____, in said county; that I
 27 am a duly qualified elector entitled to vote in such elec-
 28 tion; that I am registered in the precinct of my residence
 29 as provided by law; that I am _____
 30 (stating business), and because of the nature of my busi-
 31 ness or employment, or for the following reasons.....
 32 _____(relating unavoidable cause of absence), I
 33 expect to be absent from the state of my residence on the
 34 date of such election, and I hereby make application for
 35 an official ballot (or ballots if more than one is to be used)
 36 to be voted by me at such election; and that I will return
 37 such ballot (or ballots) to the officer issuing them not
 38 later than four days prior to the day of such election.

39 (If application is made for a primary ballot, the ap-
 40 plicant shall also designate the party whose candidates he
 41 expects to vote for.)

42 Signed.....

43 Home address of applicant.....

44 P. O. address to which ballot is to be sent.....

45 Subscribed and sworn to before me, as witness my hand

46 and seal this day of, 19.....

47

48 (Official Title.)

49 My commission expires.....

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

Sec. 7. Affidavit of Absent Voter; Marking and Return
2 *of Ballot.*—Such absent voter shall make and subscribe
3 to the affidavit provided for in section six of this article
4 before any officer authorized by law to administer oaths
5 and having an official seal, and such voter shall there-
6 upon, in the presence of such officer, and of no other
7 person, mark such ballot or ballots, but in such manner
8 that such officer cannot know how such ballot or ballots,
9 are marked, and such ballot or ballots shall then, in the
10 presence of such officer, be folded by such voter so that

11 each ballot will be separate and so as to conceal the mark-
12 ing, and shall, in the presence of such officer, be inclosed
13 in such envelope, together with any unused ballot, and
14 the envelope shall be securely sealed. The envelope shall
15 then be mailed by such voter by registered mail, postage
16 prepaid, to the officer issuing the ballot, or, if more con-
17 venient, it may be delivered in person. Any such ballot
18 to be valid shall be received by the clerk of the circuit
19 court of the county in time for him to deliver the same
20 to the election commissioners before the closing of the
21 polls: *Provided, however,* That when such absent voter
22 is a person serving in any branch of the armed forces of
23 the United States he may take and subscribe the oath
24 to the above application before any commissioned of-
25 ficer of any branch of the armed services of the United
26 States, under the same provisions and in the same form
27 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.

Ray L. Johnson
Chairman Senate Committee

Fred L. Petroff
Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Fred B. Westcott
Clerk of the Senate

Askliff
Clerk of the House of Delegates

James Paull
President of the Senate

John E. Cauce
Speaker House of Delegates

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

Matthew M. Neely
Governor.



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

Wm. S. O'BRIEN,
Secretary of State