WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 606

(Senators Kessler, Hunter and White, original sponsors)

[Passed March 10, 2007; in effect ninety days from passage.]
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(SENATORS KESSLER, HUNTER AND WHITE, original sponsors)

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AN ACT to amend and reenact §3-3-5 of the Code of West Virginia, 1931, as amended, relating to absentee voting; providing that the application for absentee voting may be distributed and returned by electronic mail; providing for distribution and return by facsimile of ballots for an absent uniformed services voter or overseas voter; and providing procedures for securely receiving and tabulating facsimile ballots.
Be it enacted by the Legislature of West Virginia:

That §3-3-5 of the Code of West Virginia, 1931, 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 official designated to supervise and conduct absentee voting shall provide to any voter of the county, in person, by mail, by electronic mail or by facsimile the appropriate application for voting absentee 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 are to be accepted when received by the official designated to supervise and conduct absentee voting in person, by mail, by electronic mail or by facsimile within the following times:

(1) For persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (b), 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 is to, upon the voter's request, be accepted as an application for the ballots for all elections in the
calendar year; and

(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 official designated to supervise and conduct absentee voting 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 precinct 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 paragraph (A) or (B), subdivision (2), subsection (b), section one of this article; or subdivision (3) or (4) of said subsection;

(5) The applicant is not making his or her first vote after having registered by postcard registration or, if the applicant is making his or her first vote after having registered by postcard registration, the applicant is exempt from these requirements; and
(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.

(d) If the official designated to supervise and conduct absentee voting determines that the required conditions have been met, two representatives that are registered to vote with different political party affiliations shall sign their names in the places indicated on the back of the official ballot. If the official designated to supervise and conduct absentee voting determines the required conditions have not been met, or has evidence that any of the information contained in the application is not true, the official 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.

(e) (1) Within one day after the official designated to supervise and conduct absentee voting has both the completed application and the ballot, the official shall mail to the voter at the address given on the application the following items as required and as prescribed by the Secretary of State:

(A) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(B) One envelope, unsealed, which may have no marks except the designation "Absent Voter's Ballot Envelope No. 1" and printed instructions to the voter;

(C) One postage paid envelope, unsealed, designated "Absent Voter's Ballot Envelope No. 2";
(D) Instructions for voting absentee by mail;

(E) For electronic systems, a device for marking by electronically sensible pen or ink, as may be appropriate;

(F) Notice that a list of write-in candidates is available upon request; and

(G) Any other supplies required for voting in the particular voting system.

(2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42 U. S. C.§1973, et seq., the official designated to supervise and conduct absentee voting may voluntarily upon request of the voter transmit the ballot to the voter via facsimile. If the ballot is transmitted by facsimile pursuant to this subdivision, the official designated to supervise and conduct absentee voting shall also transmit via facsimile:

(A) A waiver of privacy form, to be promulgated by the Secretary of State;

(B) Instructions for voting absentee utilizing the Federal Voting Assistance Program Electronic Transmission System. For the purposes of this subsection, the "Federal Voting Assistance Program Electronic Transmission System" is the system established by the Department of Defense for the explicit purpose of sending and receiving absentee ballots by military and overseas United States citizens;

(C) Notice that a list of write-in candidates is
available upon request.

The official designated to supervise and conduct absentee voting is not required to mail to the voter the materials listed in paragraphs (B), (C) and (E), subdivision (1) of this subsection.

(f) 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.

(1) After the voter has voted the ballot or ballots to be returned by mail, the voter shall:

(A) Place the ballot or ballots in envelope no. 1 and seal that envelope;

(B) place the sealed envelope no. 1 in envelope no. 2 and seal that envelope;

(C) complete and sign the forms on envelope no. 2; and

(D) return that envelope to the official designated to supervise and conduct absentee voting.

(2) If the ballot was transmitted via facsimile as provided in subdivision (2), subsection (e) of this section, the voter shall return the ballot via facsimile to the designated facsimile number of the Federal Voting Assistance Program Electronic Transmission System, along with a signed privacy waiver form.

(g) Except as provided in subsection (h) of this section, absentee ballots returned by United States mail or other
express shipping service are to be accepted if:

(1) The ballot is received by the official designated to supervise and conduct absentee voting no later than the day after the election; 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 official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(h) Absentee ballots received through the United States mail from persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (b), section one of this article, relating to uniform services and overseas voters, are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(i) Ballots transmitted via facsimile pursuant to subdivision (2), subsection (f) of this section are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the close of polls on election day: Provided, That the Secretary of State's office shall enter into an agreement with the Federal Voting Assistance Program of the United States Department of Defense to transmit the ballots to the county clerks at a time when two individuals of opposite political parties are available to process the received ballots.
(j) Ballots received after the proper time which cannot be accepted are to be placed unopened in an envelope marked for the purpose and kept secure for twenty-two months following the election, after which time they are to be destroyed without being opened.

(k) Absentee ballots which are hand delivered are to be accepted if they are received by the official designated to supervise and conduct absentee voting 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 is required to certify that he or she has not examined or altered the ballot. Any person who makes a false certification violates the provisions of article nine of this chapter and is subject to those provisions.

(l) Upon receipt of the sealed envelope, the official designated to supervise and conduct absentee voting 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 into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk.
(m) Upon receipt of a ballot submitted via facsimile pursuant to subdivision (2), subsection (f) of this section, the official designated to supervise and conduct absentee voting shall place the ballot in an envelope marked "Absentee by Facsimile" with the completed waiver: Provided, That no ballots are to be processed without the presence of two individuals of opposite political parties.

(n) All ballots received by facsimile prior to the close of the polls on election day are to be tabulated in the manner prescribed for tabulating absentee ballots submitted by mail to the extent that those procedures are appropriate for the applicable voting system. The clerk of the county commission shall keep a record of absentee ballots sent and received by facsimile.
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 is approved this 31st Day of April, 2007.

Governor