ENROLLED

SENATE BILL NO. 487

(By Mr. Shriver)

PASSED April 10, 1981
In Effect from Passage
ENROLLED
Senate Bill No. 487
(By MR. WRIGHT)

[Passed April 10, 1981; in effect from passage.]

AN ACT to amend and reenact section five, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to giving absent voters outside the continental limits of the United States, to the maximum extent practicable, an effective vote by enlarging the time during which said voters can apply for an official absent voter's ballot; restricting the time in which said ballots must be mailed to said voters; eliminating the oath and attestation requirements for federal postcard applications executed outside the continental limits of the United States; and giving county commissions and circuit clerks certain duties and responsibilities with respect to the foregoing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-5. Voting an absent voter's ballot by mail.
1 A person desiring to vote an absent voter's ballot by mail may, not more than one hundred twenty days prior to the date of any primary, general or special election in the case of any person outside the continental limits of the United States and not more than sixty days prior to the date of any primary, general or special election in the case of any other person, 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
10 ballots to be voted at such election, except that the clerk
11 of the circuit court shall not honor any such application
12 for an absent voter's ballot received by him after the
13 fourth day next preceding the date of the election. In
14 computing such fourth day, the day of conducting the
15 election shall be excluded. The application to be used by
16 persons who wish to vote an absent voter's ballot by mail
17 shall be prescribed by the secretary of state and shall be
18 in substantially the following form:

19 APPLICATION FOR VOTING AN ABSENT
20 VOTER'S BALLOT BY MAIL
21 KNOWING THAT I CAN BE FINED NOT MORE
22 THAN ONE THOUSAND DOLLARS OR IMPRISONED
23 IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE
24 THAN ONE YEAR OR BOTH SUCH FINE AND IM-
25 PRISONMENT FOR KNOWINGLY MAKING A FALSE
26 STATEMENT OR REPRESENTATION HEREIN, I,
27 ___________________________________________________________ hereby declare
28 that I am now, or will have been a resident of the state of
29 West Virginia for twelve months, and of the county of
30 ___________________________________________________________, for sixty days, next preceding
31 the date of the ensuing election to be held on the ______ day
32 of _____________, 19_____; that I now reside at ______________,
33 (give full address)
34 in the magisterial district of ____________________________,
35 in said county; that I am a duly qualified voter entitled
36 to vote in such election; that I am registered in the
37 precinct of my residence as provided by law; that I am
38 registered as a ____________________________________________;
39 (state political party if ballot is for primary election)
40 and that (strike out the numbered paragraphs not appli-
41 cable and complete the numbered paragraph which is
42 applicable):
43 (1) I will be unable to vote in person at the polls on
44 election day because of _________________________________,
45 (state particulars of physical disability, illness or injury)
46 as evidenced below by the statement of a duly licensed
47 physician or chiropractor.
48 (2) I anticipate commitment to a hospital, institution
49 or other confinement on or about the _______________day of
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 entire 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 ___________________________ 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)

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
128 disability, illness or injury, or is anticipated confinement in a hospital, institution or other place for medical reasons.

131 STATEMENT OF PHYSICIAN (CHIROPRACTOR)
132 I, __________________________ , hereby declare that I am a physician (chiropractor) duly licensed to practice in the state of __________________________;
134 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).

139 (1) The applicant will, because of __________________________ , be unable to go to the polls on the __________________________ day of __________________________, 19_____, the date of the election.

142 (2) The applicant will, because of __________________________ , be confined in __________________________ medical reasons) (specify hospital, institution or other place) 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.

153 (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.)
156 I am of the further opinion that applicant __________________________ , because of the aforementioned physical disability, illness or injury need assistance in voting an absent voter’s ballot.

163 (will)
164 (will not)

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, and any such federal postcard application does not have to be executed pursuant to oath or attestation in the case of a voter outside the continental limits of the United States.

Upon receipt of a properly completed copy of such form, the clerk of the circuit court shall process it 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 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 notify the applicant at the time he mails the absent voter's ballot to him that he will challenge 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 supplies: Provided, That the clerk mail such voting supplies to an applicant whose address is shown to be outside the continental limits of the United States on the same day the application is received in the clerk's office or on the next day thereafter that he has both an application and a ballot:

(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 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 applicant in his application.

(b) One Absent Voter's Ballot Envelope No. 1, unsealed, 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, unsealed. Upon receipt of an absent voter's ballot by mail, the voter shall mark the ballot and the voter may have assistance in voting his absent voter's ballot in accordance with the provisions of section six of this article.

After the voter has voted his absent voter's ballot, he shall (1) enclose the same in Absent Voter's Ballot Envelope 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) complete 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 per-
sons 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 commission sitting as a board of canvassers.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

To take effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within ________th of this the ________day of ________, 1981.

[Signature]
Governor