

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 636

By Senators Oliverio and Queen

[Introduced February 5, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-1-41 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §3-9-19 of said code, all relating to expressly prohibiting the
 3 acceptance of illegal ballots cast in any election; and providing criminal penalties for
 4 intentionally and knowingly accepting an absentee ballot that does not comply with state
 5 requirements for absentee voting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-41. Challenged and provisional voter procedures; counting of provisional voters' ballots; ballots of election officials.

1 (a) No ballot cast in any manner except as expressly provided in this Chapter shall be
 2 counted in any election. It is the duty of the members of the receiving board, jointly or severally, to
 3 challenge the right of any person requesting a ballot to vote in any election:

4 (1) If the person's registration record is not available at the time of the election;

5 (2) If the signature written by the person in the poll book does not correspond with the
6 signature purported to be his or hers on the registration record;

7 (3) If the registration record of the person indicates any other legal disqualification;

8 (4) If the person fails to present a valid identifying document pursuant to section thirty-four
9 of this article; or

10 (5) If any other valid challenge exists ~~against the voter pursuant to section ten, article three~~
11 ~~of this chapter.~~

12 (b) Any person challenged shall nevertheless be permitted to vote in the election. He or
 13 she shall be furnished an official ballot not endorsed by the poll clerks. In lieu of the
 14 endorsements, the poll clerks shall complete and sign an appropriate form indicating the
 15 challenge, the reason thereof and the name or names of the challengers. The form shall be
 16 securely attached to the voter's ballot and deposited together with the ballot in a separate box or
 17 envelope marked "provisional ballots".

18 (c) At the time that an individual casts a provisional ballot, the poll clerk shall give the
19 individual written information stating that an individual who casts a provisional ballot will be able to
20 ascertain under the free access system established in this section whether the vote was counted
21 and, if the vote was not counted, the reason that the vote was not counted.

22 (d) Before an individual casts a provisional ballot, the poll clerk shall provide the individual
23 written instructions, supplied by the board of ballot commissioners, stating that if the voter is
24 casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election:
25 *Provided*, That if the voter is found to be in the incorrect precinct, then the poll worker shall attempt
26 to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter
27 the information if ascertainable. Under no circumstances shall any ballot cast by a voter in the
28 incorrect precinct be counted, except for poll workers working out of precinct or a voter living with a
29 disability whose polling location is not accessible as provided in this Chapter.

30 (e) Provisional ballots ~~may~~ shall not be counted by the election officials on election day.
31 The county commission shall, on its own motion, at the time of canvassing of the election returns,
32 sit in session to determine the validity of any challenges according to the provisions of this chapter.
33 If the county commission determines that the challenges are unfounded, each provisional ballot of
34 each challenged voter, if otherwise valid, shall be counted and tallied together with the regular
35 ballots cast in the election. The county commission, as the board of canvassers, shall protect the
36 privacy of each provisional ballot cast. The county commission shall disregard technical errors,
37 omissions or oversights if it can reasonably be ascertained that the challenged voter was entitled
38 to vote: *Provided*, That any ballot submitted that does not comply with the procedures set forth in
39 this chapter and the regulations concerning election procedures, including failure to follow the
40 requirements for correctly submitting a ballot in person at the correct precinct or as prescribed in
41 §3-3-1, et seq. of this code for absentee voting, shall not be deemed a technical error, omission or
42 oversight, which ballot shall be rejected without discretion. Any person who violates this section is
43 guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more

44 than \$10,000, imprisoned in a state correctional facility for not more than one year, or both fined
45 and imprisoned.

46 (f) Any person duly appointed as an Election Commissioner or clerk under the provisions of
47 section twenty-eight of this article who serves in that capacity in a precinct other than the precinct
48 in which the person is legally entitled to vote may cast a provisional ballot in the precinct in which
49 the person is serving as a commissioner or clerk. The ballot is not invalid for the sole reason of
50 having been cast in a precinct other than the precinct in which the person is legally entitled to vote.
51 The county commission shall record the provisional ballot on the voter's permanent registration
52 record: *Provided*, That the county commission may count only the votes for the offices that the
53 voter was legally authorized to vote for in his or her own precinct.

54 (g) The Secretary of State shall establish a free access system, which may include a toll-
55 free telephone number or an Internet website, that may be accessed by any individual who casts a
56 provisional ballot to discover whether his or her vote was counted and, if not, the reason that the
57 vote was not counted.

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-19. Violations concerning absent voters' ballots; penalties.

1 (a) Any person who, with the intent to commit fraud, obtains, removes, or disseminates an
2 absent voter's ballot, intimidates an absent voter, or completes or alters an absent voter's ballot, is
3 guilty of a felony and, upon conviction thereof, shall be fined not less than \$10,000 nor more than
4 \$20,000, imprisoned in a state correctional facility for not less than one nor more than five years, or
5 both fined and imprisoned.

6 (b) Notwithstanding subsection (a) of this section, any person who, having procured an
7 absent voter's official ballot or ballots, shall willfully neglect or refuse to return the same as
8 provided in article three of this chapter, or who shall otherwise willfully violate any of the provisions
9 of said article three of this chapter, is guilty of a misdemeanor and, on conviction thereof, shall be
10 fined not more than \$250, or confined in jail for not more than three months. If the clerk of the

11 county commission of any county, or any member of the board of ballot commissioners, or any
12 member of the board of canvassers refuses or neglects to perform any of the duties required of
13 him or her by any of the provisions of articles three, five and six of this chapter relating to voting by
14 absentees or discloses to any other person or persons how any absent voter voted, he or she
15 shall, in each instance, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not
16 more than \$500, or confined in jail for not more than six months.

17 (c) Any person who knowingly and intentionally counts and includes in the official returns
18 an absentee ballot that does not comply with the provisions of this chapter concerning absentee
19 voting requirements including absentee ballots submitted after the statutory deadline or those that
20 do not contain the signature of the absentee voter is guilty of a felony and, upon conviction thereof,
21 shall be fined not less than \$10,000 nor more than \$20,000, imprisoned in a state correctional
22 facility for not less than one year nor more than five years, or both fined and imprisoned.

NOTE: The purpose of this bill is to expressly prohibit the acceptance of illegal ballots cast in any election and to provide criminal penalties for intentionally and knowingly accepting an absentee ballot that does not comply with state requirements for absentee voting.

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