

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1970

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ENROLLED

HOUSE BILL No. 624

(By Mr. Speaker, Mr. Boiarosky, and
Mr. Hylco)

—●—
PASSED February 11, 1970

In Effect July 1, 1970 Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
DATE 2-18-70

624

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
2 otherwise qualified to vote may vote an absent voter's
3 ballot in any primary, general or special election in
4 accordance with the provisions of this article:

5 (1) Any person who by reason of physical disabil-
6 ity, illness or injury will be unable to vote in person

7 at the polls in such election.

8 (2) Any person who is (a) a member of the armed
9 forces while in the active service, and his spouse and
10 dependents, or (b) a member of the merchant marine
11 of the United States, and his spouse and dependents,
12 or (c) a citizen of the United States temporarily resid-
13 ing outside the territorial limits of the United States and
14 the District of Columbia and his spouse and dependents
15 when residing with or accompanying him.

16 (3) Any person, other than a person meeting the
17 qualifications described in subdivision (2), who is re-
18 quired to be absent from the county in which he is regis-
19 tered to vote during the entire time the polls are open
20 in such election.

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

§3-3-2. Absentee voting methods.

1 An absent voter's ballot may be voted by mail or by
2 personal appearance at the office of the clerk of the circuit
3 court as provided in this section.

4 Any person described in subdivisions (1), (2) and
5 (4) of section one of this article may vote an absent
6 voter's ballot by mail; and any person described in sub-
7 division (3) of section one of this article may vote an
8 absent voter's ballot by mail if (a) his application for
9 an absent voter's ballot directs that the absent voter's
10 ballot be mailed to an out-of-county address, (b) the
11 envelope in which his absent voter's ballot is mailed is
12 postmarked at an address outside the county, and (c)
13 he is required to be absent from the county in which he
14 is registered to vote during regular business hours of the
15 office of the clerk of the circuit court of said county
16 throughout the period, or throughout the remainder of
17 the period, of voting an absent voter's ballot by personal
18 appearance at said clerk's office.

19 Any person described in subdivisions (2), (3) and (4)
20 of section one of this article, and any person described
21 in subdivision (1) of section one of this article whose
22 physical disability on the date of the election is antici-
23 pated by reason of commitment to a hospital, institution
24 or other confinement for childbirth or other medical

25 reasons, may vote an absent voter's ballot by personal
26 appearance at the office of the clerk of the circuit court.

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

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

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

1 A person desiring to vote an absent voter's ballot by
2 personal appearance may appear during regular business
3 hours at the office of the clerk of the circuit court of
4 the county in which he is registered to vote not more
5 than fifteen days before the election and on any day
6 thereafter up to and including the Saturday next pre-
7 ceding the date of the primary or general election or,
8 in the case of special elections, up to and including the

9 third day next preceding the day of any such special
10 election (in computing such third day, the day of con-
11 ducting the special election shall be excluded), and upon
12 oral request receive an application for an official absent
13 voter's ballot or ballots to be voted at such election,
14 which application shall be prescribed by the secretary of
15 state and shall be in substantially the following form:

16 APPLICATION FOR VOTING AN ABSENT
17 VOTER'S BALLOT BY PERSONAL APPEARANCE
18 KNOWING THAT I CAN BE FINED NOT MORE
19 THAN ONE THOUSAND DOLLARS OR IM-
20 PRISONED IN THE COUNTY JAIL FOR A PERIOD
21 OF NOT MORE THAN ONE YEAR OR BOTH SUCH
22 FINE AND IMPRISONMENT FOR KNOWINGLY MAK-
23 ING A FALSE STATEMENT OR REPRESENTATION
24 HEREIN, I, _____, hereby declare
25 that I am now, or will have been a resident of the state of
26 West Virginia for twelve months, and of the county of
27 _____ for sixty days, next preceding
28 the date of the ensuing election to be held on the ____ day

29 of _____, 19 ____; that I now reside at _____,

30 (give full address)

31 in the magisterial district of _____,

32 in said county; that I am a duly qualified voter entitled

33 to vote in such election; that I am registered in the

34 precinct of my residence as provided by law; that I am

35 registered as a _____;

36 (state political party if ballot is for primary election)

37 and that (strike out numbered paragraphs not applicable

38 and complete the numbered paragraph which is ap-

39 plicable):

40 (1) I expect to be absent from the aforementioned

41 county in which I am registered to vote during the en-

42 tire time the polls are open in such election, and I am

43 (check one applicable):

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

45 ☐ A spouse or dependent of a member of the armed

46 forces in the active service.

47 ☐ A member of the merchant marine of the United

48 States.

49 ☐ A spouse or dependent of a member of the mer-
50 chant marine of the United States.

51 ☐ A citizen of the United States temporarily residing
52 outside the territorial limits of the United States and the
53 District of Columbia.

54 ☐ A spouse or dependent residing with or accompany-
55 ing a citizen of the United States temporarily residing
56 outside the territorial limits of the United States and
57 the District of Columbia.

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

63 _____
64 (here state specific reason or reasons for required absence)

65 (3) I anticipate commitment to a hospital, institution
66 or other confinement on or about the ... day of_____
67 _____, 19_____, for the following medical reasons
68 _____, as
69 evidence below by the statement of a duly licensed

70 physician or chiropractor, and by reason thereof will not
71 be able to vote in person at the polls in such election.'

72 (4) I have been appointed_____

73 _____,

74 (specify whether an election commissioner or poll clerk)

75 in precinct no. _____ in said election, which precinct

76 is not the precinct in which I am registered to vote.

77 In consideration of the foregoing qualifications, I here-

78 by make application for an official absent voter's ballot

79 (or ballots if more than one are to be used) to be voted

80 by me at such election.

81 I hereby declare, under the penalties for false swearing

82 as provided in section three, article nine, chapter three

83 of the code of West Virginia, one thousand nine hundred

84 thirty-one, as amended, that the statements and declara-

85 tions contained in this application are true and correct

86 to the best of my knowledge and belief.

87 _____

88 Signature of Applicant

89 (or in case the applicant is illiterate he

90 shall make his mark and have it wit-

91 nessed on the following lines:)

92

93 Mark of Applicant

94

95 Signature of Witness

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

101 The following declaration must be completed and
102 signed if the reason specified in the above application for
103 being unable to vote in person at such election is antici-
104 pated commitment to a hospital, institution or other con-
105 finement for medical reasons:

106 DECLARATION OF PHYSICIAN (CHIROPRACTOR)

107 I, _____, hereby
108 declare that I am a physician (chiropractor), duly li-
109 censed to practice in the state of _____;
110 that I last examined _____,
111 the applicant whose signature appears on the application

112 above on the day of, 19____;

113 and that in my opinion said applicant will, because of

114 _____

115 (state medical reasons)

116 be committed to _____,

117 (state hospital, institution or other confinement)

118 on or about the ... day of, 19____,

119 and will because of such reasons not be able to go to

120 the polls on the day of, 19____,

121 the date of the election.

122 _____

123 Signature of Physician (Chiropractor)

124 The application shall be completed by the applicant in

125 his own handwriting, or in the handwriting of the witness

126 to his mark in the event of illiteracy, in the office of

127 the clerk of the circuit court; in no event shall the ap-

128 plicant remove an application for voting an absent voter's

129 ballot by personal appearance from said office except

130 when such is necessary to have a physician or chiro-

131 practor to complete and sign the declaration of a physi-

132 cian or chiropractor when such is required.

133 Immediately upon receipt of a completed application
134 for voting an absent voter's ballot by personal appearance,
135 the clerk of the circuit court shall determine (1)
136 whether such application has been completed as required
137 by law; (2) whether he has evidence that any of the
138 statements or declarations contained in the application
139 are not true; (3) whether the applicant is in fact duly
140 registered in the precinct of his residence as provided by
141 law and insofar as registration is concerned would be per-
142 mitted to vote at the polls in such election. If the de-
143 termination of the clerk of the circuit court as to (1)
144 or (3) is in the negative or as to (2) is in the affirma-
145 tive, the clerk shall, if the applicant insists, permit
146 the applicant to vote an absent voter's ballot by personal
147 appearance, but the clerk shall challenge the absent
148 voter's ballot on the basis of such determination.

149 Upon determination by the clerk of the circuit court
150 that the applicant is entitled to vote an absent voter's
151 ballot by personal appearance or in case the applicant
152 determines to vote an absent voter's ballot challenged
153 by the clerk of the circuit court as provided in the im-

154 mediately preceding paragraph, the clerk of the circuit
155 court shall hand to him the following absentee voting
156 supplies:

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

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

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

171 The voter shall thereupon retire alone to the booth
172 or compartment provided in said clerk's office for voting
173 absent voters' ballots and there mark his ballot: *Pro-*
174 *vided*, That the voter may have assistance in voting his

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

196 location in his office, there to remain until delivered to
197 the polling place in accordance with the provisions of
198 this article or in case of a challenged ballot to the county
199 court sitting as a board of canvassers.

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

1 No voter shall receive any assistance in voting an
2 absent voter's ballot in the office of the clerk of the
3 circuit court unless (1) (a) his registration record indi-
4 cates that because of illiteracy, he is unable to read the
5 names on the ballot, or that he has a physical disability
6 which renders him unable to see or mark the ballot,
7 the exact nature of the physical disability being re-
8 corded on the registration record, or (b) he shall make
9 an affidavit at the time he makes application for an ab-
10 sent voter's ballot, the form of which shall be prescribed
11 by the secretary of state, that because of illiteracy he is
12 unable to read the names on the ballot, or that he has
13 a physical disability which renders him unable to see
14 or mark the ballot, the exact nature of the physical
15 disability being stated therein; and (2) the clerk of

16 the circuit court determines that he is illiterate or suf-
17 fers from the physical disability stated on his registra-
18 tion record or in his affidavit and that such physical
19 disability renders him then unable to see or mark the
20 ballot.

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

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

37 such case challenge the absent voter's ballot on the
38 basis of such determination.

39 Any one or more of the election commissioners or poll
40 clerks in the precinct to which an absent voter's ballot
41 has been sent may challenge such ballot on the ground
42 that the voter thereof received assistance in voting it
43 when in his or their opinion (1) either the registration
44 record or affidavit of the person who received the assist-
45 ance in voting the absent voter's ballot does not indi-
46 cate a legally sufficient reason for such assistance, or
47 (2) the person who received the assistance in voting
48 did not make an affidavit when required by this sec-
49 tion to qualify for assistance, or (3) the person who
50 provided the assistance in voting did not make an affi-
51 davit as required by this section, or (4) the person who
52 received assistance in voting is not so illiterate as to have
53 been unable to read the names on the ballot or that he
54 did not have such a physical disability as to have been
55 unable to see or mark the absent voter's ballot. The
56 election commissioner or poll clerk or commissioners
57 or poll clerks making such challenge shall enter the

58 challenge and reason therefor on the form and in the
59 manner prescribed or authorized by this article.

60 Before entering the voting booth or compartment,
61 the person who intends to provide a voter assistance
62 in voting shall make an affidavit, the form of which
63 shall be prescribed by the secretary of state, that he
64 will not in any manner request, or seek to persuade,
65 or induce the voter to vote any particular ticket or for
66 any particular candidate or for or against any public
67 question, and that he will not keep or make any memo-
68 randum or entry of anything occurring within the vot-
69 ing booth or compartment, and that he will not, directly
70 or indirectly, reveal to any person the name of any
71 candidate voted for by the voter, or which ticket he had
72 voted, or how he had voted on any public question, or
73 anything occurring within the voting booth or compart-
74 ment or voting machine booth, except when required
75 pursuant to law to give testimony as to such matter in
76 a judicial proceeding.

77 In accordance with instructions issued by the secre-

78 tary of state, the clerk of the circuit court shall pro-
79 vide a form entitled "List of Assisted Voters," the form
80 of which list shall likewise be prescribed by the secre-
81 tary of state, which list shall be divided into two parts.
82 Part A shall be entitled "Unchallenged Assisted Voters"
83 and Part B shall be entitled "Challenged Assisted Voters."
84 Under Part A the clerk shall enter the name of each
85 voter receiving unchallenged assistance in voting an
86 absent voter's ballot, the address of the voter assisted,
87 the nature of the disability which qualified the voter
88 for assistance in voting an absent voter's ballot, the fact
89 that such voter made and subscribed to the oath re-
90 quired by this section, the name of the person provid-
91 ing the voter with assistance in voting an absent voter's
92 ballot, the fact that the person rendering the assistance
93 in voting made and subscribed to the oath required by
94 this section, and the signature of the clerk of the cir-
95 cuit court certifying to the fact that he had determined
96 that the voter who received assistance in voting an absent
97 voter's ballot was qualified to receive such assistance
98 under the provisions of this section. Under Part B the

99 clerk shall enter the name of each voter receiving chal-
100 lenged assistance in voting, the address of the voter
101 receiving such challenged assistance, the reason for the
102 challenge, and the name of the person providing the
103 challenged voter with assistance in voting. At the close
104 of the period provided for voting an absent voter's bal-
105 lot by personal appearance, the clerk of the circuit court
106 shall make and subscribe to an oath on such list that the
107 list is correct in all particulars; if no voter shall have
108 been assisted in voting an absent voter's ballot as here-
109 in provided, the clerk of the circuit court shall likewise
110 make and subscribe to an oath of that fact on such list.
111 The "List of Assisted Voters" shall be available for pub-
112 lic inspection in the office of the clerk of the circuit court
113 during regular business hours throughout the period
114 provided for voting an absent voter's ballot by personal
115 appearance, and unless otherwise directed by the secre-
116 tary of state, shall transmit such list, together with the
117 affidavits, applications and absent voters' ballot, to the
118 precincts on election day.

119 Following the election, the affidavits required by this

120 section from assisted voters and from persons providing
121 assistance in voting, together with the "List of Assisted
122 Voters", shall be returned by the election commissioners
123 to the clerk of the county court along with the elec-
124 tion supplies, records and returns, who shall make such
125 oaths and list available for public inspection and who
126 shall preserve the same until their destruction or other
127 disposition is authorized or directed by the secretary of
128 state.

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

138 Any person who provides a voter assistance in voting an
139 absent voter's ballot in the office of the clerk of the cir-
140 cuit court who is not qualified or permitted by this sec-

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

161 the voter's attention to any part of the official absent
162 voter's ballot.

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

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

1 A person desiring to vote an absent voter's ballot by
2 mail, may, not more than sixty days prior to the date of
3 any primary, general or special election, make application
4 by mail to the clerk of the circuit court of the county
5 in which he is registered to vote for an official absent
6 voter's ballot or ballots to be voted at such election, ex-
7 cept that the clerk of the circuit court shall not honor any
8 such application for an absent voter's ballot received
9 by him after the fourth day next preceding the date
10 of the election. In computing such fourth day, the day
11 of conducting the election shall be excluded. The
12 application to be used by persons who wish to vote an

13 absent voter's ballot by mail shall be prescribed by the
14 secretary of state and shall be in substantially the fol-
15 lowing form:

16 APPLICATION FOR VOTING AN ABSENT

17 VOTER'S BALLOT BY MAIL

18 KNOWING THAT I CAN BE FINED NOT MORE
19 THAN ONE THOUSAND DOLLARS OR IMPRISONED
20 IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE
21 THAN ONE YEAR OR BOTH SUCH FINE AND IM-
22 PRISONMENT FOR KNOWINGLY MAKING A FALSE
23 STATEMENT OR REPRESENTATION HEREIN, I,
24 _____, hereby declare that I am now,
25 or will have been a resident of the state of West Virginia
26 for twelve months, and of the county of _____, for
27 sixty days, next preceding the date of the ensuing election
28 to be held on the _____ day of _____, 19____;
29 that I now reside at _____

30 (give full address)

31 in the magisterial district of _____
32 in said county; that I am a duly qualified voter entitled
33 to vote in such election; that I am registered in the
34 precinct of my residence as provided by law; that I am

35 registered as a;

36 (state political party if ballot is for pri-

37 mary election)

38 and that (strike out numbered paragraphs not applicable

39 and complete the numbered paragraph which is applic-

40 able):

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

42 election day because of,

43 (state particulars of physical dis-

44 ability, illness or injury)

45 as evidenced below by the statement of a duly licensed

46 physician or chiropractor.

47 (2) I anticipate commitment to a hospital, institution

48 or other confinement on or about the day of

49, 19....., for the following medi-

50 cal reasons,

51 as evidenced below by the statement of a duly licensed

52 physician or chiropractor, and by reason thereof will

53 not be able to vote in person at the polls in such elec-

54 tion.

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

59 [] A member of the armed forces in the active serv-
60 ice.

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

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

65 [] A spouse or dependent of a member of the mer-
66 chant marine of the United States.

67 [] A citizen of the United States temporarily re-
68 siding outside the territorial limits of the United States
69 and the District of Columbia.

70 [] A spouse or dependent residing with or accom-
71 panying a citizen of the United States temporarily re-
72 siding outside the territorial limits of the United States
73 and the District of Columbia.

74 (4) I am required to be absent from the aforemen-
75 tioned county in which I am registered during the en-

76 tire time the polls are open in such election for the rea-
77 son or reasons hereafter stated; I am not in any of the
78 categories referred to in paragraph (3) above; I am
79 required to be absent from said county during regular
80 business hours of the clerk of the circuit court of said
81 county throughout the period or throughout the re-
82 mainder of the period of voting an absent voter's ballot
83 by personal appearance at said office.

84

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

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

88 (state whether an election commissioner or
89 poll clerk)

90 in precinct no. in said election, which pre-
91 cinct is not the precinct in which I am registered to
92 vote.

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

197 ballot or ballots be mailed to me at the following ad-
198 dress:

199 (give full address for mailing purposes)

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

102 I further declare that I will need assistance in vot-
103 ing an absent voter's ballot for the following reasons
104

105 (specify illiteracy or exact nature of physical disability,
106

107 illness or injury)

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

114

115 Signature of Applicant

116 (or in case the applicant is illiterate he

117 shall make his mark and have it wit-
118 nessed on the following lines:)

119

120

Mark of Applicant

121

122

Signature of Witness

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

128 The following declaration must be completed and signed
129 if the reason specified in the above application for being
130 unable to vote in person at such election is physical dis-
131 ability, illness or injury, or is anticipated confinement
132 in a hospital, institution or other place for medical rea-
133 sons.

134 STATEMENT OF PHYSICIAN (CHIROPRACTOR)

135 I, _____, hereby de-
136 clare that I am a physician (chiropractor) duly licensed

137 to practice in the state of _____;
138 that I last examined _____,
139 the applicant whose signature appears on the application
140 above on the _____ day of _____, 19____;
141 and that in my opinion (strike out numbered paragraph
142 not applicable and complete the numbered paragraph
143 which is applicable).

144 (1) The applicant will, because of _____
145 (state particulars of physical disability,
146 _____, be unable to go to the
147 illness or injury)
148 polls on the _____ day of _____, 19____,
149 the date of the election.

150 (2) The applicant will, because of _____
151 (state for what
152 _____, be confined in _____,
153 medical reasons) (specify hospital,
154 _____, on or about the _____
155 institution or other place)
156 day of _____, 19____, and will because of
157 such reasons not be able to go to the polls on the _____

158 day of _____, 19____, the date of the elec-
159 tion.

160 (Complete the following paragraph if applicant for
161 absent voter's ballot will need assistance in voting
162 such ballot, based upon physical disability, illness
163 or injury.)

164 I am of the further opinion that applicant _____/
165 (will)

166 _____, because of the aforementioned physical
167 (will not)

168 disability, illness or injury need assistance in voting an
169 absent voter's ballot.

170

171 _____
Signature of Physician (Chiropractor)

172 In lieu of the application for an absent voter's ballot
173 provided above, those persons specified in subdivision (2)
174 of section one of this article may use the application for
175 absentee ballot form recommended by, and issued under
176 authority of, The Federal Voting Assistance Act of 1955,
177 as amended.

178 Upon receipt of properly completed copy of such

179 form, the clerk of the circuit court shall process the same
180 as he would any other application for an absent voter's
181 ballot by mail. Any such properly completed copy may
182 be returned only to the clerk of the circuit court of the
183 county in which the applicant is a registered voter.

184 Immediately upon receipt of a completed application
185 for voting an absent voter's ballot by mail, the clerk
186 of the circuit court shall determine (1) whether the
187 application for voting such ballot has been completed
188 as required by law; (2) whether he has evidence that
189 any of the statements contained in the application are not
190 true; and (3) whether the applicant is in fact duly reg-
191 istered in the precinct of his residence as provided by
192 law and insofar as registration is concerned would be
193 permitted to vote at the polls in such election. If the
194 determination of the clerk of the circuit court as to (1)
195 or (3) is in the negative or as to (2) is in the affirma-
196 tive, the clerk shall notify the applicant at the time he
197 mails the absent voter's ballot to him that he will chal-
198 lunge the applicant's privilege to vote an absent voter's
199 ballot by mail for reasons which he shall indicate, and

200 upon receipt of the applicant's absent voter's ballot the
201 clerk shall challenge such ballot.

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

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

221 by the clerk, the clerk shall send to the applicant an
222 absent voter's ballot of the party designated by the appli-
223 cant in his application.

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

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

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

234 After the voter has voted his absent voter's ballot, he
235 shall (1) enclose the same in Absent Voter's Ballot En-
236 velope No. 1, and seal that envelope, (2) enclose sealed
237 Absent Voter's Ballot Envelope No. 1 in Absent Voter's
238 Ballot Envelope No. 2 and seal that envelope, (3) com-
239 plete and sign the forms, if any, on Absent Voter's
240 Ballot Envelope No. 2 according to the instructions
241 thereon, and (4) mail, postage prepaid, sealed Absent

242 Voter's Ballot Envelope No. 2 to the clerk of the circuit
243 court of the county in which he is registered to vote.

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

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

1 No voter shall receive any assistance in voting an
2 absent voter's ballot by mail unless he shall make a
3 declaration at the time he makes application for an

4 absent voter's ballot that because of illiteracy he is un-
5 able to read the names on the ballot, or that he has a
6 physical disability, illness or injury which renders him
7 unable to see or mark the ballot, the exact nature of
8 the physical disability, illness or injury being stated
9 therein, and in the event assistance in voting is based
10 upon physical disability, illness or injury, a declaration
11 from a physician or chiropractor that because of such
12 physical disability, illness or injury the applicant will
13 need assistance in voting an absent voter's ballot.

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

21 The person receiving assistance in voting an absent
22 voter's ballot by mail shall make a declaration either on
23 Absent Voter's Ballot Envelope No. 2, or on a form as

24 may be prescribed by the secretary of state, by whom
25 he was assisted in voting his absent voter's ballot.

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

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

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

10 An absent voter's ballot shall be delivered by the clerk
11 of the circuit court to the election commissioners of the
12 precinct in which the voter thereof is registered or if
13 not found to be registered to the election commissioner

14 of the precinct in which his residence as stated on the
15 voter's application is located.

16 Absent voters' ballots received after the election com-
17 missioner has picked up the official ballots and other
18 election supplies for the precinct shall be delivered to
19 the election commissioner of the precinct who has been
20 so designated under aforementioned section twenty-four,
21 article one, by the clerk in person, or by messenger,
22 before the closing of the polls, provided such ballots
23 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.**

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

9 After the carrier envelope has been opened, each of

10 the election commissioners and poll clerks shall examine
11 each of the sealed Absent Voter's Ballot Envelopes No.
12 2 contained therein, as well as the information con-
13 tained thereon, the application for such ballot, the affi-
14 davits, records and lists, if any, made, prepared or au-
15 thorized under the provisions of this article which relate
16 thereto, and make a decision as to each ballot whether
17 a challenge is or is not to be made to such ballot. The
18 appropriate form indicating the challenge shall be com-
19 pleted as to each ballot challenged by one or more of
20 the election commissioners or poll clerks. Each ballot
21 challenged shall remain sealed in Absent Voter's Ballot
22 Envelope No. 2 and be deposited in the box or envelope
23 for challenged ballots.

24 The election commissioners and poll clerks shall next
25 determine whether any challenge has been made to any
26 absent voter's ballot by any registered voter in the county
27 under the provisions of section nine of this article. Each
28 such ballot challenged shall remain sealed in Absent
29 Voter's Ballot Envelope No. 2 and be deposited in the
30 box or envelope for challenged ballots.

31 The election commissioners and poll clerks, in the pres-
32 ence of each other, shall then open, in a manner as not
33 to deface or destroy the information thereon, all of the
34 Absent Voter's Ballot Envelopes No. 2 which contain
35 ballots not challenged and remove therefrom the Absent
36 Voter's Ballot Envelopes No. 1. These envelopes shall
37 then be shuffled and intermingled.

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

49 An election commissioner shall thereupon deposit the
50 absent voters' ballots in the ballot box in those counties
51 not using voting machines. In the counties which have

52 adopted voting machines, the election commissioners
53 shall, before locking and sealing the operating levers
54 or mechanism on the voting machines, record such ballots
55 on the voting machine. Such recording of absent voters'
56 ballots shall be done by one of the election commis-
57 sioners, and the act of casting such votes shall be per-
58 formed in the presence, and under the careful obser-
59 vation and full view, of all election commissioners and
60 poll clerks, and the votes as indicated by voting point-
61 ers fully carries out the intent of the voter as shown
62 by the cross marks on the paper ballots. After the absent
63 voters' ballots have been recorded on the voting ma-
64 chine, they shall be enclosed in a sealed package, prop-
65 erly endorsed, and returned and filed with the state-
66 ment of returns.

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

1 Any person who has applied for and received an ab-
2 sent voter's ballot but has not voted and returned the
3 same to the clerk of the circuit court may vote in person
4 at the polls on election day provided he returns such

5 absent voter's ballot to the election commissioners at
6 the polling place. In such case the absent voter's ballot
7 shall be destroyed by the election commissioners in the
8 presence of the voter, and one of the poll clerks shall
9 make a notation of such fact as directed by instructions
10 issued by the secretary of state. In the event such per-
11 son does not return the absent voter's ballot, he shall
12 have his vote challenged by one or more of the election
13 commissioners or poll clerks.

14 Any person who has voted an absent voter's ballot
15 under authority of subdivision (3) of section one of this
16 article who is present in the county in which he is reg-
17 istered to vote between the opening and closing of the
18 polls on election day, and any person who has voted
19 an absent voter's ballot under authority of subdivision
20 (1) of section one of this article who is or becomes able
21 to vote in person at the polls on election day, shall go
22 to the polling place in the precinct of his residence on
23 election day and vote in person and ask that the absent
24 voter's ballot voted by him be destroyed in his presence.
25 In such case one of the poll clerks shall make a nota-

26 tion of such fact as directed by instructions issued by
27 the secretary of state.

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

36 The absent voter's ballot of any such person described
37 in the second paragraph of this section who fails to go to
38 the polling place in the precinct of his residence on
39 election day and vote in person shall be subject to chal-
40 lenge by any one or more of the election commissioners
41 or poll clerks or by any registered voter in the county
42 who has personal knowledge that such person was either
43 in the county between the opening and closing of the
44 polls on election day or was able to vote in person at
45 the polls on election day, as the case may be: *Provided,*
46 That any such challenge by a registered voter shall be

47 made by affidavit, the form of which shall be prescribed
48 by the secretary of state.

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

1 The clerk of the circuit court may challenge an absent
2 voter's ballot on any of the following grounds: (1) That
3 the application for an absent voter's ballot has not been
4 completed as required by law; (2) that any statement
5 or declaration contained in the application for an absent
6 voter's ballot is not true; (3) that the applicant for an
7 absent voter's ballot is not registered to vote in the
8 precinct of his residence as provided by law; (4) that
9 the person voting an absent voter's ballot by personal
10 appearance in his office had assistance in voting such
11 ballot when the person was not qualified for such voting
12 assistance because (a) the affidavit of the person who
13 received such assistance does not indicate a legally suffi-
14 cient reason for such assistance, or (b) the person who
15 received such assistance did not make an affidavit as
16 required by this article, or (c) the person who received
17 such assistance is not so illiterate as to have been unable
18 to read the names on the ballot or that he is not so

19 physically disabled as to have been unable to see or
20 mark the absent voter's ballot; and (5) that the person
21 who voted an absent voter's ballot by mail and received
22 assistance in voting such ballot, was not qualified under
23 the provisions of this article for such assistance.

24 Any one or more of the election commissioners or poll
25 clerks in a precinct may challenge an absent voter's
26 ballot on any of the following grounds: (1) That the
27 application for an absent voter's ballot was not com-
28 pleted as required by law; (2) that any statement or
29 declaration contained in the application for an absent
30 voter's ballot is not true; (3) that the person voting an
31 absent voter's ballot is not registered to vote in the pre-
32 cinct of his residence as provided by law; (4) that the
33 signatures of the person voting an absent voter's ballot
34 as they appear on his registration record, his application
35 for an absent voter's ballot, and the absent voter's ballot
36 envelope are not in the same handwriting; (5) that the
37 absent voter's ballot does not have thereon the official
38 seal of the clerk of the circuit court and all signatures
39 of members of the board of ballot commissioners; (6)

40 that the person voting an absent voter's ballot by per-
41 sonal appearance in the office of the clerk of the circuit
42 court had assistance in voting such ballot when the per-
43 son was not qualified for such assistance because (a)
44 the affidavit of the person who received such assistance
45 does not indicate a legally sufficient reason for such as-
46 sistance, or (b) the person who received such assistance
47 did not make an affidavit as required by this article,
48 or (c) the person who received such assistance is not
49 so illiterate as to have been unable to read the names
50 on the ballot or that he was not so physically disabled
51 as to have been unable to see or mark the absent voter's
52 ballot; (7) that the person voted an absent voter's ballot
53 by mail and received assistance in voting such ballot
54 when not qualified under the provisions of this article
55 for such assistance; (8) that the person who voted the
56 absent voter's ballot voted in person at the polls on elec-
57 tion day; (9) that the person voted an absent voter's
58 ballot under authority of paragraph (3) of section one
59 of this article and is or was present in the county in
60 which he is registered to vote between the opening and

61 closing of the polls on election day; (10) that the person
62 who voted an absent voter's ballot had died before elec-
63 tion day; (11) that the person voted an absent voter's
64 ballot under authority of subdivision (1) of section one
65 of this article and was able to vote at the polls on elec-
66 tion day; and (12) on any other ground or for any rea-
67 son on which or for which the ballot of a voter
68 voting in person at the polls on election day may
69 be challenged.

70 Any registered voter in the county may challenge an
71 absent voter's ballot voted under authority of subdivi-
72 sion (3) of section one of this article on the ground that
73 the voter of such ballot is or was in the county in which
74 he is registered to vote between the opening and closing
75 of the polls on election day and may challenge an absent
76 voter's ballot voted under authority of subdivision (1)
77 of section one of this article on the ground that the
78 voter of such ballot was able to vote at the polls
79 on election day.

80 Forms for, and the manner of, challenging an absent

81 voter's ballot under the provisions of this article shall
82 be prescribed by the secretary of state.

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

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

1 Absent voters' ballots shall be in all respects like other
2 ballots. Not less than forty-five days prior to the date on
3 which any primary, general or special election is to be
4 held, the clerks of the circuit courts of the several coun-
5 ties shall estimate and determine the number of absent

6 voters' ballots of all kinds which will be required in
7 their respective counties for any such election. The
8 ballots for the election of all officers, or the ratification,
9 acceptance or rejection of any measure, proposition or
10 other public question to be voted on by the voters, shall
11 be prepared and printed under the direction of the board
12 of ballot commissioners constituted as provided in article
13 one of this chapter. The several county boards of ballot
14 commissioners shall prepare and have printed, in such
15 number as they shall determine, such absent voters'
16 ballots as are to be printed under their directions as
17 hereinbefore provided, and such ballots shall be delivered
18 to the clerk of the circuit court of the county not less
19 than thirty days prior to the day of the election at
20 which they are to be used. Before any ballot is mailed
21 or delivered the clerk of the circuit court shall affix his
22 official seal and he and the other members of the board
23 of ballot commissioners shall place their signatures
24 near the lower left-hand corner on the back thereof. An
25 absent voter's ballot not containing such seal and sig-

26 natures shall be invalid and shall be subject to chal-
27 lenge by any election commissioner or poll clerk.

28 The clerk of the circuit court shall be primarily respon-
29 sible for the preparation, mailing, receiving, delivering
30 and otherwise handling of all absent voters' ballots.
31 He shall keep such record, as may be prescribed by the
32 secretary of state, of all ballots so delivered for the pur-
33 pose of absentee voting, as well as all ballots, if any,
34 marked before him, and shall deliver to the commissioner
35 of election to whom the ballots for the precinct are
36 delivered and at the time of the delivery of such ballots
37 a certificate stating the number of ballots delivered or
38 mailed to absent voters, and those marked before him,
39 if any, and the names of the voters to whom such ballots
40 have been delivered or mailed, or by whom they have
41 been marked, if marked before him.

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

1 The secretary of state shall make, amend and rescind
2 such rules, regulations, orders and instructions, and pre-
3 scribe such forms, lists and records, and consolidation

4 of such forms, lists and records as may be necessary to
5 carry out the policy of the Legislature as contained in
6 this article and as may be necessary to provide for an
7 effective, efficient and orderly administration of the ab-
8 sent voter law of this state.

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

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

17 (b) The size and form of Absent Voter's Ballot En-
18 velope Nos. 1 and 2, and carrier envelopes;

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

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

23 (e) The forms of, information to be contained in,
24 and consolidation of lists and records pertaining to ap-

25 plications for, and voting of, absent voters' ballots and
26 assistance to persons voting absentee voters' ballots;

27 (f) The supplying of application forms, envelopes,
28 challenge forms, lists, records, and other forms;

29 (g) The keeping and security of voted absentee voters'
30 ballots in the office of the clerk of the circuit court.

§3-3-13. Absentee voting in municipal elections.

1 The provisions of this article relating to absentee voting
2 shall apply to all municipal elections, except where
3 clearly not adaptable thereto, and the governing bodies
4 of the several municipalities of the state shall by ordi-
5 nance implement the provisions hereof so as to develop
6 and provide a complete and satisfactory absentee voting
7 system for municipal elections.

ARTICLE 4. VOTING MACHINES.

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

1 The recording and disposition of absent voters' ballots
2 delivered to polling places using voting machines shall
3 be governed by the provisions of article three of this
4 chapter.

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

William Tompkins
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect July 1, 1970.

Harmon Myers
Clerk of the Senate

W. B. Blankenship
Clerk of the House of Delegates

Haywood Jackson
President of the Senate

Sam F. Brumley
Speaker House of Delegates

The within approved this the 17th
day of February, 1970.

Arch. A. Moore, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 2/16/70

Time 2:40 p.m.