WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4238

(By Delegates Poore, Marshall, Fleischauer, and Boggs)
[By Request of the Secretary of State]

Passed March 6, 2012
To Take Effect Ninety Days From Passage
AN ACT to amend and reenact §3-3-1, §3-3-2 and §3-3-2b of the Code of West Virginia, 1931, as amended, relating to providing absentee ballots to participants of the Address Confidentiality Program; authorizing program participants to vote an absentee ballot by mail; authorizing the placement of program participants on special absentee voting list; describing duties of the office of the Secretary of State and county officials designated to supervise and conduct absentee voting; and providing for the removal of program participants from the special absentee voting list.

Be it enacted by the Legislature of West Virginia:

That §3-3-1, §3-3-2 and §3-3-2b of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:
ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

(a) All registered and other qualified voters of the county may vote an absentee ballot during the period of early voting in person.

(b) Registered voters and other qualified voters in the county are authorized to vote an absentee ballot by mail in the following circumstances:

(1) Any voter who is confined to a specific location and prevented from voting in person throughout the period of voting in person because of:

(A) Illness, injury or other medical reason;

(B) Physical disability or immobility due to extreme advanced age; or

(C) Incarceration or home detention: Provided, That the underlying conviction is not for a crime which is a felony or a violation of section twelve, thirteen or sixteen, article nine of this chapter involving bribery in an election;

(2) Any voter who is absent from the county throughout the period and available hours for voting in person because of:

(A) Personal or business travel;

(B) Attendance at a college, university or other place of education or training; or

(C) Employment which because of hours worked and distance from the county seat make voting in person impossible;
(3) Any voter absent from the county throughout the period and available hours for voting in person and who is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, spouses and dependents of those members on active duty and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States;

(4) Any voter who is required to dwell temporarily outside the county and is absent from the county throughout the time for voting in person because of:

(A) Serving as an elected or appointed federal or state officer; or

(B) Serving in any other documented employment assignment of specific duration of four years or less;

(5) Any voter for whom the designated area for absentee voting within the county courthouse or annex of the courthouse and the voter’s assigned polling place are inaccessible because of his or her physical disability; and

(6) Any voter who is participating in the Address Confidentiality Program as established by section one hundred three, article twenty-eight-a, chapter forty-eight of this code.

(c) Registered voters and other qualified voters in the county may, in the following circumstances, vote an emergency absentee ballot, subject to the availability of the services as provided in this article:
(1) Any voter who is confined or expects to be confined in a hospital or other duly licensed health care facility within the county of residence or other authorized area, as provided in this article, on the day of the election;

(2) Any voter who resides in a nursing home within the county of residence and would be otherwise unable to vote in person, providing the county commission has authorized the services if the voter has resided in the nursing home for a period of less than thirty days; and

(3) Any voter who is working as a replacement poll worker and is assigned to a precinct out of his or her voting district, if the assignment was made after the period for voting an absentee ballot in person has expired.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

(a) Absentee voting is to be supervised and conducted by the proper official for the political division in which the election is held, in conjunction with the ballot commissioners appointed from each political party, as follows:

(1) For any election held throughout the county, within a political subdivision or territory other than a municipality, or within a municipality when the municipal election is conducted in conjunction with a county election, the clerk of the county commission; or

(2) The municipal recorder or other officer authorized by charter or ordinance provisions to conduct absentee voting, for any election held entirely within the municipality, or in the case of annexation elections, within the area affected. The terms "clerk" or "clerk of the county commission" or "official designated to supervise and conduct absentee
(b) A person authorized and desiring to vote a mail-in absentee ballot in any primary, general or special election is to make application in writing in the proper form to the proper official as follows:

(1) The completed application is to be on a form prescribed by the Secretary of State and is to contain the name, date of birth and political affiliation of the voter, residence address within the county, the address to which the ballot is to be mailed, the authorized reason, if any, for which the absentee ballot is requested and, if the reason is illness or hospitalization, the name and telephone number of the attending physician, the signature of the voter to a declaration made under the penalties for false swearing as provided in section three, article nine of this chapter that the statements and declarations contained in the application are true, any additional information which the voter is required to supply, any affidavit which may be required and an indication as to whether it is an application for voting in person or by mail; or

(2) For any person authorized to vote an absentee ballot under the provisions of 42 U.S.C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the completed application may be on the federal postcard application for absentee ballot form issued under authority of that act, submitted by mail or electronically;

(3) For any person unable to obtain the official form for absentee balloting at a reasonable time before the deadline for an application for an absentee ballot by mail is to be received by the proper official, the completed application may be in a form set out by the voter, provided all information required
48 to meet the provisions of this article is set forth and the
49 application is signed by the voter requesting the ballot; or

50 (4) A person authorized to vote an absentee ballot who is
51 participating in the Address Confidentiality Program as
52 established by section one hundred three, article twenty-
53 eight-a, chapter forty-eight of this code, may apply to the
54 program manager within the office of the Secretary of State
55 to vote a mail-in absentee ballot. The program manager will
56 notify the designated county contact to coordinate the
57 application and the provision of an absentee ballot to the
58 program participant.

§3-3-2b. Special absentee voting list.

1 (a) Any person who is registered and otherwise qualified
2 to vote and who is permanently and totally physically
3 disabled and who is unable to vote in person at the polls in an
4 election may apply to the official designated to supervise and
5 conduct absentee voting for placement on the special
6 absentee voting list.

7 (b) Any person who is registered and otherwise qualified
8 to vote and who is participating in the Address
9 Confidentiality Program as established by section one
10 hundred three, article twenty-eight-a, chapter forty-eight of
11 this code, may apply to the program manager within the
12 office of the Secretary of State for placement on the special
13 absentee voting list. The program manager will notify the
14 designated county contact to coordinate the provision of an
15 absentee ballot to the program participant.

16 (c) The application is to be on a form prescribed by the
17 Secretary of State which is to include:

18 (1) The voter's name and signature,
(2) Residence address unless the applicant is a participant in the Address Confidentiality Program as established by section one hundred three, article twenty-eight-a, chapter forty-eight of this code, and

(3) (A) A statement that the voter is permanently and totally physically disabled and would be unable to vote in person at the polls in any election, a description of the nature of that disability, and a statement signed by a physician to that effect; or

(B) A statement that the voter is a program participant in the Address Confidentiality Program.

(d) Upon receipt of a properly completed application, the official designated to supervise and conduct absentee voting shall enter the name on the special absentee voting list, which is to be maintained in a secure and permanent record. The person's name will remain active on the list until: (1) The person requests in writing that his or her name be removed; (2) the person removes his or her residence from the county, is purged from the voter registration books or otherwise becomes ineligible to vote; (3) a ballot mailed to the address provided on the application is returned undeliverable by the United States postal service; (4) the death of the person; or (5) in the case of a Address Confidentiality Program participant, withdrawal or removal from that program.

(e) The official designated to supervise and conduct absentee voting shall mail an absentee ballot by mail to each person active on the special absentee voting list due to disability not later than forty-six days before each election. The Address Confidentiality Program manager shall, in coordination with the designated county contact, mail to each person on the special absentee voting list due to participation in the Address Confidentiality Program an absentee ballot by mail not later than forty-six days before each election.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Originating in the House.

To take effect ninety days from passage.

The within is approved this the 15th day of March, 2012.
PRESENTED TO THE GOVERNOR

MAR 12 2012

Time 10:25 am