

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1944

ENROLLED

SENATE BILL No. 2

(Originating in the Senate Committee on the Judiciary)

PASSED January 7, 1944

In Effect from Passage

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AN ACT to amend chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article to be numbered article six-a, relating to the establishment, until June thirtieth, one thousand nine hundred forty-seven, of a practicable system of absentee voting by West Virginia citizens who are members of the armed services of the United States.

Article 6-a. Absentee Voting by Service Men and Women.

Section

1. Declaration of Legislative Purpose.
2. Announcement of Candidacy.
3. Certification and Posting of Candidacies.

4. Appointment of Ballot Commissioners.
5. Compensation of Ballot Commissioners.
6. Nominations by Party Conventions.
7. Preparation, Printing and Delivery of Absent Voters' Ballots.
8. Persons Entitled to Vote Under the Provisions of This Article.
9. Temporary Registration.
10. Request for Absent Voter's Ballot.
11. Mailing of Absent Voters' Ballots.
12. Ballot Envelope.
13. Affidavit of Absent Voter; Marking and Return of Ballot.
14. Filing of Voted Ballots.
15. Canvass of Ballots.
16. Details Not Covered by This Article.
17. Duration of Article.
18. Temporary Suspension of Inconsistent Provisions; Revival.
19. Separability.

Be it enacted by the Legislature of West Virginia:

That chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article to be numbered article six-a, relating to absentee voting, to read as follows:

Section 1. *Declaration of Legislative Purpose.*—In the
2 enactment of this article, it is the purpose of the Legis-
3 lature to make only such temporary changes or modifica-
4 tions in existing election laws as may be necessary to
5 provide a practicable means whereby West Virginians in
6 the armed services may be afforded an opportunity to
7 vote during the period of time covered by this article.

Sec. 2. *Announcement of Candidacy.*—While this article is in effect, the fourteenth Saturday rather than the fifth Saturday preceding the day fixed for the primary election shall be the last day on which a person may file announcement of his candidacy for nomination to any office. In all other respects, an announcement of candidacy shall be governed by the provisions of sections five-a and six, article four, chapter three of the code.

Sec. 3. *Certification and Posting of Candidacies.*—The secretary of state shall, on the Monday following the fourteenth Saturday preceding the day fixed for the primary election, proceed with the certification and posting of candidacies. Such certification and posting shall in all other respects be governed by the provisions of section eight, article four, chapter three of the code.

Sec. 4. *Appointment of Ballot Commissioners.*—Between the fifteenth and thirty-first days of January in each year in which a general election is to be held, the clerk of each circuit court shall appoint two ballot com-

5 missioners for a term of two years beginning on the first
6 day of February following. In all other respects, includ-
7 ing the customary notice to the county executive com-
8 mittees of the two political parties and the appointment
9 of the person duly designated by the respective chairmen
10 of such committees, the appointment of ballot commis-
11 sioners shall be governed by the provisions of section two,
12 article five, chapter three of the code.

Sec. 5. *Compensation of Ballot Commissioners.*—The
2 existing five-day limitation on the number of days for
3 which each ballot commissioner may be paid for his serv-
4 ices at any election shall, for the duration of this article,
5 be raised to seven days. The compensation of ballot com-
6 missioners and other election officials shall, in all other
7 respects, be governed by the provisions of section forty,
8 article five, chapter three of the code.

Sec. 6. *Nominations by Party Conventions.*—The party
2 conventions provided for in section twenty-seven, article
3 four, chapter three of the code shall be held between the
4 fifteenth and twenty-fifth days of July. All nominations
5 which, since the enactment of section five, article four,

6 chapter forty-eight, acts of the Legislature, regular ses-
7 sion, one thousand nine hundred forty-three, are still
8 made at such conventions shall be certified to the secre-
9 tary of state or to the clerk of the circuit court, as the case
10 may be, within twenty-four hours after they are made,
11 and the secretary of state, within twenty-four hours after
12 receipt of any such certification, shall certify the nomi-
13 nations to the clerks of the proper circuit courts. In all
14 other respects, such nominations shall be governed by the
15 provisions of section twenty-seven, article four, chapter
16 three of the code.

Sec. 7. *Preparation, Printing and Delivery of Absent*
2 *Voters' Ballots.*—Upon receipt by the circuit clerk of the
3 list of candidates certified by the secretary of state as
4 provided in sections three and six of this article, the ballot
5 commissioners shall immediately proceed with the pre-
6 paration of a sample official ballot for each political party,
7 shall estimate and determine the number of absent voters'
8 ballots of each kind which will be required, and shall
9 print and deliver such ballots to the clerk of the circuit
10 court as soon as possible, but not later than the twelfth

11 Saturday preceding the day fixed for the primary election.
12 Between the twenty-fifth day of July and the tenth day
13 of August, both inclusive, for the general election to be
14 held in the year one thousand nine hundred forty-four,
15 and between the tenth and twenty-fifth days of August,
16 both inclusive, for the general election to be held in
17 the year one thousand nine hundred forty-six, the ballot
18 commissioners shall prepare, print and deliver to the
19 clerk of the circuit court such absent voters' ballots as
20 will, in their opinion, be required for such elections.

21 In order to lessen the burden of the armed forces in re-
22 spect to the transportation and distribution of absentee
23 ballots, such ballots may be printed on lightweight paper,
24 if it is available, to the end that the total weight of the
25 ballot and the two envelopes provided for in section
26 twelve of this article shall not exceed eight-tenths of an
27 ounce, if possible, and such ballots shall be valid without
28 regard to other provisions of law respecting weight and
29 quality of paper.

30 If, after the ballots are printed but before they are dis-
31 tributed as provided in the following sections, any change

32 in the names printed thereon should become necessary,
33 the ballot commissioners shall make the necessary
34 changes by the use of stickers or by the printing of addi-
35 tional ballots.

36 Except as otherwise specified in this section, prepara-
37 tion, printing and delivery of absent voters' ballots shall
38 be governed by the provisions of section nine, article four,
39 section three, article five, and section fifteen, article six,
40 of chapter three of the code.

Sec. 8. *Persons Entitled to Vote Under the Provisions*
2 *of This Article.*—Any person, man or woman, who is reg-
3 istered as a voter in any county of this state, who is a
4 member of any branch of the armed services of the
5 United States, and who in the performance of his
6 duties expects to be absent on election day from the
7 county in which he is registered, may vote by absent
8 voter's ballot as provided in this article, whether such
9 person at the time of voting is within or without the terri-
10 torial limits of the United States.

11 Any other person may vote by absent voter's ballot only
12 as provided in article six, chapter three of the code.

Sec. 9. *Temporary Registration.*—Any person who is
not registered as a voter, and who is entitled to be registered under the provisions of general law, but who is otherwise entitled to vote under the provisions of this article, may apply to the clerk of the county court of the county in which such person resides for permanent registration as provided in other sections of the code or for temporary registration as provided in this section.

Application for temporary registration shall be made upon a simplified form to be furnished by the county court. Request for such a form may be made by mail or otherwise by the applicant himself or by any other person. The form shall be substantially as follows:

TEMPORARY REGISTRATION FORM

Name

(Last Name) (First Name) (Middle Name)

Home Address

(Give street number or as specific location as possible)

.....

.....

22 Political Party Affiliation _____

23 I, _____, do solemnly swear (or
24 affirm), to the best of my knowledge and belief, that
25 though not registered I am legally qualified to vote; that
26 I am in the armed service of the United States; that I
27 am now at least twenty-one years of age, or will have
28 reached that age by the date of the next general election;
29 that I live at the above address in _____
30 County, West Virginia; and that on the basis of these state-
31 ments I desire to be registered as a voter of the proper
32 precinct in the county.

33 _____

34 (Signature of Applicant)

35 Subscribed and sworn to (or affirmed) before me this
36 _____ day of _____, 19____.

37 _____

38 _____

39 (Signature of Officer, Rank,
40 Branch of Service and
41 Identification Number)

42 Note: This application shall be certified by a com-
43 missioned officer, warrant officer, or noncommissioned of-
44 ficer no lower in rank than sergeant or the equivalent
45 navy rating, of any branch of the armed services of the
46 United States, or by some other person qualified to ad-
47 minister oaths. The certificate need not state the place
48 where it is made and no seal shall be necessary.

49 * * * *

50 Please send an absent voter's ballot, for the next elec-
51 tion, to me at the following address:

52 _____

53 _____

54 _____

55 The applicant shall make the necessary affidavit before
56 a commissioned officer, warrant officer or noncommission-
57 ed officer no lower in rank than sergeant or the equivalent
58 navy rating, of any branch of the armed services of the
59 United States, or before some other person qualified to ad-
60 minister oaths, at any place either within or without the
61 territorial limits of the United States. The certificate need
62 not state the place where it is made and shall require no seal.

63 Upon receipt by the clerk of the county court of such
64 an application, duly executed, it shall be his duty to regis-
65 ter the applicant as a temporarily qualified voter of the
66 proper precinct in the county. If the applicant has filled
67 in that part of the form containing the request for an ab-
68 sent voter's ballot, the clerk of the county court shall
69 transmit such request to the clerk of the circuit court.

70 The temporary registration form, signed by the voter,
71 shall constitute his registration record and shall be de-
72 livered by the clerk of the county court to the proper
73 election commissioners at the same time that he delivers
74 to them the permanent registration records.

75 Temporary registration as provided in this section may
76 be made at any time except during the ten days preceding
77 an election. Such registration shall be valid only for the
78 duration of this article.

 Sec. 10. *Request for Absent Voter's Ballot.*—At any
2 time except during the ten days preceding an election,
3 a request that an absent voter's ballot be sent to any
4 person, entitled to vote under the provisions of this article,
5 may be made to the clerk of the circuit court of the county

6 in which such person is registered, by such person him-
7 self or by any other person.

8 Such request need not be by certified application. If
9 the request is by the person himself, it may be made
10 informally, by mail or otherwise; if by anyone else, it
11 shall be made upon a printed form to be signed by the
12 person making the request. Such form shall be sub-
13 stantially as follows:

14 REQUEST FOR ABSENT VOTER'S BALLOT

15

16

Date

17 TO THE CIRCUIT CLERK OF..... COUNTY:

18 Please send an absent voter's ballot to

19, who is on active duty in the

20 armed services of the United States.

21 Address to which ballot shall be sent:

22

23

24

25

26

27 Absent voter's home address:

28 _____

29 _____

30 _____

31 The absent voter is registered as a qualified elector of
32 precinct No. _____, magisterial district of _____,
33 county of _____. His political party
34 affiliation (to be stated only in the case of a primary
35 election) is _____.

36 _____

37 (Signature of person making request)

38 Upon receipt of a request for an absent voter's ballot,
39 the clerk of the circuit court shall send the request to the
40 clerk of the county court, who shall then check such
41 information as may be stated in the request with the in-
42 formation appearing on the registration records filed in his
43 office. After inserting on the request necessary correc-
44 tions and such of the required information as may not
45 have been given, the clerk of the county court shall
46 return the request to the clerk of the circuit court.

47 The circuit clerk shall keep a separate list of such re-
48 quests similar in all respects to the list of other appli-
49 cations for absent voters' ballots which is provided for
50 in section four, article six, chapter three of the code.

Sec. 11. *Mailing of Absent Voters' Ballots.*—Upon de-
2 livery of the ballots to the clerk of the circuit court as
3 provided in section seven of this article, the clerk shall
4 proceed with the mailing of the ballots. In such mailing,
5 priority shall be given to ballots which are to be sent to
6 absent voters outside the territorial limits of the United
7 States. The ballots may be sent by air mail, postage pre-
8 paid. In no event shall more than one ballot be sent to
9 any absent voter.

Sec. 12. *Ballot Envelopes.*—The clerk of the circuit
2 court shall inclose the ballot in an unsealed envelope
3 to be furnished by him, which envelope shall have printed
4 on one side the name, official title and return address of
5 such clerk and on the other side an affidavit in sub-
6 stantially the following form:

7 IN THE ARMED SERVICE OF THE UNITED
8 STATES:

9 I, _____, do solemnly
10 swear (or affirm), to the best of my knowledge and belief,
11 that I am registered as a voter in _____
12 County, West Virginia; that I shall in the performance
13 of my duties be absent from such county on election day;
14 and that I am duly qualified to vote the inclosed ballot,
15 which I have personally marked and sealed in this enve-
16 lope without exhibiting it to any other person, or which,
17 in the case of my physical incapacity, has been marked
18 for me and sealed in the envelope under my personal
19 direction.

20

21 (Signature of Absent Voter)

22 Subscribed and sworn to (or affirmed) before me this
23 ____ day of _____, 19__.

24 _____

25

26 (Signature of Officer, Rank, Branch
27 of Service and Identification Number)

28 NOTE: This affidavit shall be certified by a commis-
29 sioned officer, warrant officer or noncommissioned of-
30 ficer no lower in rank than sergeant or the equivalent
31 navy rating, of any branch of the armed services of the
32 United States, or by some other person qualified to ad-
33 minister oaths. The certificate need not state the place
34 where it is made and no seal shall be necessary. If the
35 voter, because of physical incapacity, is unable to sign
36 the affidavit, his name may be signed for him by the
37 officer who makes the certificate, who shall state on the
38 affidavit that he did sign for the voter.

39 Only the ballot, the ballot envelope and such instruction
40 sheet as may be prepared and furnished by the board
41 of ballot commissioners, and nothing else, shall be en-
42 closed in a sealed carrier envelope addressed to the absent
43 voter. Both envelopes may be made of lightweight paper
44 and the outer dimensions of the carrier envelope (num-
45 ber 10 size) may not exceed four and one-eighth inches
46 by nine and one-half inches. Each envelope shall have
47 printed on its face in large type the words, "OFFICIAL
48 WEST VIRGINIA WAR BALLOT".

Sec. 13. *Affidavit of Absent Voter; Marking and Re-*

2 *turn of Ballot.*—The absent voter shall, upon receipt of
3 a ballot, mark it in secret and seal it in the envelope fur-
4 nished for that purpose. He shall then execute the
5 affidavit appearing on the back of the envelope, after
6 which the ballot shall be sent by any available mail
7 service to the circuit clerk who issued it.

8 The absent voter shall make the necessary affidavit
9 before a commissioned officer, warrant officer or non-
10 commissioned officer no lower in rank than sergeant or
11 the equivalent navy rating, of any branch of the armed
12 services of the United States or before some other person
13 qualified to administer oaths, at any place either within
14 or without the territorial limits of the United States.
15 The certificate need not state the place where it is made
16 and shall require no seal.

17 If the voter, because of his physical incapacity, is
18 unable to mark his ballot, it may be marked for him by
19 some other person acting under his personal direction.
20 In such case, the person making the certificate may sign

21 the affidavit for the voter, and if so, shall so state on the
22 affidavit.

Sec. 14. *Filing of Voted Ballots.*—Upon receipt of
2 an envelope on which the affidavit has been properly
3 executed and certified as provided in the preceding sec-
4 tion, the clerk of the circuit court shall indorse thereon the
5 following statement: "This envelope contains an absent
6 voter's ballot to be voted at precinct No. in
7 district in County, and must be
8 opened only at the polls on election day while such polls
9 are open." The clerk shall insert the name of the district
10 and the number of the precinct in which the absent voter
11 is registered. He shall thereafter keep the sealed envelope
12 securely in his office until delivered by him to the election
13 commissioners of the proper precinct. The clerk shall
14 deliver such ballot at the same time as is required by
15 section nine, article six, chapter three of the code, for
16 the delivery of other absent voters' ballots.

Sec. 15. *Canvass of Ballots.*—At any time between the
2 opening and closing of the polls on election day the elec-
3 tion commissioners to whom any such absent voters'

4 ballots have been delivered shall, in the presence of each
5 other, announce the absent voter's name and compare the
6 signature upon the affidavit on the sealed envelope with
7 the signature on his registration record. If the election
8 commissioners find that the signatures correspond and
9 that the affidavit was properly executed and certified
10 as required by section thirteen of this article, they shall,
11 with the exception of those matters mentioned in the
12 following paragraph, then proceed in all other respects
13 as is provided in section ten, article six, chapter three of
14 the code.

15 No such absent voter's ballot as is provided for in this
16 article shall be challenged because of the fact that the bal-
17 lot envelope has been opened and resealed if it clearly
18 appears on the ballot envelope that the opening and re-
19 sealing was done by the proper authorities for the pur-
20 pose of military censorship. In the event of a challenge
21 of any such absent voter's ballot as is provided for in this
22 article, it shall not be necessary for the clerk of the county
23 court to send a notice of the challenge to those absent

24 voters who are outside the territorial limits of the United
25 States. Notwithstanding any other provision of the
26 code, the election officials shall not reject such an absent
27 voter's ballot as is provided for in this article by reason
28 of the fact that the absent voter, because of physical
29 incapacity, was unable to sign the affidavit on the ballot
30 envelope, if the affidavit was signed for him by the per-
31 son making the certificate as provided in section thirteen
32 of this article.

Sec. 16. *Details Not Covered by This Article.*—The
2 provisions of article six, chapter three of the code, in so
3 far as they are not in conflict with the provisions of this
4 article, shall apply as well to voting by members of the
5 armed services as to voting by other absentees.

Sec. 17. *Duration of Article.*—Unless sooner amended
2 or repealed, this article shall expire on June thirtieth, one
3 thousand nine hundred forty-seven.

Sec. 18. *Temporary Suspension of Inconsistent Pro-*
2 *visions; Revival.*—All provisions of the code which are
3 inconsistent herewith shall be temporarily suspended for
4 the duration of this article. Upon the expiration of this

5 article, however, all such provisions shall again become
6 of full force and effect as if this article had never been
7 passed.

Sec. 19. *Separability.*—If any part of this article shall
2 be declared unconstitutional, such declaration shall not
3 affect any other part thereof.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Roy F. Jimison
Chairman Senate Committee

Frederick L. Raloff
Chairman House Committee

Originated in the

Senate

Takes effect

from

passage

Frederick B. Wadkins
Clerk of the Senate

Raloff
Clerk of the House of Delegates

James Paul
President of the Senate

John E. Amor
Speaker House of Delegates

The within approved this the 10

day of January, 1944.

Matthew A. Neely
Governor.

2

Filed in the office of the Secretary of State
of West Virginia

JAN 17 1944

Wm. S. O'BRIEN,
Secretary of State