

4357

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

HOUSE BILL No. 4357

(By ~~Mr.~~ *Del. Roop + Minard*)



Passed *Feb. 27,* 1988

In Effect *From* Passage

ENROLLED
H. B. 4357

(By DELEGATES ROOP and MINARD)

[Passed February 27, 1988; in effect from passage.]

AN ACT to amend and reenact section forty-one, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five, seven and twelve, article three of said chapter; to further amend said article three by adding thereto three new sections, designated sections three-a, five-b and five-c; and to amend and reenact section three, article nine of said chapter three, all relating generally to voting by absent voters; providing for registration and absentee ballot application by federal postcard application for certain persons, in accordance with the Uniformed and Overseas Citizens Absentee Voting Act of 1986; permitting simultaneous application by persons overseas for registration and for ballot and for primary and general election absent voter ballots; authorizing absentee voting by personal appearance for religious reasons in Saturday elections; setting forth procedure for voting special write-in absent voter's ballot by qualified absentee electors; providing an absent voter procedure in event of medical emergency; requiring the secretary of state to promulgate rules implementing the provisions of the Uniformed and Overseas Citizens Absentee Voting Act of 1986; and increasing penalty for crime of false swearing as to election matters.

Be it enacted by the Legislature of West Virginia:

That section forty-one, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections five, seven and twelve, article three of said chapter be amended and reenacted; that said article three be further amended by adding thereto three new sections, designated sections three-a, five-b and five-c; and that section three, article nine of said chapter three be amended and reenacted, all to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-41. Registration and transfer of registration by mail; form to be required and distribution thereof; receipt by county clerk thirty days prior to election before applicant entitled to vote therein; clerk to forward application if applicant outside jurisdiction, but resident of state; application forms to be made widely available by county clerk; form of application and information required.

1 (a) In addition to any procedures which may be used
2 in effecting the biennial checkup as provided under
3 section twenty-one of this article, central registration
4 and transfer as provided under sections twenty-two and
5 twenty-seven of this article, and the provision with
6 respect to registration of absentee voters under section
7 twenty-three of this article, any qualified person may
8 register or transfer his registration by mail.

9 (b) Completed applications, when received by any
10 county clerk not later than forty-two days and by the
11 appropriate county clerk not later than thirty days
12 before the following primary, general or special election,
13 entitle the applicant to vote in such election if he is
14 otherwise qualified. Any county clerk receiving an
15 application from a person who does not reside in his
16 county but who does reside elsewhere in the state shall
17 forthwith forward such application to the proper county
18 clerk. Each county clerk shall make an entry on such
19 application of the date it is received by such clerk, and
20 the application shall remain on file in the office of the
21 clerk for at least two years from the date it was
22 received.

23 (c) Applications for use pursuant to this section shall
24 be made available by the county clerk to every adult
25 person of the county, not registered, and to any
26 registered voter of the county upon request. The
27 application for use pursuant to this section shall be a
28 uniform statewide application in a form to be prescribed
29 by the secretary of state and shall include the informa-
30 tion required under the form provisions of section
31 nineteen of this article. The form, which shall be self-
32 addressed, is to be as widely and freely distributed as
33 possible and shall be a bifold self-mailer which shall be
34 compatible with local systems of voter registration data
35 collection and storage.

36 (d) In addition to the information required under the
37 form provisions of section nineteen of this article, the
38 form shall contain such other information as the
39 secretary of state may reasonably require and shall also
40 include the following information:

41 (1) Notice that those currently registered do not need
42 to reregister unless they have moved or failed to vote
43 at least once during a period covering two statewide
44 primary and two general elections as indicated by their
45 registration records;

46 (2) Instructions on how to fill out and submit the form
47 and that the form must be received by the appropriate
48 county clerk at least thirty days prior to the election at
49 which the applicant may vote;

50 (3) Notice that registration or transfer is not complete
51 until the form is received by the appropriate county
52 clerk;

53 (4) Notice of a voter's right to register centrally;

54 (5) A warning to the voter that it is a crime to procure
55 a false registration and notice of the felony offenses
56 provided for in section forty-two of this article;

57 (6) Notice that political party enrollment is optional
58 but, in order to vote in a primary election of a political
59 party, a voter must enroll in that political party;

60 (7) Notice that the applicant must be a citizen of the

61 United States, at least seventeen years old and will be
62 eighteen years old on or before the next general election,
63 and a resident of the county to which application is
64 made;

65 (8) Notice that a voter notification form will be mailed
66 to those applicants whose complete form is received;

67 (9) A space for the applicant to indicate whether or
68 not he has ever been registered before and, if so, his
69 name and address at the time of prior registration;

70 (10) A space for the applicant to indicate his choice
71 of party, if any, in which space the names of all parties
72 are provided so that the applicant can check one with
73 a clear alternative provided for an applicant to decline
74 to affiliate with any party;

75 (11) A space for the applicant to indicate his social
76 security number; and

77 (12) A place for the applicant to execute the applica-
78 tion on a line which is clearly labeled "signature of
79 applicant" and contained in the following specific form
80 of oath or affirmation:

81 "I do solemnly swear or affirm that the information
82 provided in the preceding uniform statewide application
83 is true to the best of my knowledge, information and
84 belief, and I understand that if I willingly provide false
85 information concerning a material matter or thing
86 therein, I shall be deemed guilty of the felony offense
87 of perjury and shall be subject to the penalties for
88 perjury.

89 _____
90 Signature of Applicant

91 Subscribed and sworn (or affirmed) to before me, this
92 ____ day of _____, 19____.

93 _____"

94 which oath or affirmation shall be administered by a
95 person authorized to perform notarial acts under the
96 provisions of article one or one-a, chapter thirty-nine of
97 this code. The person administering the oath or affirma-

98 tion shall not charge a fee for such act, and the uniform
99 statewide application shall inform the person adminis-
100 tering such oath or affirmation that no fee is to be
101 charged.

102 (e) Any person who has registered or reregistered
103 pursuant to this section shall be required to make his
104 first vote in person at the poll or appear in person at
105 the office of the clerk of the circuit court to vote an
106 absentee ballot during a period covering two statewide
107 primary elections and two general elections in order to
108 make such registration valid: *Provided*, That any person
109 who has registered or reregistered pursuant to this
110 section and who has qualified for placement on the
111 special absentee voting list pursuant to section two-b,
112 article three of this chapter, who has qualified to vote
113 an absent voter's ballot by mail pursuant to paragraphs
114 one, two, three or six of the application for voting an
115 absent voter's ballot by mail provided in section five,
116 article three of this chapter, who has qualified to vote
117 through the use of a federal postcard registration, or
118 who has qualified to vote an absent voter's ballot under
119 the provisions of section five-b or five-c, article three of
120 this chapter, shall not be required to make his first vote
121 in person but shall be required to vote during a period
122 covering two statewide primary elections and two
123 general elections next following his registration in order
124 to make such registration valid.

125 Any such person required by this section to make his
126 first vote in person in order to make his registration
127 valid shall present valid identification and proof of age
128 to the clerks at the poll or the clerk in the office of the
129 circuit clerk of the county in which he is registered
130 before casting his first ballot.

131 (f) The uniform statewide application prescribed in
132 this section may refer to various public officials by title
133 or official position (e.g., clerk of the county commission,
134 secretary of state), but in no case may the actual name
135 of the officeholder be printed or otherwise appear on
136 such form: *Provided*, That nothing contained in this
137 subsection shall prohibit a public official, otherwise
138 qualified, from administering the oath or affirmation in

139 accordance with the provisions of subdivision (12),
140 subsection (d) of this section, and affixing his signature
141 thereto.

142 (g) It shall be the duty of the secretary of state to
143 create and commence distribution of the forms for the
144 uniform statewide application within six months
145 following the effective date of this section.

146 (h) Notwithstanding any other provision of this
147 section, persons specified in subsection (2), section one,
148 article three of this chapter may register by mail using
149 the federal postcard application issued pursuant to the
150 authority of the Uniformed and Overseas Citizens
151 Absentee Voting Act of 1986, (Public Law 99-410, 42
152 U.S.C. 1973, et seq.).

153 The oath of the applicant using the federal postcard
154 application shall not be required to be administered by
155 a person authorized to perform notarial acts. Any
156 federal postcard application received by the county
157 clerk or circuit clerk which has been designated by the
158 applicant as both an application for registration and a
159 request for an absent voter's ballot shall be accepted for
160 both purposes if all legal requirements are met.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-3a. Voting absent voter's ballot by personal appearance in Saturday elections for religious reasons.

1 (a) In addition to the persons declared eligible to vote
2 absent voters' ballots pursuant to the provisions of
3 section one of this article, duly registered and otherwise
4 qualified voters who are members of a religious
5 denomination with an established history of observing
6 Saturday as the sabbath may vote absentee by personal
7 appearance in any election to be held on a Saturday.

8 (b) Application for an absent voter's ballot authorized
9 by the provisions of this section shall be made on a form
10 prescribed by the secretary of state. The procedures for
11 voting by personal appearance set forth in section three
12 of this article, to the extent not in conflict with the
13 provisions of this section, shall otherwise govern the

14 procedures herein.

§3-3-5. Voting an absent voter's ballot by mail; federal postcard application.

1 A person desiring to vote an absent voter's ballot by
 2 mail may, on or after the first day of January prior to
 3 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 eighty-four days
 6 prior to the date of any primary, general or special
 7 election in the case of any other person, make applica-
 8 tion by mail to the clerk of the circuit court of the county
 9 in which he is registered to vote for an official absent
 10 voter's ballot or ballots to be voted at such election. The
 11 clerk of the circuit court shall not honor any such
 12 application for an absent voter's ballot received by him
 13 after the fourth day next preceding the date of the
 14 election. In computing the fourth day, the day of
 15 conducting the election shall be excluded.

16 When a clerk receives a completed application to vote
 17 an absent voter's ballot by mail in more than one
 18 election in an election year from an applicant eligible
 19 to vote absentee under subsection (2), section one of this
 20 article, the clerk shall, if all legal requirements are met,
 21 forward to the applicant the appropriate ballot or
 22 ballots for each election held within that jurisdiction.
 23 The application to be used by persons who wish to vote
 24 an absent voter's ballot by mail shall be prescribed by
 25 the secretary of state and shall be in substantially the
 26 following form:

27 "APPLICATION FOR VOTING AN ABSENT VO-
 28 TER'S BALLOT BY MAIL

29 KNOWING THAT I CAN BE FINED NOT MORE
 30 THAN ONE THOUSAND DOLLARS OR IMPRI-
 31 SONED IN THE COUNTY JAIL FOR A PERIOD OF
 32 NOT MORE THAN ONE YEAR OR BOTH SUCH
 33 FINE AND IMPRISONMENT FOR KNOWINGLY
 34 MAKING A FALSE STATEMENT OR REPRES-
 35 ENTATION HEREIN, I, _____, hereby
 36 declare that I am now, or will have been a resident of
 37 the state of West Virginia for twelve months, and of the

38 county of _____, for thirty days, next preceding
39 the date of the ensuing election to be held on the
40 _____ day of _____, 19____; that I now reside
41 at _____,
42 (give full address)
43 in the magisterial district of _____,
44 in said county; that I am a duly qualified voter entitled
45 to vote in such election; that I am registered in the
46 precinct of my residence as provided by law; that I am
47 registered as a _____; (state political
48 party if ballot is for primary election) and that (strike
49 out the numbered paragraphs not applicable and
50 complete the numbered paragraph which is applicable):

51 (1) I will be unable to vote in person at the polls on
52 election day because of _____,
53 (state particulars of physical disability, illness or injury)
54 as evidenced below by the statement of a duly licensed
55 physician or chiropractor.

56 (2) I anticipate commitment to a hospital, institution
57 or other confinement on or about the _____
58 day of _____, 19____, for the following medical
59 reasons _____,
60 as evidenced below by the statement of a duly licensed
61 physician or chiropractor, and by reason thereof will not
62 be able to vote in person at the polls in such election.

63 (3) I expect to be absent from the aforementioned
64 county in which I am registered to vote during the
65 entire time the polls are open in such election, and I am
66 (check one applicable):

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

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

70 A member of the merchant marine of the United
71 States.

72 A spouse or dependent of a member of the mer-
73 chant marine of the United States.

74 A citizen of the United States temporarily residing
75 outside the territorial limits of the United States and the

76 District of Columbia.

77 A spouse or dependent residing with or
78 accompanying a citizen of the United States temporarily
79 residing outside the territorial limits of the United
80 States and the District of Columbia.

81 (4) I am required to be absent from the aforementi-
82 oned county in which I am registered during the entire
83 time the polls are open in such election for the reason
84 or reasons hereafter stated; I am not in any of the
85 categories referred to in paragraph (3) above; I am
86 required to be absent from said county during regular
87 business hours of the clerk of the circuit court of said
88 county throughout the period or throughout the re-
89 mainder of the period of voting an absent voter's ballot
90 by personal appearance at said office. _____

91 _____
92 (state reason or reasons for required
93 absence from county on election.)

94 (5) I have been appointed _____
95 (state whether an election
96 commissioner or poll clerk)
97 in precinct No. _____ in said election, which
98 precinct is not the precinct in which I am registered to
99 vote.

100 (6) I will be incarcerated in the county or city jail or
101 other detention facility located in this county on election
102 day but am not under sentence of treason, bribery or a
103 felony, as evidenced below by the statement of the
104 county sheriff, chief of police or authorized deputy.

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

111 _____
112 (give full address for mailing purposes)

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

115 I further declare that I will need assistance in voting
 116 an absent voter's ballot for the following reasons _____
 117 _____
 118 (specify illiteracy or exact nature of physical
 119 disability, illness or injury)

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

126 _____
 127 Signature of Applicant
 128 _____
 129 (or in case the applicant is illiterate he
 130 shall make his mark and have it witnessed
 131 on the following lines):

132 _____
 133 Mark of Applicant

134 _____
 135 Signature of Witness"

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

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

147 "STATEMENT OF PHYSICIAN (CHIROPRACTOR)

148 I, _____, hereby declare
 149 that I am a physician (chiropractor) duly licensed to
 150 practice in the state of _____; that I last
 151 examined _____, the applicant
 152 whose signature appears on the application above on the

153 _____ day of _____, 19____; and that in my
154 opinion (strike out numbered paragraph not applicable
155 and complete the numbered paragraph which is
156 applicable).

157 (1) The applicant will, because of _____
158 _____,
159 (state particulars of physical disability,
160 illness or injury)
161 be unable to go to the polls on the _____ day of
162 _____, 19____, the date of the election.

163 (2) The applicant will, because of _____
164 _____,
165 (state for what medical reasons)
166 be confined in _____
167 (specify hospital, institution or other place)
168 _____, on or about the _____
169 day of _____, 19____, and will because of such
170 reasons not be able to go to the polls on the _____ day
171 of _____, 19____, the date of the election.

172 (Complete the following paragraph if applicant for
173 absent voter’s ballot will need assistance in voting such
174 ballot, based upon physical disability, illness or injury.)

175 I am of the further opinion that applicant _____,
176 (will) (will not)

177 because of the aforementioned physical disability, illness
178 or injury need assistance in voting an absent voter’s
179 ballot.

180 _____
181 Signature of Physician (Chiropractor)”

182 The following declaration must be completed and
183 signed if the reason specified in the above application
184 for being unable to vote in person at the election is
185 incarceration in a facility within the county for other
186 than conviction of treason, bribery or a felony:

187 “STATEMENT OF SHERIFF, CHIEF
188 OF POLICE OR AUTHORIZED DEPUTY

189 I, _____, hereby declare that

190 the applicant whose signature appears on the applica-
 191 tion above will be confined in the county or city jail or
 192 other detention facility on the _____ day of
 193 _____, 19____, the date of the election, and is not
 194 under conviction of treason, bribery or a felony.

195
 196

SIGNATURE

197
 198

TITLE

199
 200

COUNTY”

201 In lieu of the application for an absent voter's ballot
 202 provided above, those persons specified in subsection (2),
 203 section one of this article may use the federal postcard
 204 application for absent voter's ballot form issued under
 205 authority of the Uniformed and Overseas Citizens
 206 Absentee Voting Act of 1986, as amended (Public Law
 207 99-410, 42 U.S.C. 1973, et seq.). Any such federal
 208 postcard application does not have to be executed
 209 pursuant to oath or attestation. Upon receipt of a
 210 properly completed copy of such form, the clerk of the
 211 circuit court shall process it the same as any other
 212 application for an absent voter's ballot by mail. Any
 213 such properly completed copy may be returned only to
 214 the clerk of the circuit court of the county in which the
 215 applicant is a registered voter.

216 Immediately upon receipt of a completed application
 217 for voting an absent voter's ballot by mail, the clerk of
 218 the circuit court shall determine (1) whether the
 219 application for voting such ballot has been completed as
 220 required by law; (2) whether he has evidence that any
 221 of the statements contained in the application are not
 222 true; and (3) whether the applicant is in fact duly
 223 registered in the precinct of his residence as provided
 224 by law and insofar as registration is concerned would
 225 be permitted to vote at the polls in such election. If the
 226 determination of the clerk of the circuit court as to (1)
 227 or (3) is in the negative or as to (2) is in the affirmative,
 228 the clerk shall notify the applicant at the time he mails
 229 the absent voter's ballot to him that he will challenge

230 the applicant's privilege to vote an absent voter's ballot
231 by mail for reasons which he shall indicate and, upon
232 receipt of the applicant's absent voter's ballot, the clerk
233 shall challenge such ballot.

234 Upon determination by the clerk of the circuit court
235 that the applicant is entitled to vote an absent voter's
236 ballot by mail or that the applicant will be permitted
237 to vote an absent voter's ballot by mail with such ballot
238 to be challenged by the clerk, the clerk shall between
239 the forty-second day and the fourth day next prior to the
240 election in which the absent voter's ballot is to be used,
241 mail to the applicant the following absentee voting
242 supplies: *Provided*, That the clerk shall mail such voting
243 supplies to an applicant whose address is shown to be
244 outside the continental limits of the United States by
245 priority airmail on the same day the application is
246 received in the clerk's office or on the next day
247 thereafter that he has both an application and a ballot:

248 (a) One official absent voter's ballot (or ballots if more
249 than one are to be used) which has been prepared in
250 accordance with law for use in such election; such ballot
251 in the case of a primary election shall be of the party
252 of the applicant's affiliation as indicated on his registra-
253 tion card or, in the case the applicant is not found to
254 be registered by the clerk but votes a ballot challenged
255 by the clerk, the clerk shall send to the applicant an
256 absent voter's ballot of the party designated by the
257 applicant in his application;

258 (b) One Absent Voter's Ballot Envelope No. 1,
259 unsealed, which shall have no writing thereon except the
260 designation "Absent Voter's Ballot Envelope No. 1";

261 (c) One Absent Voter's Ballot Envelope No. 2,
262 unsealed;

263 (d) Notice that an absent voter's ballot returned from
264 outside the continental limits of the United States must
265 be mailed priority airmail; and

266 (e) Notice that absent voters' ballots must be received
267 in the office of the clerk not later than the time of
268 closing of the polls.

269 Upon receipt of an absent voter's ballot by mail, the
270 voter shall mark the ballot and the voter may have
271 assistance in voting his absent voter's ballot in accor-
272 dance with the provisions of section six of this article.

273 After the voter has voted his absent voter's ballot, he
274 shall (1) enclose the same in Absent Voter's Ballot
275 Envelope No. 1, and seal that envelope, (2) enclose sealed
276 Absent Voter's Ballot Envelope No. 1 in Absent Voter's
277 Ballot Envelope No. 2 and seal that envelope, (3)
278 complete and sign the forms, if any, on Absent Voter's
279 Ballot Envelope No. 2 according to the instructions
280 thereon, and (4) mail, postage prepaid and, if from
281 outside the continental limits of the United States, by
282 priority airmail, the sealed Absent Voter's Ballot
283 Envelope No. 2 to the clerk of the circuit court of the
284 county in which he is registered to vote.

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

**§3-3-5b. Procedures for voting with special write-in
absent voter's ballot by qualified persons.**

1 (a) Notwithstanding any other provisions of this
2 chapter, a person qualified to vote an absent voter's
3 ballot, in accordance with subsection (2), section one of
4 this article, may apply not earlier than ninety days
5 before an election for a special write-in absentee ballot.
6 This ballot shall be for presidential electors and United
7 States senator or representative in Congress.

8 (b) The application for a special write-in absentee
9 ballot may be made on the federal post card application
10 form or on another form prescribed by the secretary of
11 state.

12 (c) In order to qualify for a special write-in absent
13 voter's ballot, the voter must state that he or she is
14 unable to vote by regular absent voter's ballot or in
15 person due to requirements of military service or due
16 to living in isolated areas or extremely remote areas of
17 the world. This statement may be made on the federal
18 post card application or on a form prepared by the
19 secretary of state and supplied and returned with the
20 special write-in absent voter's ballot.

21 (d) Upon receipt of said application, the circuit clerk
22 shall issue the special write-in absent voter's ballot
23 which shall be prescribed and provided by the secretary
24 of state. Such ballot shall permit the elector to vote by
25 writing in a party preference for each office, the names
26 of specific candidates for each office, or the name of the
27 person whom the voter prefers for each office. Any such
28 voted ballot must be received by the circuit clerk prior
29 to the close of the polls on election day or it may not
30 be counted.

**§3-3-5c. Procedures for voting an emergency absent
voter's ballot by qualified voters.**

1 (a) Notwithstanding any other provision of this
2 chapter, a person qualified to vote an absent voter's
3 ballot, as defined in subsection (1), section one of this
4 article, who is admitted, on or after the fourth day next
5 preceding the election, to a hospital or other duly
6 licensed health care facility within the county of their
7 residence for emergency medical treatment, and who
8 remains confined and is unable to vote at the polls on
9 election day, may vote an emergency absent voter's
10 ballot under the procedures established in this section.

11 (b) On or before the first Monday of the month next
12 preceding the date on which any election is to be held
13 the circuit clerk of each county shall notify the county
14 commission of the number of sets of emergency absent
15 voter ballot commissioners which he or she deems

16 necessary to perform the duties and functions hereinaf-
17 ter set forth.

18 (c) A set of emergency absent voter ballot commission-
19 ers at-large shall consist of two persons, appointed by
20 the county commission in accordance with the procedure
21 prescribed for the appointment of election commission-
22 ers under the provisions of section twenty-eight, article
23 one of this chapter but without regard to magisterial
24 district or precinct. Emergency absent voter ballot
25 commissioners shall have the same qualifications and
26 rights and take the same oath required under the
27 provisions of this chapter for commissioners of elections.
28 Such commissioners shall be compensated for services
29 and expenses in the same manner as commissioners of
30 election obtaining and delivering election supplies under
31 the provisions of section forty-four, article one of this
32 chapter.

33 (d) Upon request of the voter or a member of the
34 voter's immediate family, the circuit clerk shall issue an
35 application for an emergency absent voter ballot which
36 shall be delivered by a set of the emergency absent voter
37 ballot commissioners. The emergency absent voter ballot
38 application shall be prescribed by the secretary of state
39 and shall be in substantially the following form:

40 "APPLICATION FOR VOTING AN
41 EMERGENCY ABSENT VOTER'S BALLOT

42 KNOWING THAT I CAN BE FINED NOT MORE
43 THAN ONE THOUSAND DOLLARS AND IMPRI-
44 SONED IN THE COUNTY JAIL FOR A PERIOD OF
45 NOT MORE THAN ONE YEAR FOR KNOWINGLY
46 MAKING A FALSE STATEMENT OR REPRESENTATION
47 HEREIN, I, _____, hereby declare that
48 I am now, or will have been a resident of the state of
49 West Virginia for twelve months, and of the county of
50 _____, for thirty days next preceding the date of
51 the ensuing election to be held on the _____ day of
52 _____, 19____; that I now reside at _____
53 _____,
54 (give full address)
55 in the magisterial district of _____, in said

56 county; that I am a duly qualified voter entitled to vote
57 in such election; that I am registered in the precinct of
58 my residence as provided by law; that I am registered
59 as a _____

60 _____;

61 (1) I will be unable to vote in person at the polls on
62 election day because I have been confined in

63 _____

64 _____

65 (State name and location of facility)

66 since _____

67 (State date confinement commenced)

68 because of _____

69 (State particulars of illness or injury)

70 (2) My treating physician is _____

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

77 _____

78 Signature of Applicant

79 _____

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

83 _____

84 Mark of Applicant

85 _____

86 Signature of Witness"

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

92 The following declaration is to be completed and
93 signed by each of the emergency absent voter's ballot

94 commissioners:

95 "STATEMENT OF EMERGENCY ABSENT
96 VOTER'S BALLOT COMMISSIONERS

97 We, _____ and _____, hereby
98 declare that we are the duly appointed emergency
99 absent voter's ballot commissioners and have met the
100 applicant, whose name appears on the application above
101 at his or her place of confinement on the _____ day of
102 _____, 19____; and that in our opinion, the
103 applicant will, because of an emergency medical
104 confinement which commenced at least four days prior
105 to the election, be unable to go to the polls on the _____
106 day of _____, 19 _____, the date of the election.

107 We have determined that the applicant has been
108 confined in _____

109 _____
110 (State name and location of facility)

111 since _____
112 (State date confinement commenced)

113 because of _____
114 (State particulars of illness or injury)

115 _____
116 (Date) (Signature of Emergency Absent Voter's
117 Ballot Commissioner)

118 _____
119 (Date) (Signature of Emergency Absent Voter's
120 Ballot Commissioner)"

121 (e) The circuit clerk, upon receiving a proper and
122 complete application for voting an emergency absent
123 voter's ballot no earlier than the fourth day next
124 preceding the election and no later than noon of election
125 day, shall supply to the emergency absent voter's ballot
126 commissioners the balloting materials as prescribed in
127 section five of this article. At least one of the emergency
128 absent voter ballot commissioners receiving the ballot-
129 ing materials shall sign a receipt which shall be
130 attached to the application form. Each of the emergency
131 absent voter ballot commissioners shall deliver the
132 materials to the absent voter, await his or her comple-
133 tion of the ballot, and return the same to the circuit

134 clerk, and upon delivering the voted ballot to the circuit
135 clerk, sign an oath that no person other than the absent
136 voter voted the ballot. The voted ballot shall be returned
137 to the circuit clerk prior to the close of the polls on
138 election day. Any ballots received by the clerk after the
139 time that delivery may reasonably be made but before
140 the closing of the polls shall be treated as challenged
141 absent voters' ballots in accordance with the provisions
142 of section ten of this article and in addition to those
143 absent voters' ballots subject to challenge as enumerated
144 therein.

145 (f) If either or both of the emergency absent voter
146 ballot commissioners should refuse to sign any applica-
147 tion for voting an emergency absent voter's ballot, then
148 the voter shall be permitted to vote as an emergency
149 absent voter and any such ballot shall be treated as a
150 challenged absent voter's ballot in accordance with the
151 provisions of section ten of this article and in addition
152 to those absent voters' ballots subject to challenge as
153 enumerated therein.

154 (g) Any voter who receives assistance in voting an
155 emergency absentee voter's ballot shall comply with the
156 provisions of section six of this article. Any other
157 provisions of this chapter relating to absent voter's
158 ballots not altered by the provisions of this section shall
159 govern the treatment of emergency absent voter's
160 ballots.

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

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

11 (b) An absent voter's ballot shall be delivered by the
12 clerk of the circuit court to the election commissioners

13 of the precinct in which the voter thereof is registered,
14 or if not found to be registered, to the election commis-
15 sioner of the precinct in which his residence as stated
16 on the voter's application is located.

17 (c) Absent voters' ballots received after the election
18 commissioner has picked up the official ballots and
19 other election supplies for the precinct shall be delivered
20 to the election commissioner of the precinct who has
21 been so designated under aforementioned section
22 twenty-four, article one, by the clerk in person, or by
23 messenger, before the closing of the polls, provided such
24 ballots are received by the clerk in time to make such
25 delivery. Any ballots received by the clerk after the time
26 that delivery may reasonably be made but before the
27 closing of the polls, shall be treated as challenged absent
28 voters' ballots in accordance with the provisions of
29 section ten of this article and in addition to those absent
30 voters' ballots subject to challenge as enumerated
31 therein.

**§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
3 prescribe such forms, lists and records, and consolida-
4 tion of such forms, lists and records as may be necessary
5 to carry out the policy of the Legislature as contained
6 in this article and as may be necessary to provide for
7 an effective, efficient and orderly administration of the
8 absent voter law of this state. In the case of West
9 Virginia voters residing outside the continental United
10 States, the secretary of state shall promulgate rules and
11 regulations necessary to implement procedures relating
12 to absent voters contained in the Uniformed and
13 Overseas Citizens Absentee Voting Act of 1986 (P.L. 99-
14 410, 42 U.S.C. 1973, et seq.) and shall forward a copy
15 of the act to all circuit court clerks and clerks of the
16 county commissions within ninety days of the effective
17 date of this section.

18 It shall be the duty of all clerks of the circuit court,

19 other county officers, and all election commissioners and
20 poll clerks to abide by such rules, regulations, orders
21 and instructions and to use such forms, lists and records
22 which, without limiting the foregoing, may include or
23 relate to:

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

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

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

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

32 (e) The forms of, information to be contained in, and
33 consolidation of lists and records pertaining to applica-
34 tions for, and voting of, absent voters' ballots and
35 assistance to persons voting absent voters' ballots;

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

38 (g) The keeping and security of voted absent voters'
39 ballots in the office of the clerk of the circuit court.

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-3. False swearing; penalties.

1 (a) If any election official, or other person, making any
2 affidavit required under any provision of this chapter,
3 shall therein knowingly swear falsely, or if any person
4 shall counsel, advise, aid or abet another in the
5 commission of false swearing, he shall be guilty of a
6 misdemeanor, and, on conviction therefor shall be fined
7 not less than fifty nor more than one thousand dollars
8 and imprisoned in the county jail for a period of not
9 more than one year.

10 (b) If any person making any declaration required
11 under any provision of this chapter shall knowingly
12 make a false statement or representation therein, or if
13 any person shall counsel, advise, aid or abet another to
14 make such a declaration containing any false statement

15 or representation, any such person shall be deemed to
16 be guilty of false swearing although no oath was
17 administered, and such offense is hereby declared to be
18 a misdemeanor. Upon conviction of such offense, any
19 such person shall be fined not less than fifty nor more
20 than one thousand dollars and imprisoned in the county
21 jail for a period of not more than one year.

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

Brian O. Deegan
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

Todd C. Stillis
Clerk of the Senate

Donald L. Stopp
Clerk of the House of Delegates

Sam Tenick
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *approved* this the *8th*
March day of _____, 1988.

Aura Prange
Governor

PRESENTED TO THE

GOVERNOR

Date 3/2/88

Time 5:08 p.m.

RECEIVED
MAY 1 11 41 AM '08
DEPARTMENT OF HEALTH
AND HUMAN SERVICES