

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 2362**

BY DELEGATES MILLER, SHOTT, CAMPBELL, LOVEJOY,  
CANESTRARO, MAYNARD, HORNBuckle, SUMMERS AND  
ROBINSON

[Introduced January 14, 2019; Referred  
to the Committee on the Judiciary.]



1 A BILL to amend and reenact §3-3-5c of the Code of West Virginia, 1931, as amended, relating  
2 to procedures for voting an emergency absentee ballot by qualified voters; and providing  
3 a mechanism to allow a qualified voter who is confined to a specific location within the  
4 county other than a hospital or other duly licensed health care facility or a nursing home  
5 and is prevented from travelling to a polling place and voting in person because of illness,  
6 injury or other medical reason, or a physical disability or immobility due to extreme  
7 advanced age.

*Be it enacted by the Legislature of West Virginia:*

*PREAMBLE: The Act shall be known as the “Ardala Miller Memorial Act.”*

**ARTICLE 3. VOTING BY ABSENTEES.**

**§3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.**

1 (a) (1) Notwithstanding any other provision of this chapter, a person qualified to vote an  
2 emergency absentee ballot, as provided in §3-3-1(c) of this code may vote an emergency  
3 absentee ballot under the procedures established in this section.

4 (2) The county commission may adopt a policy extending the emergency absentee voting  
5 procedures to:

6 ~~(4)~~ (A) Hospitals or other duly licensed health care facilities within an adjacent county or  
7 within 35 five miles of the county seat; ~~or~~

8 ~~(2)~~ (B) Nursing homes within the county; ~~Provided, That~~ or

9 (C) Any qualified voter who is confined to a specific location within the county on or after  
10 the seventh day preceding an election and prevented from travelling to a polling place and voting  
11 in person because of:

12 (i) Illness, injury or other medical reason; or

13 (ii) Physical disability; or

14 (iii) Immobility due to extreme advanced age.

15           (3) The policy ~~is to~~ adopted under this subsection shall be adopted by the county  
16 commission at least 90 days prior to the election that will be affected. ~~and~~ A copy of the policy is  
17 ~~to~~ shall be filed with the Secretary of State.

18           (b) On or before the 56th day preceding the date on which any election is to be held the  
19 official designated to supervise and conduct absentee voting shall notify the county commission  
20 of the number of sets of emergency absentee ballot commissioners which he or she determines  
21 necessary to perform the duties and functions pursuant to this section.

22           (c) A set of emergency absentee ballot commissioners at-large shall consist of two  
23 persons with different political party affiliations appointed by the county commission in accordance  
24 with the procedure prescribed for the appointment of election commissioners under the provisions  
25 of §3-1-1 *et seq.* of this code. Emergency absentee ballot commissioners have the same  
26 qualifications and rights and take the same oath required under the provisions of this chapter for  
27 commissioners of elections. Emergency absentee ballot commissioners are to be compensated  
28 for services and expenses in the same manner as commissioners of election or poll clerks  
29 obtaining and delivering election supplies under the provisions of §3-1-44 of this code.

30           (d) Upon request of the voter or a member of the voter's immediate family or, when the  
31 county commission has adopted a policy to provide emergency absentee voting services to  
32 nursing home residents within the county, upon request of a staff member of the nursing home,  
33 the official designated to supervise and conduct absentee voting, upon receiving a proper request  
34 for voting an emergency absentee ballot no earlier than the seventh day next preceding the  
35 election and no later than noon of election day shall supply to the emergency absentee ballot  
36 commissioners the application for voting an emergency absentee ballot and the balloting  
37 materials. The emergency absentee ballot application is to be prescribed by the Secretary of State  
38 and is to include the name, residence address and political party affiliation of the voter, the date,  
39 location and reason for confinement in the case of an emergency, and the name of the attending  
40 physician.

41           (e) The application for an emergency absentee ballot is to be signed by the person  
42 applying. If the person applying for an emergency absentee ballot is unable to sign his or her  
43 application because of illiteracy or physical disability, he or she is to make his or her mark on the  
44 signature line provided for an illiterate or disabled applicant, the mark is to be witnessed. The  
45 person assisting the voter and witnessing the mark of the voter shall sign his or her name in the  
46 space provided.

47           (f) A declaration is to be completed and signed by each of the emergency absentee ballot  
48 commissioners, stating their names, the date on which they appeared at the place of confinement  
49 of the person applying for an emergency absentee ballot and the particulars of the confinement.

50           (g) At least one of the emergency absentee ballot commissioners receiving the balloting  
51 materials shall sign a receipt which is to be attached to the application form. Each of the  
52 emergency absentee ballot commissioners shall deliver the materials to the absent voter, await  
53 his or her completion of the application and ballot and return the application and the ballot to the  
54 official designated to supervise and conduct absentee voting. Upon delivering the application and  
55 the voted ballot to the official, the emergency absentee ballot commissioners shall sign an oath  
56 that no person other than the absent voter voted the ballot. The application and the voted ballot  
57 are to be returned to the official designated to supervise and conduct absentee voting prior to the  
58 close of the polls on election day. Any ballots received by the official after the time that delivery  
59 may reasonably be made but before the closing of the polls are to be delivered to the canvassing  
60 board along with the absentee ballots challenged in accordance with the provisions of §3-3-10 of  
61 this code.

62           (h) Upon receiving the application and emergency absentee ballot, the official designated  
63 to supervise and conduct absentee voting shall ascertain whether the application is complete,  
64 whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the  
65 voter is properly registered to vote with the office of the clerk of the county commission. If the  
66 voter is found to be properly registered in the precinct shown on the application, the ballot is to be

67 delivered to the precinct election commissioner pursuant to §3-3-7 of this code. If the voter is  
68 found not to be registered or is otherwise ineligible to vote an emergency ballot, the ballot is to be  
69 challenged for the appropriate reason provided for in §3-3-10 of this code.

70 (i) If either or both of the emergency absentee ballot commissioners refuse to sign any  
71 application for voting an emergency absentee ballot, the voter may vote as an emergency  
72 absentee and the ballot will be challenged in accordance with the provisions of §3-3-10 of this  
73 code, in addition to those absentee ballots subject to challenge as provided in that section.

74 (j) Any voter who receives assistance in voting an emergency absentee ballot shall comply  
75 with the provisions of §3-3-6 of this code. Any other provisions of this chapter relating to absentee  
76 ballots not altered by the provisions of this section are to govern the treatment of emergency  
77 absentee ballots.

NOTE: The purpose of this bill is to provide a mechanism to allow a qualified voter to vote by absentee ballot if:

(1) The person is confined to a specific location within the county (other than a hospital or other duly licensed health care facility or a nursing home); and

(2) Is prevented from travelling to a polling place and voting in person because of illness, injury or other medical reason, or a physical disability or immobility due to extreme advanced age.

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