

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 76

(By Senator Facemire)

[Originating in the Committee on the Judiciary;
reported February 21, 2013.]

A BILL to amend and reenact §3-1-3a of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-3-1 of said code, all relating to voting for President and Vice President; permitting voters who have moved from the state to vote for President and Vice President in certain circumstances; requiring voters who move from the state and vote for President and Vice President in the state to be removed from the voter rolls thereafter; allowing persons who move to the state to vote for President and Vice President in certain circumstances; and permitting voters to obtain an absentee ballot for President and Vice President only in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §3-1-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-3-1 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-3a. Persons entitled to vote under federal Voting Rights

Act Amendments of 1970; authority of Secretary of State.

1 ~~(1)~~ (a) Any citizen of the United States who is a resident
2 of the state and who applies, not later than ~~thirty~~ twenty-one
3 days immediately prior to any presidential election for
4 registration or qualification to vote for the choice of electors
5 for President and Vice President, or for President and Vice
6 President, in such election, and who is otherwise qualified to
7 vote may register to vote, and vote, for the choice of electors
8 for President and Vice President, or for President and Vice
9 President, in such election, as provided by the federal Voting
10 Rights Act Amendments of 1970.

11 ~~(2)~~ (b) Any citizen of the United States who has moved
12 his or her residence from this state within thirty days next
13 preceding any election for President and Vice President, and
14 who was otherwise qualified to vote in this state as of the
15 date of his or her change of residence and who has not
16 satisfied the registration requirements of the state to which he
17 or she has moved, may ~~vote for the choice of electors for~~
18 ~~president and vice-president, or for president and vice-~~
19 ~~president, in such election, as provided by the federal Voting~~
20 ~~Rights Act Amendments of 1970:~~ cast a vote for the offices
21 of President and Vice President: (1) in person at the primary
22 early-voting location serving the county from which the voter
23 has moved; or (2) by absentee ballot. The request for the
24 ballot must be on a form prescribed by the Secretary of State
25 and, in the case of an absentee ballot, must be received by the
26 clerk of the county commission of the last county of
27 residence no later than the sixth day prior to the general
28 election. The voter's request for a ballot due to a move out

29 of state after the thirtieth day preceding the election shall
30 serve as authorization for removal from the West Virginia
31 voter rolls as provided in the National Voter Registration Act
32 of 1993, 42 U. S. C. §1973gg-6.

33 (c) Any citizen of the United States who is otherwise
34 qualified to vote in any election for President and Vice
35 President shall not be denied the right to vote for those
36 offices due to the failure to comply with any durational
37 residency requirement of the state or political subdivision.

38 (d) No citizen of the United States may be denied the
39 right to vote for electors for President and Vice President, or
40 for President and Vice President, in any election because of
41 failure of the citizen to be physically present in the state or
42 political subdivision at the time of the election, if the citizen
43 has complied with the requirements prescribed by the laws of
44 this state for the casting of an absentee ballot in the election.

45 ~~(3)~~ (e) Any citizen of the United States who has attained
46 the age of eighteen years but who has not attained the age of
47 twenty-one years by the time of the next ensuing primary or

48 election in which he may vote under section 302 of the
49 federal Voting Rights Act Amendments of 1970, as
50 interpreted and limited by the United States Supreme Court,
51 and who is otherwise qualified to vote, may vote in any
52 primary or election for those candidates for whom he or she
53 is entitled to vote under said section 302 of the federal Voting
54 Rights Act Amendments of 1970, as interpreted and limited
55 by the United States Supreme Court.

56 (4) (f) The Secretary of State shall have authority to
57 make, amend and rescind such rules, regulations, orders and
58 instructions, and prescribe such registration and voting
59 procedures, forms (including registration, ballot and ballot
60 label forms), lists and records, as may be necessary in order
61 for this state to fully implement, and comply with, ~~the~~ federal
62 voting laws ~~Voting Rights Act Amendments of 1970~~, as
63 interpreted and limited by the United States Supreme Court,
64 and it shall be the duty of all public officers, election officers,
65 boards and commissioners having any authority or
66 responsibility in connection with any election to comply with

67 all such rules, regulations, orders and instructions, and use,
68 make, follow or comply with all such registration and voting
69 procedures, forms (including registration, ballot and ballot
70 label forms), lists and records as have been prescribed by the
71 Secretary of State under the foregoing authority vested in that
72 office.

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;

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 three, article twenty-eight-a, chapter forty-eight of
50 this 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.

68 (d) Registered voters and other qualified voters in the
69 county may vote a special absentee ballot for President and
70 Vice President only if they qualify for such a ballot under the
71 provisions of section three-a, article one of this chapter.

(NOTE: The purpose of this bill is to conform the Code of West Virginia to federal requirements for presidential office ballots for registered voters moving from the state.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language.)