WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED

SENATE BILL NO. 549

(By Senator WOOTON, et al.)

PASSED March 11, 1998
In Effect From Passage
ENROLLED

Senate Bill No. 599

(By Senators Wooton, Ball, Dittmar, Hunter, Kessler, Ross, Schoonover, Snyder, White, Deem and Scott)

[Passed March 14, 1998; 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 authorizing the transmission of certain absent voter applications by facsimile.

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 absentee ballot by mail; penalties.
(a) Upon oral or written request, the clerk of the circuit
court shall provide to any voter of the county, in person,
by mail or by facsimile, if the clerk has access to facsimile
equipment, the appropriate application for voting absent-
tee by mail, as provided in this article. The voter shall
complete and sign the application in his or her own
handwriting or, if the voter is unable to complete the
application because of illiteracy or physical disability, the
person assisting the voter and witnessing the mark of the
voter shall sign his or her name in the space provided.

(b) Completed applications for voting an absentee ballot
by mail shall be accepted when received by the clerk in
person, by mail or by facsimile, if the clerk has access to
facsimile equipment, within the following times:

1. For persons eligible to vote an absentee ballot under
the provisions of subdivision (3), subsection (d), section
one of this article, relating to absent uniformed services
and overseas voters, not earlier than the first day of
January of an election year, or eighty-four days preceding
the election, whichever is earlier, and not later than the
sixth day preceding the election, which application shall,
upon the voter’s request, be accepted as an application for
the ballots for all elections in the calendar year;

2. For all other persons eligible to vote an absentee
ballot by mail, not earlier than eighty-four days preceding
the election and not later than the sixth day preceding the
election.

(c) Upon acceptance of a completed application, the
circuit clerk shall determine whether the following
requirements have been met:

1. The application has been completed as required by
law;

2. The applicant is duly registered to vote in the pre-
cinct of his or her residence and, in a primary election, is
qualified to vote the ballot of the political party requested;
(3) The applicant is authorized for the reasons given in the application to vote an absentee ballot by mail;

(4) The address to which the ballot is to be mailed is an address outside the county if the voter is applying to vote by mail under the provisions of subdivision (2), (3) or (4), subsection (d), section one of this article;

(5) The applicant is not making his or her first vote after having registered by postcard registration under the provisions of section forty-one, article two of this chapter or, if the applicant is making the first vote under these provisions, the applicant is exempt from these requirements;

(6) No regular and repeated pattern of applications for an absentee ballot by mail for the reason of being out of the county during the entire period of voting in person exists to suggest that the applicant is no longer a resident of the county.

If the clerk determines the required conditions have not been met, or has evidence that any of the information contained in the application is not true, the clerk shall give notice to the voter that the voter's absentee ballot will be challenged as provided in this article, and shall enter that challenge.

(d) Within one day after the clerk has both the completed application and the ballot, the clerk shall mail to the voter at the address given on the application the following: (1) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law; (2) one envelope, unsealed, which shall have no marks except the designation "Absent Voter's Ballot Envelope No. 1" and printed instructions to the voter; (3) one postage paid envelope, unsealed, designated "Absent Voter's Ballot Envelope No. 2" and printed as prescribed by the secretary of state; (4) instructions for voting absentee by mail; and (5) any other supplies required for voting in the particular
voting system.

(c) The voter shall mark the ballot alone. Provided, That the voter may have assistance in voting according to the provisions of section six of this article. After the voter has voted the ballot or ballots, the voter shall: (1) Place the ballot or ballots in envelope no. 1 and seal that envelope; (2) place the sealed envelope no. 1 in envelope no. 2 and seal that envelope; (3) complete and sign the forms on envelope no. 2; and (4) return that envelope to the clerk.

(f) Absentee ballots returned by United States mail or other express shipping service shall be accepted if: (1) The ballot is received by the clerk no later than the close of the polls on election day; or (2) the ballot bears a postmark of the United States postal service dated no later than election day and the ballot is received by the clerk no later than the hour at which the board of canvassers convenes to begin the canvass.

Ballots received after the proper time which cannot be accepted shall be placed unopened in an envelope marked for the purpose and kept secure for twenty-two months following the election, after which time they shall be destroyed without being opened.

(g) Absentee ballots which are hand delivered to the clerk shall be accepted if they are received by the circuit clerk no later than the day preceding the election. Provided, That no person may hand deliver more than two absentee ballots in any election, and any person hand delivering an absentee ballot shall be required to certify that he or she has not examined or altered the ballot. Any person who makes a false certification shall be in violation of the penalty provisions of article nine of this chapter and subject to those provisions.

(h) Upon receipt of the sealed envelope, the clerk shall: (1) Enter onto the envelope any other required information; (2) enter the challenge, if any, to the ballot; (3) enter
the required information into the permanent record of persons applying for and voting an absentee ballot in person; and (4) place the sealed envelope in a secure location in the clerk's office, to remain until delivered to the polling place or, in the case of a challenged ballot, to the board of canvassers.
Enr. S. B. No. 599]

That 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.

In 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 approved this the 2nd day of April, 1998.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 3/24/98
Time 3:12 pm