

FILED

2008 MAR 20 AM 11:19

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2008**

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COMMITTEE SUBSTITUTE  
FOR

**ENROLLED**

**Senate Bill No. 514**

(SENATORS KESSLER, HUNTER, MINARD,  
AND DEEM, *original sponsors*)

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[Passed March 4, 2008; in effect from passage.]

SB 514

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OFFICE OF THE  
SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 514**

(SENATORS KESSLER, HUNTER, MINARD  
AND DEEM, *original sponsors*)

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[Passed March 4, 2008; in effect from passage.]

AN ACT to amend and reenact §3-3-5 of the Code of West Virginia, 1931, as amended, relating generally to voting an absentee ballot by electronic mail; allowing ballot to be transmitted to absentee voter by electronic mail; requiring absentee voter to return completed ballot in the same manner ballot was transmitted or by electronic mail; and specifying that ballots received via electronic mail are to be processed in the same manner as ballots submitted by facsimile.

*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, facsimile or electronic mail; penalties.**

1 (a) Upon oral or written request, the official  
2 designated to supervise and conduct absentee voting  
3 shall provide to any voter of the county, in person, by  
4 mail, by electronic mail or by facsimile the appropriate  
5 application for voting absentee by mail as provided in  
6 this article. The voter shall complete and sign the  
7 application in his or her own handwriting or, if the  
8 voter is unable to complete the application because of  
9 illiteracy or physical disability, the person assisting the  
10 voter and witnessing the mark of the voter shall sign his  
11 or her name in the space provided.

12 (b) Completed applications for voting an absentee  
13 ballot by mail are to be accepted when received by the  
14 official designated to supervise and conduct absentee  
15 voting in person, by mail, by electronic mail or by  
16 facsimile within the following times:

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

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

31 (c) Upon acceptance of a completed application, the

32 official designated to supervise and conduct absentee  
33 voting shall determine whether the following  
34 requirements have been met:

35 (1) The application has been completed as required by  
36 law;

37 (2) The applicant is duly registered to vote in the  
38 precinct of his or her residence and, in a primary  
39 election, is qualified to vote the ballot of the political  
40 party requested;

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

43 (4) The address to which the ballot is to be mailed is  
44 an address outside the county if the voter is applying to  
45 vote by mail under the provisions of paragraph (A) or  
46 (B), subdivision (2), subsection (b), section one of this  
47 article; or subdivision (3) or (4) of said subsection;

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

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

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

68 voter's absentee ballot will be challenged as provided in  
69 this article and shall enter that challenge.

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

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

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

81 (C) One postage paid envelope, unsealed, designated  
82 "Absent Voter's Ballot Envelope No. 2";

83 (D) Instructions for voting absentee by mail;

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

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

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

91 (2) If the voter is an absent uniformed services voter  
92 or overseas voter, as defined by 42 U. S. C. §1973, *et*  
93 *seq.*, the official designated to supervise and conduct  
94 absentee voting may voluntarily upon request of the  
95 voter transmit the ballot to the voter via facsimile or by  
96 electronic mail. If the ballot is transmitted by facsimile  
97 or by electronic mail pursuant to this subdivision, the  
98 official designated to supervise and conduct absentee  
99 voting shall also transmit via facsimile or by electronic  
100 mail:

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

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

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

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

117 (f) The voter shall mark the ballot alone: *Provided*,  
118 That the voter may have assistance in voting according  
119 to the provisions of section six of this article.

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

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

124 (B) Place the sealed envelope no. 1 in envelope no. 2  
125 and seal that envelope;

126 (C) Complete and sign the forms on envelope no. 2;  
127 and

128 (D) Return that envelope to the official designated to  
129 supervise and conduct absentee voting.

130 (2) If the ballot was transmitted via facsimile or by  
131 electronic mail as provided in subdivision (2),  
132 subsection (e) of this section, the voter shall return the  
133 ballot in the same manner the ballot was received,

134 except that the voter may return the ballot by United  
135 States mail, along with a signed privacy waiver form.

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

139 (1) The ballot is received by the official designated to  
140 supervise and conduct absentee voting no later than the  
141 day after the election; or

142 (2) The ballot bears a postmark of the United States  
143 Postal Service dated no later than election day and the  
144 ballot is received by the official designated to supervise  
145 and conduct absentee voting no later than the hour at  
146 which the board of canvassers convenes to begin the  
147 canvass.

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

157 (i) Ballots transmitted via facsimile or by electronic  
158 mail pursuant to subdivision (2), subsection (f) of this  
159 section are to be accepted if the ballot is received by the  
160 official designated to supervise and conduct absentee  
161 voting no later than the close of polls on election day:  
162 *Provided*, That the Secretary of State's office shall  
163 enter into an agreement with the Federal Voting  
164 Assistance Program of the United States Department of  
165 Defense to transmit the ballots to the county clerks at  
166 a time when two individuals of opposite political  
167 parties are available to process the received ballots.

168 (j) Ballots received after the proper time which cannot  
169 be accepted are to be placed unopened in an envelope  
170 marked for the purpose and kept secure for twenty-two

171 months following the election, after which time they are  
172 to be destroyed without being opened.

173 (k) Absentee ballots which are hand delivered are to  
174 be accepted if they are received by the official  
175 designated to supervise and conduct absentee voting no  
176 later than the day preceding the election: *Provided*,  
177 That no person may hand deliver more than two  
178 absentee ballots in any election and any person hand  
179 delivering an absentee ballot is required to certify that  
180 he or she has not examined or altered the ballot. Any  
181 person who makes a false certification violates the  
182 provisions of article nine of this chapter and is subject  
183 to those provisions.

184 (l) Upon receipt of the sealed envelope, the official  
185 designated to supervise and conduct absentee voting  
186 shall:

187 (1) Enter onto the envelope any other required  
188 information;

189 (2) Enter the challenge, if any, to the ballot;

190 (3) Enter the required information into the permanent  
191 record of persons applying for and voting an absentee  
192 ballot in person; and

193 (4) Place the sealed envelope into a ballot box that is  
194 secured by two locks with a key to one lock kept by the  
195 president of the county commission and a key to the  
196 other lock kept by the county clerk.

197 (m) Upon receipt of a ballot submitted via facsimile or  
198 by electronic mail pursuant to subdivision (2),  
199 subsection (f) of this section, the official designated to  
200 supervise and conduct absentee voting shall place the  
201 ballot in an envelope marked "Absentee by Facsimile or  
202 by Electronic Mail" with the completed waiver:  
203 *Provided*, That no ballots are to be processed without  
204 the presence of two individuals of opposite political  
205 parties.



206 (n) All ballots received by facsimile or by electronic  
207 mail prior to the close of the polls on election day are to  
208 be tabulated in the manner prescribed for tabulating  
209 absentee ballots submitted by mail to the extent that  
210 those procedures are appropriate for the applicable  
211 voting system. The clerk of the county commission  
212 shall keep a record of absentee ballots sent and received  
213 by facsimile or by electronic mail.

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

*Chandy White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Carroll Holmes*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is appended* ..... this  
the *20<sup>th</sup>* Day of *May* ....., 2008.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 17 2008

Time 11:12am