ENROLLED

SENATE BILL No. 2

(Originating in the Senate Committee on the Judiciary)

PASSED January 7, 1944

In Effect
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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.
7. Preparation, Printing and Delivery of Absent Voters' Ballots.
8. Persons Entitled to Vote Under the Provisions of This Article.
10. Request for Absent Voter's Ballot.
11. Mailing of Absent Voters' Ballots.
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.

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 enactment of this article, it is the purpose of the Legislature to make only such temporary changes or modifications in existing election laws as may be necessary to provide a practicable means whereby West Virginians in the armed services may be afforded an opportunity to 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-
missioners for a term of two years beginning on the first day of February following. In all other respects, including the customary notice to the county executive committees of the two political parties and the appointment of the person duly designated by the respective chairmen of such committees, the appointment of ballot commissioners shall be governed by the provisions of section two, article five, chapter three of the code.

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

Sec. 6. Nominations by Party Conventions.—The party conventions provided for in section twenty-seven, article four, chapter three of the code shall be held between the fifteenth and twenty-fifth days of July. All nominations which, since the enactment of section five, article four,
chapter forty-eight, acts of the Legislature, regular ses-
session, one thousand nine hundred forty-three, are still
made at such conventions shall be certified to the secre-
tary of state or to the clerk of the circuit court, as the case
may be, within twenty-four hours after they are made,
and the secretary of state, within twenty-four hours after
receipt of any such certification, shall certify the nomi-
nations to the clerks of the proper circuit courts. In all
other respects, such nominations shall be governed by the
provisions of section twenty-seven, article four, chapter
three of the code.

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

Between the twenty-fifth day of July and the tenth day of August, both inclusive, for the general election to be held in the year one thousand nine hundred forty-four, and between the tenth and twenty-fifth days of August, both inclusive, for the general election to be held in the year one thousand nine hundred forty-six, the ballot commissioners shall prepare, print and deliver to the clerk of the circuit court such absent voters' ballots as will, in their opinion, be required for such elections.

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

If, after the ballots are printed but before they are distributed as provided in the following sections, any change
in the names printed thereon should become necessary, the ballot commissioners shall make the necessary changes by the use of stickers or by the printing of additional ballots.

Except as otherwise specified in this section, preparation, printing and delivery of absent voters' ballots shall be governed by the provisions of section nine, article four, section three, article five, and section fifteen, article six, of chapter three of the code.

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

Any other person may vote by absent voter's ballot only 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 affirm), to the best of my knowledge and belief, that though not registered I am legally qualified to vote; that I am in the armed service of the United States; that I am now at least twenty-one years of age, or will have reached that age by the date of the next general election; that I live at the above address in ____________________________, County, West Virginia; and that on the basis of these statements I desire to be registered as a voter of the proper precinct in the county.

34 (Signature of Applicant)

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

39 (Signature of Officer, Rank, Branch of Service and Identification Number)
Note: This application shall be certified by a commissioned officer, warrant officer, or noncommissioned officer no lower in rank than sergeant or the equivalent navy rating, of any branch of the armed services of the United States, or by some other person qualified to administer oaths. The certificate need not state the place where it is made and no seal shall be necessary.

* * * *

Please send an absent voter's ballot, for the next election, to me at the following address:

The applicant shall make the necessary affidavit before a commissioned officer, warrant officer or noncommissioned officer no lower in rank than sergeant or the equivalent navy rating, of any branch of the armed services of the United States, or before some other person qualified to administer oaths, at any place either within or without the territorial limits of the United States. The certificate need not state the place where it is made and shall require no seal.
Upon receipt by the clerk of the county court of such an application, duly executed, it shall be his duty to register the applicant as a temporarily qualified voter of the proper precinct in the county. If the applicant has filled in that part of the form containing the request for an absent voter's ballot, the clerk of the county court shall transmit such request to the clerk of the circuit court.

The temporary registration form, signed by the voter, shall constitute his registration record and shall be delivered by the clerk of the county court to the proper election commissioners at the same time that he delivers to them the permanent registration records.

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

Sec. 10. Request for Absent Voter's Ballot.—At any time except during the ten days preceding an election, a request that an absent voter's ballot be sent to any person, entitled to vote under the provisions of this article, may be made to the clerk of the circuit court of the county
in which such person is registered, by such person him-
self or by any other person.

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

REQUEST FOR ABSENTEE VOTER’S BALLOT

Date

TO THE CIRCUIT CLERK OF __________ COUNTY:

Please send an absentee voter’s ballot to ________________,

who is on active duty in the

armed services of the United States.

Address to which ballot shall be sent:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
Absent voter's home address:

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

(Signature of person making request)

Upon receipt of a request for an absent voter's ballot, the clerk of the circuit court shall send the request to the clerk of the county court, who shall then check such information as may be stated in the request with the information appearing on the registration records filed in his office. After inserting on the request necessary corrections and such of the required information as may not have been given, the clerk of the county court shall return the request to the clerk of the circuit court.
The circuit clerk shall keep a separate list of such requests similar in all respects to the list of other applications for absent voters' ballots which is provided for in section four, article six, chapter three of the code.

Sec. 11. Mailing of Absent Voters' Ballots.—Upon delivery of the ballots to the clerk of the circuit court as provided in section seven of this article, the clerk shall proceed with the mailing of the ballots. In such mailing, priority shall be given to ballots which are to be sent to absent voters outside the territorial limits of the United States. The ballots may be sent by air mail, postage prepaid. In no event shall more than one ballot be sent to any absent voter.

Sec. 12. Ballot Envelopes.—The clerk of the circuit court shall inclose the ballot in an unsealed envelope to be furnished by him, which envelope shall have printed on one side the name, official title and return address of such clerk and on the other side an affidavit in substantially the following form:
IN THE ARMED SERVICE OF THE UNITED STATES:

I, .................................................., do solemnly swear (or affirm), to the best of my knowledge and belief,

that I am registered as a voter in ........................................

County, West Virginia; that I shall in the performance

of my duties be absent from such county on election day;

and that I am duly qualified to vote the inclosed ballot,

which I have personally marked and sealed in this enve-

lope without exhibiting it to any other person, or which,

in the case of my physical incapacity, has been marked

for me and sealed in the envelope under my personal

direction.

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

(Signature of Absent Voter)

Subscribed and sworn to (or affirmed) before me this

day of ........................................, 19......

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

(Signature of Officer, Rank, Branch of Service and Identification Number)
28 Note: This affidavit shall be certified by a commissioned officer, warrant officer or noncommissioned officer no lower in rank than sergeant or the equivalent navy rating, of any branch of the armed services of the United States, or by some other person qualified to administer oaths. The certificate need not state the place where it is made and no seal shall be necessary. If the voter, because of physical incapacity, is unable to sign the affidavit, his name may be signed for him by the officer who makes the certificate, who shall state on the affidavit that he did sign for the voter.

29 Only the ballot, the ballot envelope and such instruction sheet as may be prepared and furnished by the board of ballot commissioners, and nothing else, shall be enclosed in a sealed carrier envelope addressed to the absent voter. Both envelopes may be made of lightweight paper and the outer dimensions of the carrier envelope (number 10 size) may not exceed four and one-eighth inches by nine and one-half inches. Each envelope shall have printed on its face in large type the words, "OFFICIAL WEST VIRGINIA WAR BALLOT".
Sec. 13. *Affidavit of Absent Voter; Marking and Return of Ballot.*—The absent voter shall, upon receipt of a ballot, mark it in secret and seal it in the envelope furnished for that purpose. He shall then execute the affidavit appearing on the back of the envelope, after which the ballot shall be sent by any available mail service to the circuit clerk who issued it.

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

If the voter, because of his physical incapacity, is unable to mark his ballot, it may be marked for him by some other person acting under his personal direction. In such case, the person making the certificate may sign
the affidavit for the voter, and if so, shall so state on the affidavit.

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

Sec. 15. Canvass of Ballots.—At any time between the opening and closing of the polls on election day the election commissioners to whom any such absent voters'
ballots have been delivered shall, in the presence of each
other, announce the absent voter's name and compare the
signature upon the affidavit on the sealed envelope with
the signature on his registration record. If the election
commissioners find that the signatures correspond and
that the affidavit was properly executed and certified
as required by section thirteen of this article, they shall,
with the exception of those matters mentioned in the
following paragraph, then proceed in all other respects
as is provided in section ten, article six, chapter three of
the code.

No such absent voter's ballot as is provided for in this
article shall be challenged because of the fact that the bal-
lot envelope has been opened and resealed if it clearly
appears on the ballot envelope that the opening and re-
sealing was done by the proper authorities for the pur-
pose of military censorship. In the event of a challenge
of any such absent voter's ballot as is provided for in this
article, it shall not be necessary for the clerk of the county
court to send a notice of the challenge to those absent
voters who are outside the territorial limits of the United States. Notwithstanding any other provision of the code, the election officials shall not reject such an absent voter's ballot as is provided for in this article by reason of the fact that the absent voter, because of physical incapacity, was unable to sign the affidavit on the ballot envelope, if the affidavit was signed for him by the person making the certificate as provided in section thirteen of this article.

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

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

Sec. 18. Temporary Suspension of Inconsistent Provisions; Revival.—All provisions of the code which are inconsistent herewith shall be temporarily suspended for the duration of this article. Upon the expiration of this
article, however, all such provisions shall again become
of full force and effect as if this article had never been
passed.

Sec. 19. Separability.—If any part of this article shall
be declared unconstitutional, such declaration shall not
affect any other part thereof.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Ray F. Jones
Chairman Senate Committee

Chairman House Committee

Originated in the Senate

Takes effect from passage

Fred H. Wadnic
Clerk of the Senate

Clerk of the House of Delegates

James Conn
President of the Senate

John E. Atkins
Speaker House of Delegates

The within approved this the 10th day of January, 1944.

Matthew Neely
Governor.

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

JAN 17 1944

Wm. S. O'Brien,
Secretary of State