

COMMITTEE SUBSTITUTE

FOR

**H. B. 4238**

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(BY DELEGATES POORE, MARSHALL,  
FLEISCHAUER AND BOGGS)  
[BY REQUEST OF THE SECRETARY OF STATE]

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(Originating in the Committee on the Judiciary)  
[January 24, 2012]

A BILL 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 the provision of 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.**

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

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

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

10 (A) Illness, injury or other medical reason;

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

13 (C) Incarceration or home detention: *Provided*, That the  
14 underlying conviction is not for a crime which is a felony or

15 a violation of section twelve, thirteen or sixteen, article nine  
16 of this chapter involving bribery in an election;

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

20 (A) Personal or business travel;

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

23 (C) Employment which because of hours worked and  
24 distance from the county seat make voting in person  
25 impossible;

26 (3) Any voter absent from the county throughout the  
27 period and available hours for voting in person and who is an  
28 absent uniformed services voter or overseas voter, as defined  
29 by 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas  
30 Citizens Absentee Voting Act of 1986, including members of  
31 the uniformed services on active duty, members of the  
32 merchant marine, spouses and dependents of those members  
33 on active duty and persons who reside outside the United

34 States and are qualified to vote in the last place in which the  
35 person was domiciled before leaving the United States;

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

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

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

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

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

51 (c) Registered voters and other qualified voters in the  
52 county may, in the following circumstances, vote an

53 emergency absentee ballot, subject to the availability of the  
54 services as provided in this article:

55 (1) Any voter who is confined or expects to be confined  
56 in a hospital or other duly licensed health care facility within  
57 the county of residence or other authorized area, as provided  
58 in this article, on the day of the election;

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

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

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

1 (a) Absentee voting is to be supervised and conducted by  
2 the proper official for the political division in which the

3 election is held, in conjunction with the ballot commissioners  
4 appointed from each political party, as follows:

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

10 (2) The municipal recorder or other officer authorized by  
11 charter or ordinance provisions to conduct absentee voting,  
12 for any election held entirely within the municipality, or in  
13 the case of annexation elections, within the area affected.  
14 The terms "clerk" or "clerk of the county commission" or  
15 "official designated to supervise and conduct absentee  
16 voting" used elsewhere in this article means municipal  
17 recorder or other officer in the case of municipal elections.

18 (b) A person authorized and desiring to vote a mail-in  
19 absentee ballot in any primary, general or special election is  
20 to make application in writing in the proper form to the  
21 proper official as follows:

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

37 (2) For any person authorized to vote an absentee ballot  
38 under the provisions of 42 U.S.C. §1973, *et seq.*, the  
39 Uniformed and Overseas Citizens Absentee Voting Act of  
40 1986, the completed application may be on the federal

41 postcard application for absentee ballot form issued under  
42 authority of that act, submitted by mail or electronically; or

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

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

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

18 (1) the voter's name and signature,

19           (2) residence address unless the applicant is a participant  
20           in the Address Confidentiality Program as established by  
21           section one hundred ten, article twenty-eight-a, chapter forty-  
22           eight of this code, and

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

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

30           (⌘) (d) Upon receipt of a properly completed application,  
31           the official designated to supervise and conduct absentee  
32           voting shall enter the name on the special absentee voting  
33           list, which is to be maintained in a secure and permanent  
34           record. The person's name will remain active on the list until:

35           (1) The person requests in writing that his or her name be  
36           removed; (2) the person removes his or her residence from  
37           the county, is purged from the voter registration books or

38 otherwise becomes ineligible to vote; (3) a ballot mailed to  
39 the address provided on the application is returned  
40 undeliverable by the United States postal service; ~~or~~ (4) the  
41 death of the person; or (5) in the case of a Address  
42 Confidentiality Program participant, withdrawal or removal  
43 from that program.

44 (d) (e) The official designated to supervise and conduct  
45 absentee voting shall mail an ~~application for an~~ absentee  
46 ballot by mail to each person active on the special absentee  
47 voting list due to disability not later than forty-six days  
48 before each election. The Address Confidentiality Program  
49 manager shall, in coordination with the designated county  
50 contact, mail to each person on the special absentee voting  
51 list due to participation in the Address Confidentiality  
52 Program an absentee ballot by mail not later than forty-six  
53 days before each election.