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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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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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.

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 in
42 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 the
50 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 for
54 an absentee ballot by mail for the reason of being out of
55 the county during the entire period of voting in person
56 exists to suggest that the applicant is no longer a
57 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 available
88 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 or
92 overseas voter, as defined by 42 U. S. C. §1973, *et seq.*,
93 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. If
96 the ballot is transmitted by facsimile pursuant to this
97 subdivision, the official designated to supervise and
98 conduct absentee voting shall also transmit via
99 facsimile:

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

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

110 (C) Notice that a list of write-in candidates is

111 available upon request.

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

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

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

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

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

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

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

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

135 (g) Except as provided in subsection (h) of this section,
136 absentee ballots returned by United States mail or other

137 express shipping service are to be accepted if:

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

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

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

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

167 (j) Ballots received after the proper time which cannot
168 be accepted are to be placed unopened in an envelope
169 marked for the purpose and kept secure for twenty-two
170 months following the election, after which time they are
171 to be destroyed without being opened.

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

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

186 (1) Enter onto the envelope any other required
187 information; (2) Enter the challenge, if any, to the
188 ballot;

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

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


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

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

Enr. Com. Sub. for S. B. No. 606] 10

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.


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Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within *is approved* this
the *3rd* Day of *April*, 2007.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 02 2007

Time 3:30 pm