WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1970

ENROLLED

HOUSE BILL No. 624

(By Mr. Speaker, Mr. Sciascia and Mr. Hughes)

PASSED February 11, 1970

In Effect July 1, 1970

F I L E D I N T H E O F F I C E
JOHN D. ROCKERFELLER, IV
SECRETARY OF STATE
IN O F F I C E 2-18-70
ENROLLED

House Bill No. 624
(By Mr. Speaker, Mr. Boiarsky, and Mr. Myles)

[Passed February 11, 1970; in effect July 1, 1970.]

AN ACT to amend and reenact article three; and section twenty, article four, all of chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to voting by absentees and the disposition and recording of absent voters' ballots and particularly to persons eligible to vote absent voters' ballots; absentee voting methods; voting an absent voters' ballot by personal appearance; assistance to a voter in voting an absent voters' ballot by personal appearance; voting an absent voter's ballot by mail; assistance to a voter in voting an absent voter's ballot by mail; delivery of absent voters' ballots, forms and supplies to polling places; disposition and counting of absent voters' ballots at the
polling places; voting in person after having received and after having voted an absent voter's ballot; challenging of absent voters' ballots; preparation, number and handling of absent voters' ballots; rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting; absentee voting in municipal elections; recording and disposition of absent voters' ballots in voting machine counties; and providing penalties for certain violations.

Be it enacted by the Legislature of West Virginia:

That article three; and section twenty, article four, all of chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted all to read as follows:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absent voters' ballots.

1 The following persons who are duly registered and otherwise qualified to vote may vote an absent voter's ballot in any primary, general or special election in accordance with the provisions of this article:

2 (1) Any person who by reason of physical disability, illness or injury will be unable to vote in person
at the polls in such election.

(2) Any person who is (a) a member of the armed forces while in the active service, and his spouse and dependents, or (b) a member of the merchant marine of the United States, and his spouse and dependents, or (c) a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and his spouse and dependents when residing with or accompanying him.

(3) Any person, other than a person meeting the qualifications described in subdivision (2), who is required to be absent from the county in which he is registered to vote during the entire time the polls are open in such election.

(4) Any person who has been appointed to serve as election commissioner or poll clerk in a precinct other than the one in which he is registered to vote.

§3-3-2. Absentee voting methods.

An absent voter's ballot may be voted by mail or by personal appearance at the office of the clerk of the circuit court as provided in this section.
Any person described in subdivisions (1), (2) and (4) of section one of this article may vote an absent voter's ballot by mail; and any person described in subdivision (3) of section one of this article may vote an absent voter's ballot by mail if (a) his application for an absent voter's ballot directs that the absent voter's ballot be mailed to an out-of-county address, (b) the envelope in which his absent voter's ballot is mailed is postmarked at an address outside the county, and (c) he is required to be absent from the county in which he is registered to vote during regular business hours of the office of the clerk of the circuit court of said county throughout the period, or throughout the remainder of the period, of voting an absent voter's ballot by personal appearance at said clerk's office.

Any person described in subdivisions (2), (3) and (4) of section one of this article, and any person described in subdivision (1) of section one of this article whose physical disability on the date of the election is anticipated by reason of commitment to a hospital, institution or other confinement for childbirth or other medical
reasons, may vote an absent voter's ballot by personal appearance at the office of the clerk of the circuit court.

§3-3-2a. Voting booths to be provided by the clerk.

Throughout the period during which absent voter ballots may be voted in the clerk's office as provided elsewhere in this article, the clerk shall provide or maintain in his office one or more booths or compartments, each containing a table, counter or shelf, and furnished with proper supplies for preparing ballots, at or in which voters may conveniently prepare their ballots, so that in the preparation thereof they may be secure from the observation of others.

§3-3-3. Voting an absent voter's ballot by personal appearance.

A person desiring to vote an absent voter's ballot by personal appearance may appear during regular business hours at the office of the clerk of the circuit court of the county in which he is registered to vote not more than fifteen days before the election and on any day thereafter up to and including the Saturday next preceding the date of the primary or general election or, in the case of special elections, up to and including the
third day next preceding the day of any such special election (in computing such third day, the day of conducting the special election shall be excluded), and upon oral request receive an application for an official absent voter's ballot or ballots to be voted at such election, which application shall be prescribed by the secretary of state and shall be in substantially the following form:

APPLICATION FOR VOTING AN ABSENT VOTER'S BALLOT BY PERSONAL APPEARANCE KNOWING THAT I CAN BE FINED NOT MORE THAN ONE THOUSAND DOLLARS OR IMPRISONED IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE THAN ONE YEAR OR BOTH SUCH FINE AND IMPRISONMENT FOR KNOWINGLY MAKING A FALSE STATEMENT OR REPRESENTATION HEREIN, I, _____________________________, hereby declare that I am now, or will have been a resident of the state of West Virginia for twelve months, and of the county of ______________ for sixty days, next preceding the date of the ensuing election to be held on the ______ day
of _____________, 19 __; that I now reside at ______________________,

(give full address)

in the magisterial district of ________________________________,

in said county; that I am a duly qualified voter entitled
to vote in such election; that I am registered in the
precinct of my residence as provided by law; that I am
registered as a _________________________________;

(state political party if ballot is for primary election)

and that (strike out numbered paragraphs not applicable
and complete the numbered paragraph which is ap-
licable):

(1) I expect to be absent from the aforementioned
county in which I am registered to vote during the en-
tire time the polls are open in such election, and I am
(check one applicable):

☐ A member of the armed forces in the active service.

☐ A spouse or dependent of a member of the armed
forces in the active service.

☐ A member of the merchant marine of the United
States.
49    □ A spouse or dependent of a member of the merchant marine of the United States.

50    □ A citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia.

51    □ A spouse or dependent residing with or accompanying a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia.

58    (2) I am required to be absent from the aforementioned county in which I am registered during the entire time the polls are open in such election for the reason or reasons hereafter stated, and I am not in any of the categories referred to in paragraph (1) above: ____________________

56    (here state specific reason or reasons for required absence)

65    (3) I anticipate commitment to a hospital, institution or other confinement on or about the ___ day of __________, 19_____, for the following medical reasons ____________________, as evidence below by the statement of a duly licensed
physician or chiropractor, and by reason thereof will not be able to vote in person at the polls in such election.

(4) I have been appointed______________________________

______________________________

(specify whether an election commissioner or poll clerk) in precinct no. ______ in said election, which precinct is not the precinct in which I am registered to vote.

In consideration of the foregoing qualifications, I hereby make application for an official absent voter's ballot (or ballots if more than one are to be used) to be voted by me at such election.

I hereby declare, under the penalties for false swearing as provided in section three, article nine, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, that the statements and declarations contained in this application are true and correct to the best of my knowledge and belief.

______________________________

Signature of Applicant (or in case the applicant is illiterate he shall make his mark and have it wit-
If the person applying for an absent voter’s ballot by personal appearance be unable to sign his application because of illiteracy, he shall make his mark on the signature line above provided for an illiterate applicant which mark shall be witnessed.

The following declaration must be completed and signed if the reason specified in the above application for being unable to vote in person at such election is anticipated commitment to a hospital, institution or other confinement for medical reasons:

DECLARATION OF PHYSICIAN (CHIROPRACTOR)

I, __________________________________________________________, hereby declare that I am a physician (chiropractor), duly licensed to practice in the state of ____________________________; that I last examined ____________________________, the applicant whose signature appears on the application
above on the _____ day of ______________________, 19__;
and that in my opinion said applicant will, because of
__________________________
(state medical reasons)
be committed to ________________________,
(state hospital, institution or other confinement)
on or about the ____ day of ______________________, 19__,
and will because of such reasons not be able to go to
the polls on the ____ day of ______________________, 19__,
the date of the election.

Signature of Physician (Chiropractor)

The application shall be completed by the applicant in
his own handwriting, or in the handwriting of the witness
to his mark in the event of illiteracy, in the office of
the clerk of the circuit court; in no event shall the ap-
plicant remove an application for voting an absent voter’s
ballot by personal appearance from said office except
when such is necessary to have a physician or chiro-
practor to complete and sign the declaration of a physi-
cian or chiropractor when such is required.
Immediately upon receipt of a completed application for voting an absent voter's ballot by personal appearance, the clerk of the circuit court shall determine (1) whether such application has been completed as required by law; (2) whether he has evidence that any of the statements or declarations contained in the application are not true; (3) whether the applicant is in fact duly registered in the precinct of his residence as provided by law and insofar as registration is concerned would be permitted to vote at the polls in such election. If the determination of the clerk of the circuit court as to (1) or (3) is in the negative or as to (2) is in the affirmative, the clerk shall, if the applicant insists, permit the applicant to vote an absent voter's ballot by personal appearance, but the clerk shall challenge the absent voter's ballot on the basis of such determination.

Upon determination by the clerk of the circuit court that the applicant is entitled to vote an absent voter's ballot by personal appearance or in case the applicant determines to vote an absent voter's ballot challenged by the clerk of the circuit court as provided in the im-
mediately preceding paragraph, the clerk of the circuit
court shall hand to him the following absentee voting
supplies:

(a) One official absent voter's ballot (or ballots if
more than one are to be used) which has been prepared
in accordance with law for use in such election; such
ballot in the case of a primary election shall be of the
party of applicant's affiliation as indicated on his reg-
istration record or in case the applicant is not found to
be registered by the clerk but insists upon voting a chal-
enged ballot, the ballot shall be of the party designated
by the applicant in his application.

(b) One Absent Voter's Ballot Envelope No. 1, un-
sealed, which shall have no writing thereon except the
designation "Absent Voter's Ballot Envelope No. 1".

(c) One Absent Voter's Ballot Envelope No. 2, un-
sealed.

The voter shall thereupon retire alone to the booth
or compartment provided in said clerk's office for voting
absent voters' ballots and there mark his ballot: Pro-
vided, That the voter may have assistance in voting his
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175 absent voters' ballot in accordance with the provisions
176 of the next succeeding section of this article. After the
177 voter has voted his absent voter's ballot, he shall (1) en-
178 close the same in Absent Voter's Ballot Envelope No. 1,
179 and seal that envelope; (2) enclose sealed Absent Voter's
180 Ballot Envelope No. 1 in Absent Voter's Ballot Envelope
181 No. 2 and seal that envelope; (3) complete and sign the
182 forms, if any, on Absent Voter's Ballot Envelope No. 2 ac-
183 cording to the instructions thereon; and (4) transmit pos-
184 session of sealed Absent Voter's Ballot Envelope No. 2 to
185 the clerk of the circuit court.

186 Upon receipt of such sealed envelope, the clerk shall
187 (1) enter onto the envelope such information as may
188 be required of him according to the instructions thereon;
189 (2) enter his challenge, if any, to the absent voter's
190 ballot; (3) enter the required information into a record
191 of persons making an application for and voting an ab-
192 sent voter's ballot by personal appearance or by mail
193 (the form of which record and the information to be
194 entered thereon shall be prescribed by the secretary of
195 state; and (4) place such sealed envelope in a secure
section in his office, there to remain until delivered to
the polling place in accordance with the provisions of
this article or in case of a challenged ballot to the county
court sitting as a board of canvassers.

§3-3-4. Assistance to voter in voting an absent voter's ballot by personal appearance.

No voter shall receive any assistance in voting an
absent voter's ballot in the office of the clerk of the
circuit court unless (1) (a) his registration record indi-
cates that because of illiteracy, he is unable to read the
names on the ballot, or that he has a physical disability
which renders him unable to see or mark the ballot,
the exact nature of the physical disability being re-
corded on the registration record, or (b) he shall make
an affidavit at the time he makes application for an ab-
sent voter's ballot, the form of which shall be prescribed
by the secretary of state, that because of illiteracy he is
unable to read the names on the ballot, or that he has
a physical disability which renders him unable to see
or mark the ballot, the exact nature of the physical
disability being stated therein; and (2) the clerk of
the circuit court determines that he is illiterate or suf-
ers from the physical disability stated on his registra-
tion record or in his affidavit and that such physical
disability renders him then unable to see or mark the
ballot.

Any voter determined by the clerk of the circuit court
to be qualified to receive assistance in voting an absent
voter's ballot under the provisions of this section shall
be permitted by such clerk to select any person who
is a registered voter in the county in which the voter
is registered to assist in voting such ballot: Provided,
That no person shall provide assistance to more than
two voters in any election in voting an absent voter's
ballot.

Any voter who requests assistance in voting an absent
voter's ballot but who is determined by the clerk of the
circuit court not to be qualified for such assistance under
the provisions of this section shall nevertheless be per-
mitted to vote a challenged absent voter's ballot with
the assistance of any person herein authorized to ren-
der assistance. The clerk of the circuit court shall in
such case challenge the absent voter's ballot on the basis of such determination.

Any one or more of the election commissioners or poll clerks in the precinct to which an absent voter's ballot has been sent may challenge such ballot on the ground that the voter thereof received assistance in voting it when in his or their opinion (1) either the registration record or affidavit of the person who received the assistance in voting the absent voter's ballot does not indicate a legally sufficient reason for such assistance, or (2) the person who received the assistance in voting did not make an affidavit when required by this section to qualify for assistance, or (3) the person who provided the assistance in voting did not make an affidavit as required by this section, or (4) the person who received assistance in voting is not so illiterate as to have been unable to read the names on the ballot or that he did not have such a physical disability as to have been unable to see or mark the absent voter's ballot. The election commissioner or poll clerk or commissioners or poll clerks making such challenge shall enter the
challenge and reason therefor on the form and in the manner prescribed or authorized by this article.

Before entering the voting booth or compartment, the person who intends to provide a voter assistance in voting shall make an affidavit, the form of which shall be prescribed by the secretary of state, that he will not in any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question, and that he will not keep or make any memorandum or entry of anything occurring within the voting booth or compartment, and that he will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he had voted, or how he had voted on any public question, or anything occurring within the voting booth or compartment or voting machine booth, except when required pursuant to law to give testimony as to such matter in a judicial proceeding.

In accordance with instructions issued by the secre-
tary of state, the clerk of the circuit court shall pro-
vide a form entitled "List of Assisted Voters," the form
of which list shall likewise be prescribed by the secre-
tary of state, which list shall be divided into two parts.
Part A shall be entitled "Unchallenged Assisted Voters"
and Part B shall be entitled "Challenged Assisted Voters."
Under Part A the clerk shall enter the name of each
voter receiving unchallenged assistance in voting an
absent voter's ballot, the address of the voter assisted,
the nature of the disability which qualified the voter
for assistance in voting an absent voter's ballot, the fact
that such voter made and subscribed to the oath re-
quired by this section, the name of the person provid-
ing the voter with assistance in voting an absent voter's
ballot, the fact that the person rendering the assistance
in voting made and subscribed to the oath required by
this section, and the signature of the clerk of the cir-
cuit court certifying to the fact that he had determined
that the voter who received assistance in voting an absent
voter's ballot was qualified to receive such assistance
under the provisions of this section. Under Part B the
clerk shall enter the name of each voter receiving challenged assistance in voting, the address of the voter receiving such challenged assistance, the reason for the challenge, and the name of the person providing the challenged voter with assistance in voting. At the close of the period provided for voting an absent voter's ballot by personal appearance, the clerk of the circuit court shall make and subscribe to an oath on such list that the list is correct in all particulars; if no voter shall have been assisted in voting an absent voter's ballot as herein provided, the clerk of the circuit court shall likewise make and subscribe to an oath of that fact on such list. The “List of Assisted Voters” shall be available for public inspection in the office of the clerk of the circuit court during regular business hours throughout the period provided for voting an absent voter's ballot by personal appearance, and unless otherwise directed by the secretary of state, shall transmit such list, together with the affidavits, applications and absent voters' ballot, to the precincts on election day.

Following the election, the affidavits required by this
section from assisted voters and from persons providing assistance in voting, together with the "List of Assisted Voters", shall be returned by the election commissioners to the clerk of the county court along with the election supplies, records and returns, who shall make such oaths and list available for public inspection and who shall preserve the same until their destruction or other disposition is authorized or directed by the secretary of state.

Any person making an affidavit required under the provisions of this section who shall therein knowingly swear falsely, or any person who shall counsel, or advise, aid or abet another in the commission of false swearing under this section, shall be guilty of a misdemeanor, and, upon conviction thereof shall be fined not more than one thousand dollars or imprisoned in the county jail for a period of not more than one year, or both such fine and imprisonment.

Any person who provides a voter assistance in voting an absent voter's ballot in the office of the clerk of the circuit court who is not qualified or permitted by this sec-
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141 tion to provide such assistance shall be guilty of a mis-
142 demeanor, and, upon conviction thereof shall be fined
143 not more than one thousand dollars or imprisoned in the
144 county jail for a period of not more than one year, or both
145 such fine and imprisonment.
146 Any clerk of the circuit court, election commissioner
147 or poll clerk who authorizes or allows a voter to receive
148 or to have received unchallenged assistance in voting an
149 absent voter's ballot when such voter is known to the
150 clerk of the circuit court or election commissioner or poll
151 clerk not to be or have been authorized by the provisions
152 of this section to receive or to have received assistance in
153 voting shall be guilty of a misdemeanor, and, upon con-
154 viction thereof, shall be fined not more than one thousand
155 dollars or imprisoned in the county jail for a period of
156 not more than one year, or both such fine and imprison-
157 ment.
158 The term “assistance in voting” as used in this section
159 shall mean assistance in physically marking the official
160 absent voter's ballot for a voter, or reading or directing
the voter's attention to any part of the official absent voter's ballot.

The term "physical disability" as used in this section shall mean only blindness or such degree of blindness as will prevent the voter from seeing the names on the ballot, or amputation of both hands, or such disability of both hands that neither can be used to make cross marks on the absent voter's ballot.

§3-3-5. Voting an absent voter's ballot by mail.

A person desiring to vote an absent voter's ballot by mail, may, not more than sixty days prior to the date of any primary, general or special election, make application by mail to the clerk of the circuit court of the county in which he is registered to vote for an official absent voter's ballot or ballots to be voted at such election, except that the clerk of the circuit court shall not honor any such application for an absent voter's ballot received by him after the fourth day next preceding the date of the election. In computing such fourth day, the day of conducting the election shall be excluded. The application to be used by persons who wish to vote an
absent voter's ballot by mail shall be prescribed by the
secretary of state and shall be in substantially the fol-
lowing form:

APPLICATION FOR VOTING AN ABSENT

VOTER'S BALLOT BY MAIL

KNOWING THAT I CAN BE FINED NOT MORE
THAN ONE THOUSAND DOLLARS OR IMPRISONED
IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE
THAN ONE YEAR OR BOTH SUCH FINE AND IM-
PRISONMENT FOR KNOWINGLY MAKING A FALSE
STATEMENT OR REPRESENTATION HEREIN, I,
________________, hereby declare that I am now,
or will have been a resident of the state of West Virginia
for twelve months, and of the county of ____________, for
sixty days, next preceding the date of the ensuing election
to be held on the ______ day of ______________, 19____;
that I now reside at______________________________
(give full address)
in the magisterial district of ____________________________
in said county; that I am a duly qualified voter entitled
to vote in such election; that I am registered in the
precinct of my residence as provided by law; that I am
registered as a ........................................................... ................;

(state political party if ballot is for primary election)

and that (strike out numbered paragraphs not applicable
and complete the numbered paragraph which is applicable):

(1) I will be unable to vote in person at the polls on

election day because of .................................................... ······-·····-···;

(state particulars of physical disability, illness or injury)

as evidenced below by the statement of a duly licensed
physician or chiropractor.

(2) I anticipate commitment to a hospital, institution
or other confinement on or about the ............... day of
............. ............... , 19......, for the following medical reasons ..............................................................,

as evidenced below by the statement of a duly licensed
physician or chiropractor, and by reason thereof will
not be able to vote in person at the polls in such election.
(3) I expect to be absent from the aforementioned county in which I am registered to vote during the entire time the polls are open in such election, and I am (check one applicable):

[ ] A member of the armed forces in the active service.

[ ] A spouse or dependent of a member of the armed forces in active service.

[ ] A member of the merchant marine of the United States.

[ ] A spouse or dependent of a member of the merchant marine of the United States.

[ ] A citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia.

[ ] A spouse or dependent residing with or accompanying a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia.

(4) I am required to be absent from the aforementioned county in which I am registered during the en-
tire time the polls are open in such election for the reason or reasons hereafter stated; I am not in any of the categories referred to in paragraph (3) above; I am required to be absent from said county during regular business hours of the clerk of the circuit court of said county throughout the period or throughout the remainder of the period of voting an absent voter's ballot by personal appearance at said office. ........................................

(state reason or reasons for required absence from county on election day)

(5) I have been appointed ........................................

(state whether an election commissioner or poll clerk)
in precinct no. ............... in said election, which precinct is not the precinct in which I am registered to vote.

In consideration of the foregoing qualifications, I hereby make application for an official absent voter's ballot (or ballots if more than one are to be used) to be voted by me at such election, and request that such
ballot or ballots be mailed to me at the following address: .................................................................

(give full address for mailing purposes)

(Complete the following paragraph only if assistance will be needed in voting absent voter's ballot):

I further declare that I will need assistance in voting an absent voter's ballot for the following reasons

(specify illiteracy or exact nature of physical disability, illness or injury)

I hereby declare under the penalties for false swearing as provided in section three, article nine, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, that the statements and declarations contained in this application are true and correct to the best of my knowledge and belief.

Signature of Applicant

(or in case the applicant is illiterate he
shall make his mark and have it witnessed on the following lines:

Mark of Applicant

Signature of Witness

If the person applying for an absent voter's ballot by mail be unable to sign his application because of illiteracy, he shall make his mark on the signature line above provided for an illiterate applicant which mark shall be witnessed.

The following declaration must be completed and signed if the reason specified in the above application for being unable to vote in person at such election is physical disability, illness or injury, or is anticipated confinement in a hospital, institution or other place for medical reasons.

STATEMENT OF PHYSICIAN (CHIROPRACTOR)

I,

declare that I am a physician (chiropractor) duly licensed
to practice in the state of ........................................;

that I last examined ..................................................,

the applicant whose signature appears on the application

above on the ............... day of ................., 19........;

and that in my opinion (strike out numbered paragraph

not applicable and complete the numbered paragraph

which is applicable).

(1) The applicant will, because of ______________________

(state particulars of physical disability,

be unable to go to the

illness or injury)

polls on the ........ day of ........................................, 19........,

the date of the election.

(2) The applicant will, because of_____________________

(state for what

be confined in ___________________,

medical reasons) (specify hospital,

institution or other place)

day of ___________________, 19........, and will because of

such reasons not be able to go to the polls on the......
day of _______________ _____________ ___, 19_____, the date of the elec-

tion.

(Complete the following paragraph if applicant for

absent voter's ballot will need assistance in voting

such ballot, based upon physical disability, illness

or injury.)

I am of the further opinion that applicant _________________ /

(will)

_____________ _____________, because of the aforementioned physical

(will not)

disability, illness or injury need assistance in voting an

absent voter's ballot.

________________________________________

Signature of Physician (Chiropractor)

In lieu of the application for an absent voter's ballot

provided above, those persons specified in subdivision (2)

of section one of this article may use the application for

absentee ballot form recommended by, and issued under

authority of, The Federal Voting Assistance Act of 1955,

as amended.

Upon receipt of properly completed copy of such
form, the clerk of the circuit court shall process the same
as he would any other application for an absent voter's
ballot by mail. Any such properly completed copy may
be returned only to the clerk of the circuit court of the
county in which the applicant is a registered voter.
Immediately upon receipt of a completed application
for voting an absent voter's ballot by mail, the clerk
of the circuit court shall determine (1) whether the
application for voting such ballot has been completed
as required by law; (2) whether he has evidence that
any of the statements contained in the application are not
true; and (3) whether the applicant is in fact duly reg-
istered in the precinct of his residence as provided by
law and insofar as registration is concerned would be
permitted to vote at the polls in such election. If the
determination of the clerk of the circuit court as to (1)
or (3) is in the negative or as to (2) is in the affirm-
ative, the clerk shall notify the applicant at the time he
mails the absent voter's ballot to him that he will chal-
lange the applicant's privilege to vote an absent voter's
ballot by mail for reasons which he shall indicate, and
upon receipt of the applicant's absent voter's ballot the
clerk shall challenge such ballot.

Upon determination by the clerk of the circuit court
that the applicant is entitled to vote an absent voter's
ballot by mail or that the applicant will be permitted
to vote an absent voter's ballot by mail with such ballot
to be challenged by the clerk, the clerk shall between
the thirtieth day and the fourth day next prior to the
election in which the absent voter's ballot is to be used
mail to the applicant the following absentee voting sup-
plies: Provided, That the clerk shall not, after the fif-
teenth day next prior to such election, mail such ballot
to an applicant whose address is shown to be outside the
continental limits of the United States:

(a) One official absent voter's ballot (or ballots if
more than one are to be used) which has been prepared
in accordance with law for use in such election; such bal-
lot in the case of a primary election shall be of the
party of the applicant's affiliation as indicated on his
registration card or in the case the applicant is not found
to be registered by the clerk, but votes a ballot challenged
by the clerk, the clerk shall send to the applicant an
absent voter’s ballot of the party designated by the appli-
cant in his application.

(b) One Absent Voter’s Ballot Envelope No. 1, un-
sealed, which shall have no writing thereon except the
designation “Absent Voter’s Ballot Envelope No. 1”.

(c) One Absent Voter’s Ballot Envelope No. 2, un-
sealed.

Upon receipt of an absent voter’s ballot by mail, the
voter shall mark the ballot: Provided, That the voter
may have assistance in voting his absent voter’s ballot
in accordance with the provisions of the next succeeding
section of this article.

After the voter has voted his absent voter’s ballot, he
shall (1) enclose the same in Absent Voter’s Ballot En-
velope No. 1, and seal that envelope, (2) enclose sealed
Absent Voter’s Ballot Envelope No. 1 in Absent Voter’s
Ballot Envelope No. 2 and seal that envelope, (3) com-
plete and sign the forms, if any, on Absent Voter’s
Ballot Envelope No. 2 according to the instructions
thereon, and (4) mail, postage prepaid, sealed Absent
Voter's Ballot Envelope No. 2 to the clerk of the circuit court of the county in which he is registered to vote.

Upon receipt of such sealed envelope, the clerk shall (1) enter onto the envelope such information as may be required of him according to the instructions thereon; (2) enter his challenge, if any, to the absent voter's ballot; (3) enter the required information into a record of persons making application for and voting an absent voter's ballot by personal appearance or by mail (the form of which record and the information to be entered therein shall be prescribed by the secretary of state); and (4) place such sealed envelope in a secure location in his office, there to remain until delivered to the polling place in accordance with the provisions of this article or in case of a challenged ballot to the county court sitting as a board of canvassers.

§3-3-6. Assistance to voter in voting an absent voter's ballot by mail.

No voter shall receive any assistance in voting an absent voter's ballot by mail unless he shall make a declaration at the time he makes application for an
absent voter's ballot that because of illiteracy he is unable to read the names on the ballot, or that he has a physical disability, illness or injury which renders him unable to see or mark the ballot, the exact nature of the physical disability, illness or injury being stated therein, and in the event assistance in voting is based upon physical disability, illness or injury, a declaration from a physician or chiropractor that because of such physical disability, illness or injury the applicant will need assistance in voting an absent voter's ballot.

Upon receipt of an absent voter's ballot by mail, the voter who requires assistance in voting such ballot and who has indicated his need for such assistance and the reasons therefor on his application, and has had the physician's or chiropractor's declaration completed when applicable, may select any person to assist him in voting.

The person receiving assistance in voting an absent voter's ballot by mail shall make a declaration either on Absent Voter's Ballot Envelope No. 2, or on a form as
may be prescribed by the secretary of state, by whom
he was assisted in voting his absent voter's ballot.

The term "assistance in voting" as used in this section
shall mean assistance in physically marking the official
absent voter's ballot for a voter, or reading or directing
the voter's attention to any part of the official absent
voter's ballot.

§3-3-7. Delivery of absent voters' ballots to polling places.

The absent voters' ballots of each precinct, together
with the applications therefor, the affidavits made in
connection with assistance in voting, and such forms,
lists and records as may be designated by the secretary
of state, shall be delivered in a sealed carrier envelope
to the election commissioner of the precinct at the time
he picks up the official ballots and other election sup-
plies as provided in section twenty-four, article one of
this chapter.

An absent voter's ballot shall be delivered by the clerk
of the circuit court to the election commissioners of the
precinct in which the voter thereof is registered or if
not found to be registered to the election commissioner
of the precinct in which his residence as stated on the
voter's application is located.

Absent voters' ballots received after the election com-
missioner has picked up the official ballots and other
election supplies for the precinct shall be delivered to
the election commissioner of the precinct who has been
so designated under aforementioned section twenty-four,
article one, by the clerk in person, or by messenger,
before the closing of the polls, provided such ballots
are received by the clerk in time to make such delivery.

§3-3-8. Disposition and counting of absent voters' ballots at
the polling places.

Immediately after the closing of the polls on election
day, and before the operating lever or mechanism of the
voting machines (in counties using voting machines)
are locked and sealed as provided in section twenty-four,
article four of this chapter, the election commissioners
and poll clerks of the precinct, in the presence of each
other, shall open the carrier envelope in which are en-
closed the absent voters' ballots for that precinct.

After the carrier envelope has been opened, each of
the election commissioners and poll clerks shall examine
each of the sealed Absent Voter's Ballot Envelopes No.
2 contained therein, as well as the information con-
tained thereon, the application for such ballot, the affi-
davits, records and lists, if any, made, prepared or au-
thesized under the provisions of this article which relate
thereto, and make a decision as to each ballot whether
a challenge is or is not to be made to such ballot. The
appropriate form indicating the challenge shall be com-
pleted as to each ballot challenged by one or more of
the election commissioners or poll clerks. Each ballot
challenged shall remain sealed in Absent Voter's Ballot
Envelope No. 2 and be deposited in the box or envelope
for challenged ballots.

The election commissioners and poll clerks shall next
determine whether any challenge has been made to any
absent voter's ballot by any registered voter in the county
under the provisions of section nine of this article. Each
such ballot challenged shall remain sealed in Absent
Voter's Ballot Envelope No. 2 and be deposited in the
box or envelope for challenged ballots.
31 The election commissioners and poll clerks, in the presence of each other, shall then open, in a manner as not to deface or destroy the information thereon, all of the Absent Voter's Ballot Envelopes No. 2 which contain ballots not challenged and remove therefrom the Absent Voter's Ballot Envelopes No. 1. These envelopes shall then be shuffled and intermingled.

38 The election commissioners and poll clerks, in the presence of each other, shall next open all of the Absent Voter's Ballot Envelopes No. 1 and remove the ballots therefrom. The poll clerks shall write their names on the back of each of such ballots in the same manner as other ballots are required to be endorsed by the poll clerks at precinct voting. The poll clerks shall then indicate with the letter "a" in the appropriate place on the registration record the fact that the voter had voted by absent voter's ballot in that election, and shall enter the absent voter's name on the poll book.

49 An election commissioner shall thereupon deposit the absent voters' ballots in the ballot box in those counties not using voting machines. In the counties which have
adopted voting machines, the election commissioners
shall, before locking and sealing the operating levers
or mechanism on the voting machines, record such ballots
on the voting machine. Such recording of absent voters'
balloons shall be done by one of the election commis-
sioners, and the act of casting such votes shall be per-
formed in the presence, and under the careful obser-
vation and full view, of all election commissioners and
poll clerks, and the votes as indicated by voting point-
ers fully carries out the intent of the voter as shown
by the cross marks on the paper ballots. After the absent
voters' ballots have been recorded on the voting ma-
chine, they shall be enclosed in a sealed package, prop-
erly endorsed, and returned and filed with the state-
ment of returns.

§3-3-9. Voting in person after having received and after hav-
ing voted an absent voter's ballot.

Any person who has applied for and received an ab-
sent voter's ballot but has not voted and returned the
same to the clerk of the circuit court may vote in person
at the polls on election day provided he returns such
absent voter’s ballot to the election commissioners at
the polling place. In such case the absent voter’s ballot
shall be destroyed by the election commissioners in the
presence of the voter, and one of the poll clerks shall
make a notation of such fact as directed by instructions
issued by the secretary of state. In the event such per-
son does not return the absent voter’s ballot, he shall
have his vote challenged by one or more of the election
commissioners or poll clerks.

Any person who has voted an absent voter’s ballot
under authority of subdivision (3) of section one of this
article who is present in the county in which he is reg-
istered to vote between the opening and closing of the
polls on election day, and any person who has voted
an absent voter’s ballot under authority of subdivision
(1) of section one of this article who is or becomes able
to vote in person at the polls on election day, shall go
to the polling place in the precinct of his residence on
election day and vote in person and ask that the absent
voter’s ballot voted by him be destroyed in his presence.
In such case one of the poll clerks shall make a nota-
tion of such fact as directed by instructions issued by
the secretary of state.

In the event a person who has voted an absent voter's
ballot votes in person at the polls on election day and
fails to notify the election commissioners and poll clerks
that he had previously voted an absent voter's ballot
in such election and the election commissioners and
poll clerks fail to discover such fact at the time of voting
in person, they shall, following the closing of the polls,
challenge the absent voter's ballot of such person.

The absent voter's ballot of any such person described
in the second paragraph of this section who fails to go to
the polling place in the precinct of his residence on
election day and vote in person shall be subject to chal-
lenge by any one or more of the election commissioners
or poll clerks or by any registered voter in the county
who has personal knowledge that such person was either
in the county between the opening and closing of the
polls on election day or was able to vote in person at
the polls on election day, as the case may be: Provided,
That any such challenge by a registered voter shall be
made by affidavit, the form of which shall be prescribed
by the secretary of state.

§3-3-10. Challenging of absent voter's ballots.

The clerk of the circuit court may challenge an absent
voter's ballot on any of the following grounds: (1) That
the application for an absent voter's ballot has not been
completed as required by law; (2) that any statement
or declaration contained in the application for an absent
voter's ballot is not true; (3) that the applicant for an
absent voter's ballot is not registered to vote in the
precinct of his residence as provided by law; (4) that
the person voting an absent voter's ballot by personal
appearance in his office had assistance in voting such
ballot when the person was not qualified for such voting
assistance because (a) the affidavit of the person who
received such assistance does not indicate a legally suffi-
cient reason for such assistance, or (b) the person who
received such assistance did not make an affidavit as
required by this article, or (c) the person who received
such assistance is not so illiterate as to have been unable
to read the names on the ballot or that he is not so
physically disabled as to have been unable to see or mark the absent voter's ballot; and (5) that the person who voted an absent voter's ballot by mail and received assistance in voting such ballot, was not qualified under the provisions of this article for such assistance.

Any one or more of the election commissioners or poll clerks in a precinct may challenge an absent voter's ballot on any of the following grounds: (1) That the application for an absent voter's ballot was not completed as required by law; (2) that any statement or declaration contained in the application for an absent voter's ballot is not true; (3) that the person voting an absent voter's ballot is not registered to vote in the precinct of his residence as provided by law; (4) that the signatures of the person voting an absent voter's ballot as they appear on his registration record, his application for an absent voter's ballot, and the absent voter's ballot envelope are not in the same handwriting; (5) that the absent voter's ballot does not have thereon the official seal of the clerk of the circuit court and all signatures of members of the board of ballot commissioners; (6)
that the person voting an absent voter's ballot by personal appearance in the office of the clerk of the circuit court had assistance in voting such ballot when the person was not qualified for such assistance because (a) the affidavit of the person who received such assistance does not indicate a legally sufficient reason for such assistance, or (b) the person who received such assistance did not make an affidavit as required by this article, or (c) the person who received such assistance is not so illiterate as to have been unable to read the names on the ballot or that he was not so physically disabled as to have been unable to see or mark the absent voter's ballot; (7) that the person voted an absent voter's ballot by mail and received assistance in voting such ballot when not qualified under the provisions of this article for such assistance; (8) that the person who voted the absent voter's ballot voted in person at the polls on election day; (9) that the person voted an absent voter's ballot under authority of paragraph (3) of section one of this article and is or was present in the county in which he is registered to vote between the opening and
closing of the polls on election day; (10) that the person who voted an absent voter's ballot had died before election day; (11) that the person voted an absent voter's ballot under authority of subdivision (1) of section one of this article and was able to vote at the polls on election day; and (12) on any other ground or for any reason on which or for which the ballot of a voter voting in person at the polls on election day may be challenged.

Any registered voter in the county may challenge an absent voter's ballot voted under authority of subdivision (3) of section one of this article on the ground that the voter of such ballot is or was in the county in which he is registered to vote between the opening and closing of the polls on election day and may challenge an absent voter's ballot voted under authority of subdivision (1) of section one of this article on the ground that the voter of such ballot was able to vote at the polls on election day.

Forms for, and the manner of, challenging an absent
voter's ballot under the provisions of this article shall be prescribed by the secretary of state.

Absent voters' ballots challenged by the clerk of the circuit court under the provisions of this article shall be transmitted by the clerk directly to the county court sitting as a board of canvassers; and the absent voters' ballots challenged by the election commissioners, poll clerks and registered voters of the county under the provisions of this article shall not be counted by the election officials but shall be transmitted by them to the county court sitting as a board of canvassers. Action by the board of canvassers on such challenged absent voters' ballots shall be governed by the provisions of section forty-one, article one of this chapter.

§3-4-11. Preparation, number and handling of absent voters' ballots.

Absent voters' ballots shall be in all respects like other ballots. Not less than forty-five days prior to the date on which any primary, general or special election is to be held, the clerks of the circuit courts of the several counties shall estimate and determine the number of absent
voters' ballots of all kinds which will be required in
their respective counties for any such election. The
ballots for the election of all officers, or the ratification,
acceptance or rejection of any measure, proposition or
other public question to be voted on by the voters, shall
be prepared and printed under the direction of the board
of ballot commissioners constituted as provided in article
one of this chapter. The several county boards of ballot
commissioners shall prepare and have printed, in such
number as they shall determine, such absent voters'
balloons as are to be printed under their directions as
hereinbefore provided, and such ballots shall be delivered
to the clerk of the circuit court of the county not less
than thirty days prior to the day of the election at
which they are to be used. Before any ballot is mailed
or delivered the clerk of the circuit court shall affix his
official seal and he and the other members of the board
of ballot commissioners shall place their signatures
near the lower left-hand corner on the back thereof. An
absent voter's ballot not containing such seal and sig-
natures shall be invalid and shall be subject to challenge by any election commissioner or poll clerk.

The clerk of the circuit court shall be primarily responsible for the preparation, mailing, receiving, delivering and otherwise handling of all absent voters' ballots. He shall keep such record, as may be prescribed by the secretary of state, of all ballots so delivered for the purpose of absentee voting, as well as all ballots, if any, marked before him, and shall deliver to the commissioner of election to whom the ballots for the precinct are delivered and at the time of the delivery of such ballots a certificate stating the number of ballots delivered or mailed to absent voters, and those marked before him, if any, and the names of the voters to whom such ballots have been delivered or mailed, or by whom they have been marked, if marked before him.

§3-3-12. Rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting.

The secretary of state shall make, amend and rescind such rules, regulations, orders and instructions, and prescribe such forms, lists and records, and consolidation
of such forms, lists and records as may be necessary to carry out the policy of the Legislature as contained in this article and as may be necessary to provide for an effective, efficient and orderly administration of the absent voter law of this state.

It shall be the duty of all clerks of the circuit court, other county officers, and all election commissioners and poll clerks to abide by such rules, regulations, orders and instructions and to use such forms, lists and records which, without limiting the foregoing, may include or relate to:

(a) The consolidation of the two application forms provided for herein into one form;

(b) The size and form of Absent Voter's Ballot Envelope Nos. 1 and 2, and carrier envelopes;

(c) The forms and information which shall be placed on Absent Voter's Ballot Envelope No. 2;

(d) The forms and manner of making the challenges to absent voters' ballots authorized by this article;

(e) The forms of, information to be contained in, and consolidation of lists and records pertaining to ap-
The provisions of this article relating to absentee voting shall apply to all municipal elections, except where clearly not adaptable thereto, and the governing bodies of the several municipalities of the state shall by ordinance implement the provisions hereof so as to develop and provide a complete and satisfactory absentee voting system for municipal elections.

ARTICLE 4. VOTING MACHINES.

§3-4-20. Recording and disposition of absent voters' ballots.

The recording and disposition of absent voters' ballots delivered to polling places using voting machines shall be governed by the provisions of article three of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompot
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect July 1, 1970.

J. Thomas Meyers
Clerk of the Senate

(Blankenship)
Clerk of the House of Delegates

Haywood H. Jackson
President of the Senate

Jim J. Beckley
Speaker House of Delegates

The within __________ approved ______ this the _______ day of ______, 1970.

Archibald Sisson, Jr.
Governor
PRESENTED TO THE
GOVERNOR

Date 2/16/70
Time 2:40 p.m.