

APPROVED AND SIGNED BY THE GOVERNOR

Date: 4-29-81

Time: _____

No: 487

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981



ENROLLED

SENATE BILL NO. 487

(By Mr. Shright)



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
2 mail may, not more than one hundred twenty days prior
3 to the date of any primary, general or special election, in
4 the case of any person outside the continental limits of
5 the United States and not more than sixty days prior to
6 the date of any primary, general or special election in the
7 case of any other person, make application by mail to the
8 clerk of the circuit court of the county in which he is
9 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

50 _____, 19____, for the following medical
 51 reasons _____, as
 52 evidenced below by the statement of a duly licensed
 53 physician or chiropractor, and by reason thereof will not
 54 be able to vote in person at the polls in such election.

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

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

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

62 A member of the merchant marine of the United
 63 States.

64 A spouse or dependent of a member of the merchant
 65 marine of the United States.

66 A citizen of the United States temporarily residing
 67 outside the territorial limits of the United States and the
 68 District of Columbia.

69 A spouse or dependent residing with or accompany-
 70 ing a citizen of the United States temporarily residing
 71 outside the territorial limits of the United States and
 72 the District of Columbia.

73 (4) I am required to be absent from the aforemen-
 74 tioned county in which I am registered during the entire
 75 time the polls are open in such election for the reason or
 76 reasons hereafter stated; I am not in any of the categories
 77 referred to in paragraph (3) above; I am required to be
 78 absent from said county during regular business hours of
 79 the clerk of the circuit court of said county throughout
 80 the period or throughout the remainder of the period of
 81 voting an absent voter's ballot by personal appearance at
 82 said office _____

83 _____
 84 (state reason or reasons for required absence from
 85 county on election day)

86 (5) I have been appointed _____
 87 (state whether an election commissioner or poll clerk)
 88 in precinct No. _____ in said election, which

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

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

96 -----
97 (give full address for mailing purposes)

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

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

102 -----
103 (specify illiteracy or exact nature of physical disability,
104 illness or injury)

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

111 -----
112 Signature of Applicant
113 (or in case the applicant is illiterate he
114 shall make his mark and have it witnessed
115 on the following lines):

116 -----
117 Mark of Applicant

118 -----
119 Signature of Witness

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

125 The following declaration must be completed and signed
126 if the reason specified in the above application for being
127 unable to vote in person at such election is physical

128 disability, illness or injury, or is anticipated confinement
129 in a hospital, institution or other place for medical rea-
130 sons.

131 STATEMENT OF PHYSICIAN (CHIROPRACTOR)

132 I, _____, hereby
133 declare that I am a physician (chiropractor) duly li-
134 censed to practice in the state of _____;
135 that I last examined _____,
136 the applicant whose signature appears on the application
137 above on the _____ day of _____, 19____;
138 and that in my opinion (strike out numbered paragraph
139 not applicable and complete the numbered paragraph
140 which is applicable).

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

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

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

159 I am of the further opinion that applicant _____
160 _____ (will)
161 _____, because of the aforementioned physical
162 (will not)
163 disability, illness or injury need assistance in voting an
164 absent voter's ballot.

165 _____
166 Signature of Physician (Chiropractor)

167 In lieu of the application for an absent voter's ballot
168 provided above, those persons specified in subdivision (2)
169 of section one of this article may use the application for
170 absentee ballot form recommended by and issued under
171 authority of The Federal Voting Assistance Act of 1955,
172 as amended, and any such federal postcard application
173 does not have to be executed pursuant to oath or attesta-
174 tion in the case of a voter outside the continental limits of
175 the United States.

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

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

200 Upon determination by the clerk of the circuit court
201 that the applicant is entitled to vote an absent voter's
202 ballot by mail or that the applicant will be permitted to
203 vote an absent voter's ballot by mail with such ballot to
204 be challenged by the clerk, the clerk shall between the
205 thirtieth day and the fourth day next prior to the election
206 in which the absent voter's ballot is to be used mail to the

207 applicant the following absentee voting supplies: *Pro-*
208 *vided*, That the clerk mail such voting supplies to an
209 applicant whose address is shown to be outside the conti-
210 nental limits of the United States on the same day the
211 application is received in the clerk's office or on the next
212 day thereafter that he has both an application and a
213 ballot:

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

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

227 (c) One Absent Voter's Ballot Envelope No. 2, unsealed.
228 Upon receipt of an absent voter's ballot by mail, the
229 voter shall mark the ballot and the voter may have
230 assistance in voting his absent voter's ballot in accordance
231 with the provisions of section six of this article.

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

242 Upon receipt of such sealed envelope, the clerk shall
243 (1) enter onto the envelope such information as may be
244 required of him according to the instructions thereon; (2)
245 enter his challenge, if any, to the absent voter's ballot;
246 (3) enter the required information into a record of per-

247 sons making application for and voting an absent voter's
248 ballot by personal appearance or by mail (the form of
249 which record and the information to be entered therein
250 shall be prescribed by the secretary of state); and (4)
251 place such sealed envelope in a secure location in his
252 office, there to remain until delivered to the polling place
253 in accordance with the provisions of this article or, in case
254 of a challenged ballot, to the county commission sitting as
255 a board of canvassers.

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

R. P. Bayler
Chairman Senate Committee

Joseph E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Todd C. Wittes
Clerk of the Senate

VA Blankenship
Clerk of the House of Delegates

Miner P. Brown
President of the Senate

Clayton M. Bee, Jr.
Speaker House of Delegates

The within approved this the 29

day of April, 1981.

[Signature]
Governor



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SECY. OF STATE