

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 94

**INTERIM
BILL**

**FISCAL
NOTE**

BY SENATORS TRUMP, WELD, AZINGER, BALDWIN,
BEACH, CLEMENTS, CLINE, HARDESTY, JEFFRIES,
LINDSAY, MAYNARD, PITSENBARGER, ROMANO, RUCKER,
SMITH, TAKUBO, WOELFEL, HAMILTON, AND STOLLINGS

[Introduced January 8, 2020; referred

to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-3-1, §3-3-2, §3-3-2b, §3-3-4, §3-3-5, and §3-3-6 of the Code of
 2 West Virginia, 1931, as amended; and to amend said code by adding thereto a new
 3 section, designated §3-3-1a, all relating generally to absentee voting; clarifying that voters
 4 with disabilities prevented from voting in person may vote by mail-in absentee ballot;
 5 providing that voters with physical disabilities may vote by electronic absentee ballot;
 6 clarifying that certain overseas military members and citizens may vote by electronic
 7 absentee ballot; defining terms; providing that a voter with a physical disability may
 8 electronically submit an application to vote absentee; providing that the information
 9 collected in the application to be placed on the special absentee voting list include whether
 10 a voter with a physical disability requests an electronic absentee ballot; clarifying that a
 11 voter with a physical disability can receive assistance to vote in certain circumstances;
 12 establishing requirements and deadlines for transmission, submission, and acceptance of
 13 electronic absentee ballots; and updating obsolete terms.

Be it enacted by the Legislature of West Virginia:

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 may vote an absentee ballot
 2 during the period of early voting in person.

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

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

7 (A) Disability, illness, injury, or other medical reason;

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

9 (C) Incarceration or home detention: *Provided*, That the underlying conviction is not for a
 10 crime which is a felony or a violation of §3-9-12, §3-9-13, or §3-9-16 of this code involving bribery

11 in an election;

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

14 (A) Personal or business travel;

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

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

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

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

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

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

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

33 (6) Any voter who is participating in the Address Confidentiality Program as established
34 by §48-28A-103 of this code.

35 (c) Registered voters and other qualified voters in the county are authorized to vote an
36 electronic absentee ballot in the following circumstances:

37 (1) The voter has a physical disability, as defined in §3-3-1a of this code; or
38 (2) The voter is absent from the county throughout the period and available hours for
39 voting in person and is an absent uniformed services voter or overseas voter, as defined by 42
40 U.S.C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986,
41 including members of the uniformed services on active duty, members of the merchant marine,
42 spouses and dependents of those members on active duty, and persons who reside outside the
43 United States and are qualified to vote in the last place in which the person was domiciled before
44 leaving the United States.

45 ~~(e)~~ (d) Registered voters and other qualified voters in the county may, in the following
46 circumstances, vote an emergency absentee ballot, subject to the availability of the services as
47 provided in this article:

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

51 (2) Any voter who resides in a nursing home within the county of residence and would be
52 otherwise unable to vote in person, providing the county commission has authorized the services
53 if the voter has resided in the nursing home for a period of less than 30 days;

54 (3) Any voter who becomes confined, on or after the seventh day preceding an election,
55 to a specific location within the county because of illness, injury, physical disability, immobility due
56 to advanced age, or another medical reason: *Provided*, That the county clerk may require a written
57 confirmation by a licensed physician, physician's assistant, or advanced practice registered nurse
58 that the voter meets the criteria of this subdivision before permitting such voter to vote an
59 emergency absentee ballot; and

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

§3-3-1a. Definitions.

1 For the purposes of this article, the following terms have the following definitions:

2 (1) "Disability" means a physical or mental impairment that substantially limits one or more
3 major life activities.

4 (2) "Physical disability" means a physical impairment that substantially limits one or more
5 major life activities and renders a person unable to vote in person, at the polls, without assistance.

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

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

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

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

12 (b) A person authorized and desiring to vote a mail-in absentee ballot or an electronic
13 absentee ballot in any primary, general, or special election is to make application ~~in writing~~ in the
14 proper form to the proper official as follows:

15 (1) The completed application is to be on a form prescribed by the Secretary of State and
16 is to contain the name, date of birth, and political affiliation of the voter, residence address within
17 the county, the address to which the ballot is to be mailed, the authorized reason, if any, for which
18 the absentee ballot is requested and, if the reason is illness or hospitalization, the name and
19 telephone number of the attending physician, the signature of the voter to a declaration made

20 under the penalties for false swearing as provided in §3-3-9 of this code that the statements and
 21 declarations contained in the application are true, any additional information which the voter is
 22 required to supply, any affidavit which may be required, and an indication as to whether it is an
 23 application for voting in person, ~~or~~ by mail, or electronically; ~~or~~

24 (2) For any person authorized to vote an absentee ballot under the provisions of 42 U.S.C.
 25 §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the completed
 26 application may be on the federal postcard application for absentee ballot form issued under
 27 authority of that act, submitted by mail or electronically; and

28 (3) For any voter with a physical disability, the completed application may be submitted by
 29 mail or electronically, in a form prescribed by the Secretary of State;

30 ~~(3)~~ (4) For any person unable to obtain the official form for absentee balloting at a
 31 reasonable time before the deadline ~~for~~ by which an application for an absentee ballot ~~by mail~~ is
 32 to be received by the proper official, the completed application may be in a form set out by the
 33 voter, ~~provided~~ containing all information that would otherwise be required on the appropriate
 34 application ~~to meet the provisions of this article is set forth and the application is signed by~~ and
 35 the signature of the voter requesting the ballot; or

36 ~~(4)~~ (5) A For any person authorized to vote an absentee ballot who is participating in the
 37 Address Confidentiality Program as established by §48-28A-103 of this code, ~~may apply~~
 38 application may be made to the program manager within the office of the Secretary of State to
 39 vote a mail-in absentee ballot. The program manager will notify the designated county contact to
 40 coordinate the application and 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 to vote and who is ~~permanently~~
 2 ~~and totally~~ physically disabled and ~~who is~~ unable to vote in person at the polls in an election may
 3 apply to the official designated to supervise and conduct absentee voting for placement on the
 4 special absentee voting list.

5 (b) Any person who is registered and otherwise qualified to vote and who is participating
6 in the Address Confidentiality Program, as established by §48-28A-103 of this code, may apply
7 to the program manager within the office of the Secretary of State for placement on the special
8 absentee voting list. The program manager will notify the designated county contact to coordinate
9 the provision of an absentee ballot to the program participant.

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

12 (1) The voter's name and signature,

13 (2) The voter's residence address, unless the applicant is a participant in the Address
14 Confidentiality Program as established by §48-28A-103 of this code; ~~and~~

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

18 (B) A statement that the voter is a program participant in the Address Confidentiality
19 Program; and

20 (4) If the voter has a physical disability, whether the voter requests a mail-in absentee
21 ballot or an electronic absentee ballot.

22 (d) Upon receipt of a properly completed application, the official designated to supervise
23 and conduct absentee voting shall enter the name on the special absentee voting list which is to
24 be maintained in a secure and permanent record. The person's name will remain active on the
25 list until: (1) The person requests in writing that his or her name be removed; (2) the person
26 ~~removes his or her residence from~~ is no longer a resident of the county, is purged from the voter
27 registration books, or otherwise becomes ineligible to vote; (3) a ballot mailed to the address
28 provided on the application is returned undeliverable by the United States Postal Service; (4) ~~the~~
29 ~~death of the person~~ the person's death; or (5) in the case of a an Address Confidentiality Program
30 participant, the person's withdrawal or removal from that program.

31 (e) The official designated to supervise and conduct absentee voting shall, not later than
 32 46 days before each election:

33 (1) ~~Mail Deliver~~ an absentee ballot by mail to each ~~person~~ voter active on the special
 34 absentee voting list due to a physical disability who requested a mail-in absentee ballot on the
 35 application; not later than forty-six days before each election and

36 (2) Electronically transmit an absentee ballot to each voter on the special absentee voting
 37 list due to a physical disability who requested an electronic absentee ballot on the application.

38 (f) The Address Confidentiality Program manager shall, in coordination with the
 39 designated county contact, mail to each person on the special absentee voting list due to
 40 participation in the Address Confidentiality Program an absentee ballot by mail not later than 46
 41 days before each election.

**§3-3-4. Assistance to voter in voting an ~~absent voter's~~ absentee ballot by personal
 appearance; penalties.**

1 (a) Any registered voter who requires assistance to vote by reason of blindness, physical
 2 disability, advanced age, or inability to read and write may be given assistance by a person of the
 3 voter's choice: *Provided*, That the assistance may not be given by the voter's present or former
 4 employer or agent of that employer, by the officer or agent of a labor union of which the voter is
 5 a past or present member, or by a candidate on the ballot.

6 (b) Any voter who requests assistance in voting an ~~absent voter's~~ absentee ballot but who
 7 is determined by the official designated to supervise and conduct absentee voting not to be
 8 qualified for assistance under the provisions of this section and §3-1-34 of this code may vote a
 9 ~~challenged absent voter's~~ provisional absentee ballot with the assistance of any person
 10 authorized to render assistance pursuant to this section. The official designated to supervise and
 11 conduct absentee voting shall, in this case, challenge the ~~absent voter's~~ absentee ballot on the
 12 basis of his or her determination that the voter is not qualified for assistance.

13 (c) Any one or more of the election commissioners or poll clerks in the precinct to which

14 an ~~absent voter's~~ absentee ballot has been sent may challenge the ballot on the ground that the
15 voter received assistance in voting it when in his or their opinion: (1) The person who received
16 the assistance in voting the ~~absent voter's~~ absentee ballot did not require assistance; or (2) the
17 person who provided the assistance in voting did not make an affidavit as required by this section.
18 The election commissioner or poll clerk or commissioners or poll clerks making a challenge shall
19 enter the challenge and reason for the challenge on the form and in the manner prescribed or
20 authorized by this article.

21 (d) Before entering the voting booth or compartment, the person who intends to provide a
22 voter assistance in voting by personal appearance shall make an affidavit, the form of which is to
23 be prescribed by the Secretary of State, that he or she will not in any manner request or seek to
24 persuade or induce the voter to vote any particular ticket or for any particular candidate or for or
25 against any ~~public~~ question; ~~and~~ that he or she will not keep or make any memorandum or entry
26 of anything occurring within the voting booth or compartment; and that he or she will not, directly
27 or indirectly, reveal to any person the name of any candidate voted for by the voter, ~~or~~ which ticket
28 ~~he or she had~~ the voter voted, ~~or~~ how ~~he or she had~~ the voter voted on any ~~public~~ question, or
29 anything occurring within the voting booth, ~~or~~ compartment, or voting machine booth, except when
30 required, pursuant to law, ~~to give testimony as to the matter~~ in a judicial proceeding.

31 (e) In accordance with instructions issued by the Secretary of State, the official designated
32 to supervise and conduct absentee voting shall ~~provide~~ complete a form entitled "List of Assisted
33 Voters", ~~prescribed by the Secretary of State~~ which list is to be divided into two parts, as follows:

34 (1) Part A is to be entitled "Unchallenged Assisted Voters"; and Part B is to be entitled
35 "Challenged Assisted Voters".

36 (2) Under Part A, the official designated to supervise and conduct absentee voting shall
37 enter the name of each voter receiving unchallenged assistance in voting an ~~absent voter's~~
38 absentee ballot, the address of the voter assisted, the nature of the disability which qualified the
39 voter for assistance in voting an ~~absent voter's~~ absentee ballot, the name of the person providing

40 the voter with assistance in voting an ~~absent voter's~~ absentee ballot, the fact that the person
41 rendering the assistance in voting made and subscribed the ~~oath~~ affidavit required by this section,
42 and the signature of the official designated to supervise and conduct absentee voting, certifying
43 to the fact that he or she had determined that the voter who received assistance in voting an
44 ~~absent voter's~~ absentee ballot was qualified to receive the assistance under the provisions of this
45 section.

46 (3) Under Part B, the official designated to supervise and conduct absentee voting shall
47 enter the name of each voter receiving challenged assistance in voting, the address of the voter
48 receiving challenged assistance, the reason for the challenge, and the name of the person
49 providing the challenged voter with assistance in voting. At the close of the period provided for
50 voting an ~~absent voter's~~ absentee ballot by personal appearance, the official designated to
51 supervise and conduct absentee voting shall make and subscribe to an oath on the list that the
52 list is correct in all particulars.

53 (4) If no voter has been assisted in voting an absent voter's ballot as provided in this
54 section, the official designated to supervise and conduct absentee voting shall make and
55 subscribe to an oath of that fact on the list.

56 (5) The "List of Assisted Voters" is to be available for public inspection in the office of the
57 official designated to supervise and conduct absentee voting during regular business hours
58 throughout the period provided for voting an absent voter's ballot by personal appearance and,
59 unless otherwise directed by the Secretary of State, the official shall transmit the list, together with
60 the affidavits, applications, and absent voters' ballots, to the precincts on election day.

61 (f) Following the election, the affidavits required by this section from persons providing
62 assistance in voting, together with the "List of Assisted Voters", are to be returned by the election
63 commissioners to the clerk of the county commission, along with the election supplies, records
64 and returns. ~~who~~ The clerk shall make the oaths and the "List of Assisted Voters" available for
65 public inspection and ~~who~~ shall preserve the oaths and list for 22 months or, if under order of the

66 court, until their destruction or other disposition is authorized or directed by the court.

67 (g) Any person making an affidavit required under the provisions of this section who
68 knowingly swears falsely in the affidavit or any person who counsels or advises, aids, or abets
69 another in the commission of false swearing under this section is guilty of a misdemeanor and,
70 upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for a period of not
71 more than one year, or both fined and confined.

72 (h) Any person who provides a voter assistance in voting an absent voter's ballot in the
73 office of the official designated to supervise and conduct absentee voting who is not qualified or
74 permitted by this section to provide assistance is guilty of a misdemeanor and, upon conviction
75 thereof, shall be fined not more than \$1,000 or confined in jail for a period of not more than one
76 year, or both fined and confined.

77 (i) Any official designated to supervise and conduct absentee voting, election
78 commissioner, or poll clerk who authorizes or allows a voter to receive or to have received
79 unchallenged assistance in voting an absent voter's ballot when the voter is known to the official
80 designated to supervise and conduct absentee voting or election commissioner or poll clerk not
81 to be or have been authorized by the provisions of this section to receive or to have received
82 assistance in voting is guilty of a misdemeanor and, upon conviction thereof, shall be fined not
83 more than \$1,000 or confined in jail for a period of not more than one year, or both fined and
84 confined.

85 ~~(j) The term "physical disability" as used in this section means blindness or a degree of~~
86 ~~blindness as will prevent the voter from seeing the names on the ballot or amputation of both~~
87 ~~hands or a disability of both hands that neither can be used to make cross marks on the absent~~
88 ~~voter's ballot~~

§3-3-5. Voting an absentee ballot by mail or electronically; penalties.

1 (a) Upon oral or written request, the official designated to supervise and conduct absentee
2 voting shall provide to any voter of the county, in person, by mail, or electronically, the appropriate

3 application for voting absentee ~~by mail~~ as provided in this article. The voter shall complete and
4 sign the application in his or her own handwriting or, if the voter is unable to complete the
5 application because of illiteracy or physical disability:

6 (1) The person assisting the voter and witnessing the mark of the voter shall sign his or
7 her name in the space provided; or

8 (2) The person, if eligible to vote by electronic absentee ballot due to physical disability,
9 may complete and verify the application by available electronic means prescribed by the
10 Secretary of State.

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

14 (1) For persons eligible to vote an absentee ballot under the provisions of §3-3-1(b)(3) of
15 this code, relating to absent uniformed services and overseas voters, not earlier than January 1
16 of an election year or 84 days preceding the election, whichever is earlier, and not later than the
17 sixth day preceding the election, which application is to, upon the voter's request, be accepted as
18 an application for the ballots for all elections in the calendar year; and

19 (2) For all other persons eligible to vote an absentee ballot by mail or electronically, not
20 earlier than January 1 of an election year or 84 days preceding the election, whichever is earlier,
21 and not later than the sixth day preceding the election.

22 (c) Upon acceptance of a completed application, the official designated to supervise and
23 conduct absentee voting shall determine whether the following requirements have been met:

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

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

27 (3) The applicant is authorized for the reasons given in the application to vote an absentee
28 ballot by mail or electronically;

29 (4) The address to which ~~the a~~ ballot is to be mailed is an address outside the county if
30 the voter is applying to vote by mail under the provisions of §3-3-1(b)(2)(A), ~~or~~ §3-3-1(b)(2)(B), ~~of~~
31 ~~this code; or~~ §3-3-1(b)(3), or §3-3-1(b)(4) of this code;

32 (5) The applicant is not making his or her first vote after having registered by postcard
33 registration or, if the applicant is making his or her first vote after having registered by postcard
34 registration, the applicant is ~~exempt from these requirements~~ subject to one of the exceptions
35 provided in §3-2-10 of this code; and

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

39 (d) (1) If the official designated to supervise and conduct absentee voting determines that
40 the required conditions have been met for voting an absentee ballot by mail, two representatives
41 that are registered to vote with different political party affiliations shall sign their names in the
42 places indicated on the back of the official ballot. If the official designated to supervise and conduct
43 absentee voting determines the required conditions have not been met or has evidence that any
44 of the information contained in the application is not true, the official shall give notice to the voter
45 that the voter's absentee ballot will be challenged as provided in this article and shall enter that
46 challenge.

47 (2) If the official designated to supervise and conduct electronic voting determines that a
48 voter is eligible to submit an electronic ballot because the voter is an absent uniformed services
49 voter or overseas voter or a person with a physical disability, the official designated to supervise
50 absentee voting shall cause the absentee ballot to be transmitted electronically in the manner
51 required for the electronic ballot marking tool or other electronic means.

52 (e)(1) Beginning on the 46th day prior to election day, within one day after the official
53 designated to supervise and conduct absentee voting has both the completed application and the
54 ballot, the official shall ~~mail~~ provide to the voter at the address given on the application, or by the

55 appropriate electronic delivery method, the following items as required and as prescribed by the

56 Secretary of State:

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

59 (B) For persons voting absentee ballot by mail, one envelope, unsealed, which may have
60 no marks except the designation "Absent Voter's Ballot Envelope No. 1" and printed instructions
61 to the voter;

62 (C) For persons voting absentee ballot by mail, one postage paid envelope, unsealed,
63 designated "Absent Voter's Ballot Envelope No. 2";

64 (D) Instructions for voting absentee by mail or electronically;

65 (E) For electronic systems or transmission, ~~a device for marking by electronically sensible~~
66 ~~pen or ink, as may be appropriate~~ an electronic means by which eligible voters with physical
67 disabilities may mark the absentee ballot without assistance, as prescribed by the Secretary of
68 State; and

69 (F) Notice that a list of write-in candidates is available upon request. ~~and~~

70 ~~(G) Any other supplies required for voting in the particular voting system~~

71 (2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42
72 U.S.C. §1973, *et seq.*, the official designated to supervise and conduct absentee voting shall
73 transmit the ballot to the voter via mail, or electronically, as requested by the voter. If the voter
74 does not designate a preference for transmittal, the clerk may select either method of transmittal
75 for the ballot. If the ballot is transmitted electronically pursuant to this subdivision, the official
76 designated to supervise and conduct absentee voting shall also transmit electronically:

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

78 (B) Instructions for voting absentee ~~utilizing a federally approved system for voting by mail~~
79 ~~or electronically~~;

80 (C) Notice that a list of write-in candidates is available upon request; and

81 (D) A statement of the voter affirming the voter's current name and address and whether
82 or not he or she received assistance in voting.

83 (f) The voter shall mark the ballot alone: *Provided*, That the voter may have assistance in
84 voting according to the provisions of §3-3-6 of this code.

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

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

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

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

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

91 (2) If the ballot was transmitted electronically as provided in ~~subdivision~~ subdivisions (1)
92 or (2), subsection (e) of this section, the voter ~~shall return the ballot in the same manner the ballot~~
93 ~~was received~~ shall return the ballot electronically, in the manner prescribed by the Secretary of
94 State, or the voter may return the ballot by United States mail, along with a signed privacy waiver
95 form.

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

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

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

104 (h) Absentee ballots received through the United States mail from persons eligible to vote
105 an absentee ballot under the provisions of §3-3-1(b)(3) of this code, relating to uniform services
106 and overseas voters, are to be accepted if the ballot is received by the official designated to

107 supervise and conduct absentee voting no later than the hour at which the board of canvassers
108 convenes to begin the canvass.

109 (i) Voted ballots submitted electronically ~~pursuant to subdivision (2), subsection (f) of this~~
110 ~~section~~ are to be accepted if the ballot is received by the official designated to supervise and
111 conduct absentee voting no later than the close of polls on election day: *Provided, That* for uniform
112 services and overseas voters, the Secretary of State's office shall enter into an agreement with
113 the Federal Voting Assistance Program of the United States Department of Defense to transmit
114 the ballots to the county clerks at a time when two individuals of opposite political parties are
115 available to process the received ballots. For persons casting absentee ballots electronically due
116 to physical disability, the county clerk shall designate two individuals of opposite political parties
117 to process the received ballots in the manner required by the particular electronic ballot marking
118 tool or other electronic means of returning the electronic absentee ballot.

119 (j) Ballots received after the proper time which cannot be accepted are to be placed
120 unopened in an envelope marked for the purpose and kept secure for 22 months following the
121 election, after which time they are to be destroyed without being opened.

122 (k) Absentee ballots which are hand delivered are to be accepted if they are received by
123 the official designated to supervise and conduct absentee voting no later than the day preceding
124 the election: *Provided, That* no person may hand deliver more than two absentee ballots in any
125 election and any person hand delivering an absentee ballot is required to certify that he or she
126 has not examined or altered the ballot. Any person who makes a false certification violates the
127 provisions of §3-9-1 *et seq.* of this code and is subject to those provisions.

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

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

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

132 (3) Enter the required information into the permanent record of persons applying for and

133 voting an absentee ballot in person; and

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

137 (m) Upon receipt of a ballot submitted electronically pursuant to subdivision (2), subsection
138 (f) of this section, the official designated to supervise and conduct absentee voting shall place the
139 ballot in an envelope marked "Absentee by Electronic Means" with the completed waiver when
140 appropriate: *Provided*, That no ballots are to be processed without the presence of two individuals
141 of opposite political parties.

142 (n) All ballots received electronically prior to the close of the polls on election day are to
143 be tabulated in the manner prescribed for tabulating absentee ballots submitted by mail to the
144 extent that those procedures are appropriate for the applicable voting system. The clerk of the
145 county commission shall keep a record of absentee ballots sent and received electronically.

§3-3-6. Assistance to voter in voting an absent voter's ballot by mail.

1 (a) No voter shall receive any assistance in voting an absent voter's ballot by mail unless
2 he or she shall make a declaration at the time he or she makes application for an absent voter's
3 ballot that because of blindness, physical disability, advanced age, or inability to read or write he
4 or she requires assistance in voting an absent voter's ballot.

5 (b) Upon receipt of an absent voter's ballot by mail, the voter who requires assistance in
6 voting such ballot and who has indicated he or she requires such assistance and the reasons
7 therefor on the application may select any eligible person to assist him or her in voting.

8 (c) The person providing assistance in voting an absent voter's ballot by mail shall make
9 an affidavit on a form as may be prescribed by the Secretary of State, that he or she will not in
10 any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for
11 any particular candidate or for or against any public question, and that he or she will not keep or
12 make any memorandum or entry of anything occurring within the voting booth or compartment,

13 and that he or she will not, directly or indirectly, reveal to any person the name of any candidate
14 voted for by the voter, ~~or~~ which ticket ~~he~~ the voter had voted, or how ~~he~~ the voter had voted on
15 any public question or anything occurring within the voting booth, ~~or~~ compartment, or voting
16 machine booth, except when required pursuant to law to give testimony as to such matter in a
17 judicial proceeding.

18 (d) The term “assistance in voting” as used in this section shall mean assistance in
19 physically marking the official absent voter’s ballot for a voter or reading or directing the voter’s
20 attention to any part of the official absent voter’s ballot.

NOTE: The purpose of this bill is to provide persons with physical disabilities the ability to vote by electronic absentee ballot.

This bill was recommended for introduction and passage during the 2020 Regular Session by the Joint Committee on the Judiciary.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.