

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1951



# ENROLLED

HOUSE BILL No. 141

(By Mr. Beneke)



PASSED February 27 1951

In Effect Thirty days from Passage



141

**ENROLLED**

**House Bill No. 141**

(By MR. BENEKE)

[Passed February 27, 1951; in effect ninety days from passage.]

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 of a practicable system of absentee voting by West Virginia citizens who are members of the armed services of the United States.

*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 Legisla-  
3 ture 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

6 in 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  
2 is in effect, the fourteenth Saturday rather than the fifth  
3 Saturday preceding the day fixed for the primary elec-  
4 tion shall be the last day on which a person may file  
5 announcement of his candidacy for nomination to any  
6 office. In all other respects, an announcement of candi-  
7 dacy shall be governed by the provisions of sections  
8 five-a and six, article four, chapter three of the code.

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

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

5 a term of two years beginning on the first day of Feb-  
6 ruary following. In all other respects, including the cus-  
7 tomary notice to the county executive committees of the  
8 two political parties and the appointment of the person  
9 duly designated by the respective chairmen of such com-  
10 mittees, the appointment of ballot commissioners shall  
11 be governed by the provisions of section two, article five,  
12 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  
4 services at any election shall, for the duration of this  
5 article, be raised to seven days. The compensation of bal-  
6 lot commissioners and other election officials shall in all  
7 other respects, be governed by the provisions of section  
8 forty, 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 thirty-first 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  
10 case may be, within twenty-four hours after they are  
11 made, and the secretary of state, within twenty-four  
12 hours after receipt of any such certification, shall certify  
13 the nominations to the clerks of the proper circuit courts.  
14 In all other respects, such nominations shall be governed  
15 by the provisions of section twenty-seven, article four,  
16 chapter 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  
5 ballot commissioners shall immediately proceed with the  
6 preparation of a sample official ballot for each political  
7 party, shall estimate and determine the number of absent  
8 voters' ballots of each kind which will be required, and  
9 shall print and deliver such ballots to the clerk of the  
10 circuit court as soon as possible, but not later than the

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

21 In order to lessen the burden of the armed forces in  
22 respect 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  
31 distributed as provided in the following sections, any

32 change in the names printed thereon should become  
33 necessary, the ballot commissioners shall make the  
34 necessary changes by the use of stickers or by the printing  
35 of additional 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  
3 registered 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 duties  
6 expects to be absent on election day from the county in  
7 which he is registered, may vote by absent voter's ballot  
8 as provided in this article, whether such person at the  
9 time of voting is within or without the territorial limits  
10 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  
2 not registered as a voter, and who is entitled to be regis-  
3 tered under the provisions of general law, but who is  
4 otherwise entitled to vote under the provisions of this  
5 article, may apply to the clerk of the county court of the  
6 county in which such person resides for permanent regis-  
7 tration as provided in other sections of the code or for  
8 temporary registration as provided in this section.

9 Application for temporary registration shall be made  
10 upon a simplified form to be furnished by the county  
11 court. Request for such a form may be made by mail or  
12 otherwise by the applicant himself or by any other per-  
13 son.

14 The form shall be substantially as follows:

15 TEMPORARY REGISTRATION FORM

16 Name .....

17 (Last Name) (First Name) .. (Middle Name)

18 Home Address .....

19 (Give street number or as specific location as possible)

20 .....

21 .....



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 am  
27 now at least twenty-one years of age, or will have reached  
28 that age by the date of the next general election; that I  
29 live at the above address in ..... County,  
30 West Virginia; and that on the basis of these statements  
31 I desire to be registered as a voter of the proper precinct  
32 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, Branch  
40 of Service and Identification Number)

41 Note: This application shall be certified by a commis-  
42 sioned officer, warrant officer, or noncommissioned

43 officer no lower in rank than sergeant or the equivalent  
44 navy rating, of any branch of the armed service of the  
45 United States, or by some other person qualified to ad-  
46 minister oaths. The certificate need not state the place  
47 where it is made and no seal shall be necessary.

48

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

51

52

53

54 The applicant shall make the necessary affidavit before  
55 a commissioned officer, warrant officer or noncommis-  
56 sioned officer no lower in rank than sergeant or the  
57 equivalent navy rating, of any branch of the armed ser-  
58 vices of the United States, or before some other person  
59 qualified to administer oaths, at any place either within  
60 or without the territorial limits of the United States.  
61 The certificate need not state the place where it is made  
62 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  
65 register the applicant as a temporarily qualified voter of  
66 the proper precinct in the county. If the applicant has  
67 filled in that part of the form containing the request for  
68 an absent voter's ballot, the clerk of the county court  
69 shall transmit such request to the clerk of the circuit  
70 court.

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

76 Temporary registration as provided in this section may  
77 be made at any time except during the ten days preceding  
78 an election. Such registration shall be valid only for the  
79 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 per-  
4 son, entitled to vote under the provisions of this article,  
5 may be made to the clerk of the circuit court of the

6 county in which such person is registered, by such person  
7 himself 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 in-  
10 formally, by mail or otherwise; if by anyone else, it shall  
11 be made upon a printed form to be signed by the person  
12 making the request. Such form shall be substantially as  
13 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 armed  
20 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 affiliation

34 (to be stated only in the case of a primary election) is

35 \_\_\_\_\_,

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

40 the 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

43 this office. After inserting on the request necessary cor-

44 rections and such of the required information as may

45 not 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

48 requests similar in all respects to the list of other applica-  
49 tions for absent voters' ballots which is provided for in  
50 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 enclose the ballot in an unsealed envelope to  
3 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 substan-  
6 tially the following forms:

7 IN THE ARMED SERVICE OF THE UNITED STATES:

8 I, \_\_\_\_\_, do solemnly swear (or  
9 affirm), to the best of my knowledge and belief, that

10 I am registered as a voter in \_\_\_\_\_ County,  
11 West Virginia; that I shall in the performance of my  
12 duties be absent from such county on election day; and  
13 that I am duly qualified to vote the enclosed ballot, which  
14 I have personally marked and sealed in this envelope with-  
15 out exhibiting it to any other person, or which, in the  
16 case of my physical incapacity, has been marked for me  
17 and sealed in the envelope under my personal direction.

18 \_\_\_\_\_

19 (Signature of Absent Voter)

20 Subscribed and sworn to (or affirmed) before me this  
21 \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

22 \_\_\_\_\_

23 \_\_\_\_\_

24 (Signature of Officer, Rank, Branch of  
25 Service and Identification Number)

26 NOTE: This affidavit shall be certified by a commis-  
27 sioned officer, warrant officer or noncommissioned officer  
28 no lower in rank than sergeant or the equivalent navy  
29 rating, of any branch of the armed services of the United  
30 States, or by some other person qualified to administer

31 oaths. The certificate need not state the place where it  
32 is made and no seal shall be necessary. If the voter, be-  
33 cause of physical incapacity, is unable to sign the affi-  
34 davit, his name may be signed for him by the officer who  
35 makes the certificate, who shall state on the affidavit  
36 that he did sign for the voter.

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

Sec. 13. *Affidavit of Absent Voter; Marking and Return*  
2 of Ballot.—The absent voter shall, upon receipt of a bal-  
3 lot, mark it in secret and seal it in the envelope furnished  
4 for that purpose. He shall then execute the affidavit ap-  
5 pearing on the back of the envelope, after which the ballot



6 shall be sent by any available mail service to the circuit  
7 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. The  
15 certificate need not state the place where it is made and  
16 shall require no seal.

17 If the voter, because of his physical incapacity, is un-  
18 able to mark his ballot, it may be marked for him by some  
19 other person acting under his personal direction. In such  
20 case, the person making the certificate may sign the af-  
21 fidavit for the voter, and if so, shall so state on the affi-  
22 davit.

Sec. 14. *Filing of Voted Ballots.*—Upon receipt of an  
2 envelope on which the affidavit has been properly exe-  
3 cuted and certified as provided in the preceding section,  
4 the clerk of the circuit court shall endorse 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  
8 must be opened only at the polls on election day while  
9 such polls are open." The Clerk shall insert the name of  
10 the district and the number of the precinct in which the  
11 absent voter is registered. He shall thereafter keep the  
12 sealed envelope securely in his office until delivered by  
13 him to the election commissioners of the proper precinct.  
14 The clerk shall deliver such ballot at the same time as  
15 is required by section nine, article six, chapter three of  
16 the code, for 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' bal-  
4 lots have been delivered shall, in the presence of each  
5 other, announce the absent voter's name and compare  
6 the signature upon the affidavit on the sealed envelope  
7 with the signature on his registration record. If the  
8 election commissioners find that the signatures corres-  
9 pond and that the affidavit was properly executed and cer-

10 tified as required by section thirteen of this article, they  
11 shall, with the exception of those matters mentioned in  
12 the following paragraph, then proceed in all other re-  
13 spects as is provided in section ten, article six, chapter  
14 three of 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  
17 ballot 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  
22 this article, it shall not be necessary for the clerk of the  
23 county court to send a notice of the challenge to those  
24 absent voters who are outside the territorial limits of  
25 the United States. Notwithstanding any other provision  
26 of the code, the election officials shall not reject such an  
27 absent voter's ballot as is provided for in this article by  
28 reason of the fact that the absent voter, because of phys-  
29 ical incapacity, was unable to sign the affidavit on the  
30 ballot envelope, if the affidavit was signed for him by the

31 person making the certificate as provided in section thir-  
32 teen of this article.

Sec. 16. *Details not Covered by This Article.*—The pro-  
2 visions of article six, chapter three of the code, in so far  
3 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. *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. 18. *Separability.*—If any part of this article shall  
2 be declared unconstitutional, such declaration shall not  
3 affect any other part thereof.

RECORDED  
INDEXED  
MAR 6 1951  
D. PITT O'BRIEN  
SECRETARY OF STATE

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

*A. R. Winters*

Chairman Senate Committee

*James M. Loop*

Chairman House Committee

Originated in the House of Delegates

Takes effect

*Twenty days from*

passage.

*Howard Rogers*

Clerk of the Senate

*J. R. Abiff*

Clerk of the House of Delegates

*W. E. Harman*

President of the Senate

*W. E. Harman*

Speaker House of Delegates

The within

*APPROVED*

this the

*6th*

day of

*MARCH*

, 1951.

*Okay L. Patterson*

Governor



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

**MAR 6 1951**

**D. PITT O'BRIEN,**

**SECRETARY OF STATE**