WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED
Committee Substitute for SENATE BILL NO. 186

(By Senator Chafin)

PASSED April 8, 1989
In Effect 90 days from Passage
AN ACT to amend and reenact sections five, five-c and ten, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to voting by absentees; necessity for physician’s and chiropractor’s statements deleted in certain cases; more than four consecutive absentee ballots voted by mail as a result of being out of the county to be challenged; exceptions; authorizing county commissions to adopt a policy extending emergency absentee voting to health care facilities within an adjacent county or within thirty-five miles of the county seat; extending the time in which persons admitted to health care facilities may apply to vote an emergency absent voter’s ballot; changing the method by which emergency absent voter’s ballots may be applied for and voted; and updating certain terminology.

Be it enacted by the Legislature of West Virginia:

That sections five, five-c and ten, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted, all to read as follows:
ARTICLE 3. VOTING BY ABSENTEES.

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

A person desiring to vote an absent voter's ballot by mail may, on or after the first day of January 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 eighty-four 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 ballots to be voted at such election. The clerk of the circuit court shall not honor any such application for an absent voter's ballot received by him after the fourth day next preceding the date of the election. In computing the fourth day, the day of conducting the election shall be excluded.

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

"APPLICATION FOR VOTING AN ABSENT VOTER'S BALLOT BY MAIL"

KNOWING THAT I CAN BE FINED NOT MORE THAN ONE THOUSAND DOLLARS OR IMPRISONED IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE THAN ONE YEAR OR BOTH SUCH FINE AND IMPRISONMENT FOR KNOWINGLY MAKING A FALSE STATEMENT OR REPRESENTATION HEREIN, I, ____________________________________________, hereby declare that I am now, or will have been a resident of the state of West Virginia for twelve...
3 months, and of the county of ____________________
for thirty days, next preceding the date of the ensuing
election to be held on the ____________________ day of
__________, 19___; that I now reside at __________,
(give full address)
in the magisterial district of ________________ in
said county; that I am a duly qualified voter entitled
to vote in such election; that I am registered in the
precinct of my residence as provided by law; that I am
registered as ________________________________;
(state political party if ballot is for primary election)
and that (strike out the numbered paragraphs not
applicable and complete the numbered paragraph
which is applicable):

(1) I will be unable to vote in person at the polls on
election day because of ________________________,
(state particulars of physical disability, illness or
injury).

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

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

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

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

□ A member of the merchant marine of the United
States.

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

□ A citizen of the United States temporarily residing
(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.)

(5) I have been appointed __________________________

(state whether an election commissioner or poll clerk)

in precinct No. ______ in said election, which precinct is not the precinct in which I am registered to vote.

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

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

(give full address for mailing purposes)

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

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

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

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

__________________________
Signature of Applicant

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

__________________________
Mark of Applicant

__________________________
Signature of Witness’

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

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

“STATEMENT OF PHYSICIAN (CHIROPRACTOR)

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

__________________________
Signature of Witness’
that I last examined _________________
the applicant whose signature appears on the applica-
tion above on the ____day of _________________,
19____; and that in my opinion:

The applicant will, because of _________________
______________________________
(state for what medical reasons)
be confined in______________________________
(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.

Signature of Physician (Chiropractor)"

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

“STATEMENT OF SHERIFF, CHIEF OF POLICE
OR AUTHORIZED DEPUTY

I, ______________________, hereby declare that
the applicant whose signature appears on the applica-
tion above will be confined in the county or city jail
or other detention facility on the ______ day of
_______, 19 _____, the date of the election, and
is not under conviction of treason, bribery or a felony.

__________________________
SIGNATURE

__________________________
TITLE

__________________________
COUNTY"

In lieu of the application for an absent voter's ballot
provided above, those persons specified in subsection (2), section one of this article may use the federal postcard application for absent voter's ballot form issued under authority of the Uniformed and Overseas Citizens Absentee Voting Act of 1986, as amended (Public Law 99-410, 42 U.S.C. 1973, et seq.). Any such federal postcard application does not have to be executed pursuant to oath or attestation. Upon receipt of a properly completed copy of such form, the clerk of the circuit court shall process it the same as 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; (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; and (4) whether the applicant has voted absentee by mail as a result of being out of the county more than four consecutive times: Provided, That the determination as to whether the applicant has voted more than four consecutive times shall not apply if the applicant is a citizen residing out of the United States; or a member, spouse or dependent of a member serving in the uniformed services; or a college student living outside his or her home county. If the determination of the clerk of the circuit court as to (1) or (3) is in the negative or as to (2) or (4) 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. If the challenge is made under subdivision (4) above, such a challenge
shall be removed upon submission of proof of residence before the board of canvassers.

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 forty-second 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 shall mail such voting supplies to an applicant whose address is shown to be outside the continental limits of the United States by priority airmail 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;

(d) Notice that an absent voter’s ballot returned from outside the continental limits of the United States must be mailed priority airmail; and
(e) Notice that absent voters' ballots must be received in the office of the clerk not later than the time of closing of the polls.

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 and, if from outside the continental limits of the United States, by priority airmail, the sealed Absent Voter's Ballot Envelope No. 2 to the clerk of the circuit court of the county in which he is registered to vote.

Upon receipt of such sealed envelope, the clerk shall (1) enter onto the envelope such information as may be required of him according to the instructions thereon; (2) enter his challenge, if any, to the absent voter's ballot; (3) enter the required information into a record of persons making application for and voting an absent voter's ballot by personal appearance or by mail or otherwise (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 body of canvassers.

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

(a) Notwithstanding any other provision of this chapter, a person qualified to vote an absent voter's ballot, as defined in subsection (1), section one of this article, who is admitted, on or after the seventh day.
next preceding the election, to a hospital or other duly licensed health care facility within the county of their residence for emergency medical treatment, and who remains confined and is unable to vote at the polls on election day, may vote an emergency absent voter's ballot under the procedures established in this section. The county commission may adopt a policy extending the emergency absentee voting procedures to hospitals or other duly licensed health care facilities within an adjacent county or within thirty-five miles of the county seat: Provided, That the policy shall be adopted by the county commission at least ninety days prior to the election that will be effected and a copy of such policy shall be filed with the secretary of state.

(b) On or before the first Monday of the month next preceding the date on which any election is to be held the circuit clerk of each county shall notify the county commission of the number of sets of emergency absent voter ballot commissioners which he or she deems necessary to perform the duties and functions hereinafter set forth.

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

(d) Upon request of the voter or a member of the voter's immediate family, the circuit clerk upon receiving a proper request for voting an emergency absent voter's ballot no earlier than the seventh day next preceding the election and no later than noon of
election day, shall supply to the emergency absent voter’s ballot commissioners the application for voting an emergency absent voter’s ballot and the balloting materials. The emergency absent voter’s ballot application shall be prescribed by the secretary of state and shall be in substantially the following form:

"APPLICATION FOR VOTING AN EMERGENCY ABSENT VOTER’S BALLOT

KNOWING THAT I CAN BE FINED NOT MORE THAN ONE THOUSAND DOLLARS AND IMPRISONED IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE THAN ONE YEAR FOR KNOWINGLY MAKING A FALSE STATEMENT OR REPRESENTATION HEREIN, I, ______________, hereby declare that I am now, or will have been a resident of the state of West Virginia for twelve months, and of the county of ______________, for thirty days next preceding the date of the ensuing election to be held on the ___ day of __________________________, 19___;

that I now reside at __________________________,

(give full address)

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

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

________________________________________________________

(State name and location of facility)

since_______________________________

(State date of confinement commenced)

because of __________________________

(State particulars of illness or injury)

(2) My treating physician is ________________
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

__________________________
Mark of Applicant

__________________________
Signature of Witness"

If the person applying for an emergency absent voter's ballot 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 is to be completed and signed by each of the emergency absent voter's ballot commissioners:

"STATEMENT OF EMERGENCY ABSENT VOTER'S BALLOT COMMISSIONERS

We, _______________ and _______________, hereby declare that we are the duly appointed emergency absent voter's ballot commissioners and have met the applicant, whose name appears on the application above at his or her place of confinement on the ___ day of __________________________, 19__; and that in our opinion, the applicant will, because of an emergency medical confinement which commenced at least seven days prior to the election, be unable to go to the polls on the _________ day of __________, 19____, the date of the election.
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We have determined that the applicant has been confined in ____________________________
(State name and location of facility)

since ____________________________
(State date confinement commenced)

because of ____________________________
(State particulars of illness or injury)

(Date) (Signature of Emergency Absent Voter's Ballot Commissioner)

(Date) (Signature of Emergency Absent Voter's Ballot Commissioner)"

(e) At least one of the emergency absent voter's ballot commissioners receiving the balloting materials shall sign a receipt which shall be attached to the application form. Each of the emergency absent voter's ballot commissioners shall deliver the materials to the absent voter, await his or her completion of the application and then the ballot, and return the same to the circuit clerk, and upon delivering the application and the voted ballot to the circuit clerk, sign an oath that no person other than the absent voter voted the ballot. The application and the voted ballot shall be returned to the circuit clerk prior to the close of the polls on election day. Any ballots received by the clerk after the time that delivery may reasonably be made but before the closing of the polls shall be treated as challenged absent voters' ballots in accordance with the provisions of section ten of this article and in addition to those absent voters' ballots subject to challenge as enumerated therein.

(f) Upon receiving the application and emergency absent voter's ballot, the clerk of the circuit court shall ascertain whether the application is complete and the voter is properly registered to vote with the office of the clerk of the county commission. If the voter is
found to be properly registered in the precinct shown on the application, the ballot shall be delivered to the precinct election commissioner pursuant to section seven of this article. If the voter is found not to be registered, then the ballot shall be challenged for that reason or any other provided for in section ten of this article.

(g) If either or both of the emergency absent voter’s ballot commissioners should refuse to sign any application for voting an emergency absent voter’s ballot, then the voter shall be permitted to vote as an emergency absent voter and any such ballot shall be treated as a challenged absent voter’s ballot in accordance with the provisions of section ten of this article and in addition to those absent voters’ ballots subject to challenge as enumerated therein.

(h) Any voter who receives assistance in voting an emergency absentee voter’s ballot shall comply with the provisions of section six of this article. Any other provisions of this chapter relating to absent voter’s ballots not altered by the provisions of this section shall govern the treatment of emergency absent voter’s ballots.

§3-3-10. Challenging of absent voters’ ballots.

The clerk of the circuit court may challenge an absent voter’s ballot on any of the following grounds:

(1) That the application for an absent voter’s ballot has not been completed as required by law; (2) that any statement or declaration contained in the application for an absent voter’s ballot is not true; (3) that the applicant for an absent voter’s ballot is not registered to vote in the precinct of his residence as provided by law; (4) that the person voting an absent voter’s ballot by personal appearance in his office had assistance in voting such ballot when the person was not qualified for such voting assistance because (a) the affidavit of the person who received such assistance does not indicate a legally sufficient reason for such assistance, or (b) the person who received such assistance did not make an affidavit as required by this article, or (c) the
person who received such assistance is not so illiterate
as to have been unable to read the names on the ballot
or that he is not so physically disabled as to have been
unable to see or mark the absent voter’s ballot; (5) that
the person who voted an absent voter’s ballot by mail
and received assistance in voting such ballot, was not
qualified under the provisions of this article for such
assistance; and (6) that the person has voted absentee
by mail as a result of being out of the county more
than four consecutive times: Provided, That the
determination as to whether the person has voted
more than four consecutive times shall not apply if the
person is a citizen residing out of the United States; or
a member, spouse or dependent of a member serving
in the uniformed services; or a college student living
outside of his or her home county.

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

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

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

Absent voters' ballots challenged by the clerk of the circuit court under the provisions of this article shall be transmitted by the clerk directly to the county commission sitting as a board of canvassers; and the absent voters' ballots challenged by the election commissioners, poll clerks and registered voters of the county under the provisions of this article shall not be
counted by the election officials but shall be transmitted by them to the county commission sitting as a board of canvassers. Action by the board of canvassers on such challenged absent voters' ballots shall be governed by the provisions of section forty-one, article one of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

 Clerk of the Senate

 Clerk of the House of Delegates

 President of the Senate

 Speaker House of Delegates

The within ........... approved ....this the 27th day of ....April ....1989.

Governor