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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



ENROLLED

SENATE BILL NO. 599

(By Senator WOOTEN, ET AL)



PASSED MARCH 14, 1998

In Effect From Passage

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SENATE OF WEST VIRGINIA

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.

1 (a) Upon oral or written request, the clerk of the circuit
2 court shall provide to any voter of the county, in person,
3 by mail or by facsimile, if the clerk has access to facsimile
4 equipment, the appropriate application for voting absen-
5 tee by mail, as provided in this article. The voter shall
6 complete and sign the application in his or her own
7 handwriting or, if the voter is unable to complete the
8 application because of illiteracy or physical disability, the
9 person assisting the voter and witnessing the mark of the
10 voter shall sign his or her name in the space provided.

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

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

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

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

31 (1) The application has been completed as required by
32 law;

33 (2) The applicant is duly registered to vote in the pre-
34 cinct of his or her residence and, in a primary election, is
35 qualified to vote the ballot of the political party requested;

36 (3) The applicant is authorized for the reasons given in
37 the application to vote an absentee ballot by mail;

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

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

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

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

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

71 voting system.

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

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

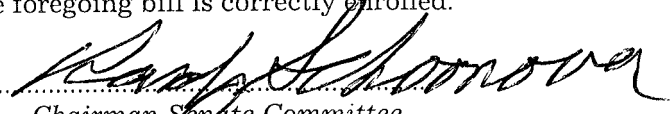
88 Ballots received after the proper time which cannot be
89 accepted shall be placed unopened in an envelope marked
90 for the purpose and kept secure for twenty-two months
91 following the election, after which time they shall be
92 destroyed without being opened.

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

103 (h) Upon receipt of the sealed envelope, the clerk shall:
104 (1) Enter onto the envelope any other required informa-
105 tion; (2) enter the challenge, if any, to the ballot; (3) enter

106 the required information into the permanent record of
107 persons applying for and voting an absentee ballot in
108 person; and (4) place the sealed envelope in a secure
109 location in the clerk's office, to remain until delivered to
110 the polling place or, in the case of a challenged ballot, to
111 the board of canvassers.

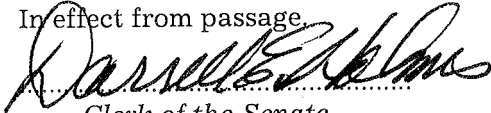
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

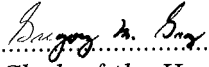

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Chairman Senate Committee.

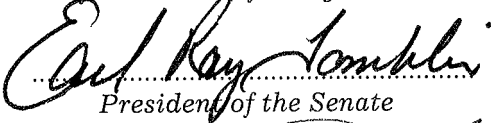

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Chairman House Committee

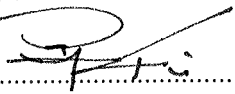
Originated in the Senate.

In effect from passage.

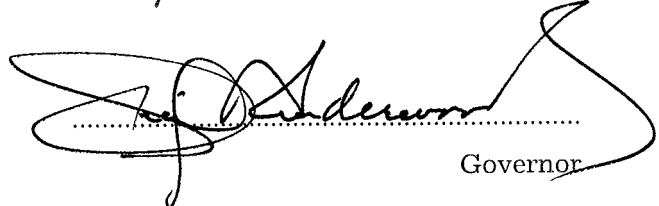

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within approved this the 2nd
day of April, 1998.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/24/98

Time 3:12 pm