WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1951

ENROLLED

HOUSE BILL No. 141

(By Mr. [Signature])

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 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
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
3 Enr. H.B. No. 141

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,
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
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 elec-
tion to be held in the year one thousand nine hundred
fifty-two 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 fifty-four, 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
dozen 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)
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.

______________________________
(Signature of Applicant)

Subscribed and sworn to (or affirmed) before me this __________ day of ____________________, 19__________.

______________________________
(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 service of the
United States, or by some other person qualified to ad-
minister 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 elec-
tion, to me at the following address:

The applicant shall make the necessary affidavit before
a commissioned officer, warrant officer or noncommis-
sioned officer no lower in rank than sergeant or the
equivalent navy rating, of any branch of the armed ser-
vices 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 himself 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 substantially as follows:

REQUEST FOR ABSENT VOTER'S BALLOT

Date

TO THE CIRCUIT CLERK OF COUNTY:

Please send an absent 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 this 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 enclose 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 forms:

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 enclosed ballot, which I have personally marked and sealed in this envelope 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)

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, be-
cause of physical incapacity, is unable to sign the affi-
davit, 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.

Only the ballot, the ballot envelope and such instruc-
tion sheet as may be prepared and furnished by the board
of ballot commissioners, and nothing else, shall be en-
closed 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 ARMED SERVICE BALLOT."

Sec. 13. Affidavit of Absent Voter; Marking and Return
of Ballot.—The absent voter shall, upon receipt of a bal-
lot, mark it in secret and seal it in the envelope furnished
for that purpose. He shall then execute the affidavit ap-
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
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 cer-
Eh.: H.B. No. 141] 18

10 ified 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
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. 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. 18. 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.

A. B. Welker
Chairman Senate Committee

James M. Crisp
Chairman House Committee

Originated in the House of Delegates

Takes effect

J. H. Aliff
Clerk of the Senate

J. R. Afflidd
Clerk of the House of Delegates

W. E. Harless
President of the Senate

Speaker House of Delegates

The within approved this the 6th

day of March, 1951.

Oley L. Pattison
Governor

Not in the Office of the Secretary of State
of West Virginia MAR 6 1951
D. Pitt O'Brien,
SECRETARY OF STATE