

Election Statute Navigator: West Virginia

The Election Law Program prepared this Election Law Navigator to highlight state election statutes particularly relevant to the 2020 cycle. The Election Law Navigator is updated as of October 19, 2020. Please contact elect@wm.edu with questions or suggestions. To access COVID-specific legal information impacting this state's election process, please use this link: <https://ebenchmark.org/west-virginia/covid/#tracker>.

Voter Registration

- Voters (other than above) register prior to Election Day
 - **3-2-6(a)**: Voter registration before an election closes on the twenty-first day before the election or on the first day thereafter which is not a Saturday, Sunday or legal holiday
 - **3-2-6a**: Extended time for certain persons to register in person
- Online registration available
 - [See official West Virginia online registration website](#)
- Registration via mail available **3-2-6**
- In-Person registration available **3-2-7**
- Automatic Voter Registration
 - Anticipated 2019. [See HB 4013](#)
- Preregistration allowed **3-2-2(a)**
 - At least seventeen years of age and who will be eighteen years of age by the time of the next ensuing general election may also be permitted to register, and shall not be otherwise legally disqualified: Provided, That a registered voter who has not reached eighteen years of age may vote both partisan and nonpartisan ballots in a federal, state, county, municipal or special primary election if he or she will be eighteen years of age by the time of the corresponding general election.
- Residency requirement
 - **3-2-2(a)**: Citizenship
 - **3-2-5(c)(3)**: Address
 - **3-2-5(c)(3)(B)**: Homeless person having no fixed residence
- Prior conviction eligibility **3-2-2(b)**
- Voters judged mentally incompetent cannot vote **3-2-2(b)**
- Voter list maintenance guidelines **3-2-4a**
- Other:



- **3-2-1(b)**: No voter so registered shall be required to register again for any election while continuing to reside within the same county, unless the voter's registration is canceled as provided in this article.

State Absentee, Early, and Mail Voting

- Early voting allowed **3-3-1(a)**
- In-Person early voting **3-3-2a, 3-3-3**
- Listed excuses to vote absentee **3-3-1**
- Online absentee ballot application available **3-3-1(c), 3-3-5**
- Absentee ballot application is verified **3-3-5**
- Permanent absentee voting options **3-3-2b**
- Absentee ballot verification details
 - **3-3-5**: Procedure
 - **3-3-10**: Challenging
- Someone other than the voter can return an absentee or mail ballot on behalf of the voter
 - **3-3-5(k)**: Absentee ballots which are hand delivered are to be accepted if they are received by the official designated to supervise and conduct absentee voting no later than the day preceding the election: Provided, That no person may hand deliver more than two absentee ballots in any election and any person hand delivering an absentee ballot is required to certify that he or she has not examined or altered the ballot.
- Deadline by which election official must receive absentee/mailed ballots
 - **3-3-5(g)(1)**: The ballot is received by the official designated to supervise and conduct absentee voting no later than the day after the election
- State accepts postmarked ballots that arrive after election day
 - **3-3-5(g)(2)**: Absentee ballots returned by United States mail or other express shipping service are to be accepted if the ballot bears a postmark of the United States Postal Service dated no later than election day and the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass
- State is required to provide secrecy sleeve for absentee/mail ballot **3-3-12(c)**
- Absentee/Mail ballot processing and counting procedures
 - **3-3-5(m)**: No ballots are to be processed without the presence of two individuals of opposite political parties



- **3-3-5(n):** All ballots received electronically prior to the close of the polls on election day are to be tabulated in the manner prescribed for tabulating absentee ballots submitted by mail to the extent that those procedures are appropriate for the applicable voting system. The clerk of the county commission shall keep a record of absentee ballots sent and received electronically
- **3-3-8:** Disposition and counting
- **3-3-11:** Preparation, number and handling
- Spoiling/Replacement/Correction ballot regulations
 - **3-1-20(b):** The commissioners of election shall post one instruction card in each voting booth giving instructions to the voters on how to prepare the ballots for deposit in the ballot boxes and how to obtain a new ballot in place of one accidentally spoiled
 - **3-1-34(c):** If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot “spoiled” and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot.
 - **3-1-36:** Report on disposition of ballots spoiled or not used
 - **3-1-49:** Voting system standards; following HAVA
 - **3-4A-19(g):** Where applicable, any voter who spoils, defaces or mutilates the ballot delivered to him or her, on returning the ballot to the poll clerks, shall receive another in its place.
- Other:
 - **3-3-1(d):** Emergency absentee ballot availability
 - **3-3-4:** Assistance to voter in voting an absent voter’s ballot by personal appearance
 - **3-3-5:** Procedures for voting an emergency absentee ballot
 - **3-3-6:** Assistance to voter in voting an absent voter’s ballot by mail
 - **3-3-9:** Voting in person after having received and after having voted an absent voter’s ballot
 - **3-3-10:** Challenging of absent voter’s ballots



- **3-3-12(b)**: The Secretary of State may establish special procedures to allow absentee voting for those categories of registered voters who, because of special circumstances, would otherwise be unable to vote in the election
- **3-3A**: Vote by Mail Pilot Program

In-Person Voter ID

- ID requirements **3-1-34**
- Photo ID not required **3-1-34(2)**
- Exceptions to Voter ID Requirements
 - **3-1-34(a)(6)**: A voter who votes in person at a precinct polling place that is located in a building which is part of a state licensed care facility where the voter is a resident is not required to provide proof of identification as a condition before voting in an election.
- Options for voters without ID
 - **3-1-34(a)(3)**: In lieu of providing a valid identifying document, as required by this section, a registered voter may be accompanied at the polling place by an adult known to the registered voter for at least six months. That adult may sign an affidavit on a form provided to clerks and poll workers by the Secretary of State, which states under oath or affirmation that the adult has known the registered voter for at least six months, and that in fact the registered voter is the same person who is present for the purpose of voting. For the affidavit to be considered valid, the adult shall present a valid identifying document with his or her name, address, and photograph.
 - **3-1-34(a)(4)**: A poll worker may allow a voter, whom the poll worker has known for at least six months, to vote without presenting a valid identifying document.
 - **3-1-34(a)(5)**: If the person desiring to vote is unable to furnish a valid identifying document, or if the poll clerk determines that the proof of identification presented by the voter does not qualify as a valid identifying document, the person desiring to vote shall be permitted to cast a provisional ballot after executing an affidavit affirming his or her identity pursuant to paragraph (B) of this subdivision.

Provisional Voting

- Provisional ballot availability
 - **3-1-34(a)(5)**: If the person desiring to vote is unable to furnish a valid identifying document, or if the poll clerk determines that the proof of identification presented



by the voter does not qualify as a valid identifying document, the person desiring to vote shall be permitted to cast a provisional ballot after executing an affidavit affirming his or her identity pursuant to paragraph (B) of this subdivision.

- **3-1-34(b):** A handicapped person who has not made a request for a transfer of registration at least thirty days prior to the date of the election may vote a provisional ballot at a handicap accessible polling place in the county of his or her registration. If during the canvass the county commission determines that the person had been registered in a precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall be counted
 - **3-1-34(e)(3):** A voter who requests assistance in voting but who is believed not to be qualified for assistance under the provisions of this section shall nevertheless be permitted to vote a provisional ballot with the assistance of any person herein authorized to render assistance.
 - **3-2-1(c):** A person who is not eligible or not duly registered to vote shall not be permitted to vote at any election in any subdivision of the state, except that such a voter may cast a “provisional” or “challenged” ballot as provided in this chapter if the voter’s eligibility or registration is in question, and such “provisional” or “challenged” ballot may be counted only if a positive determination of the voter’s eligibility and proper registration can be ascertained.
 - **3-2-10(h):** An individual who desires to vote in person or by mail, but who does not meet the requirements of subsection (g) of this section, may cast a provisional ballot
 - **3-2-22(g):** Any voter who, in a primary election, alleges the party affiliation entered on the voter registration record at the polling place is incorrect and who desires to vote the ballot of a political party for which he or she does not appear to be eligible, may vote a challenged or provisional ballot of the desired political party: Provided, however, That the ballot may be counted in the canvass only if the original voter registration record contains a designation of such political party which has been filed no later than the close of registration for the primary election in issue.
 - **3-2-31(c):** A voter whose registration record lists one residence address but the voter has since moved to another residence address in a different precinct in the same county shall be permitted to update the registration at the polling place serving the new precinct and shall be permitted to vote a challenged or provisional ballot at the new polling place.
- Provisional ballot rejection reasons



- **3-1-41(d):** Before an individual casts a provisional ballot, the poll clerk shall provide the individual written instructions, supplied by the board of ballot commissioners, stating that if the voter is casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election: Provided, That if the voter is found to be in the incorrect precinct, then the poll worker shall attempt to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter the information if ascertainable.
- Method for informing voters whether provisional vote was counted
 - **3-1-41(c):** At the time that an individual casts a provisional ballot, the poll clerk shall give the individual written information stating that an individual who casts a provisional ballot will be able to ascertain under the free access system established in this section whether the vote was counted and, if the vote was not counted, the reason that the vote was not counted.
 - **3-1-41(g):** The Secretary of State shall establish a free access system, which may include a toll-free telephone number or an Internet website, that may be accessed by any individual who casts a provisional ballot to discover whether his or her vote was counted and, if not, the reason that the vote was not counted.
- Other
 - **3-1-41(e):** Provisional ballots may not be counted by the election officials. The county commission shall, on its own motion, at the time of canvassing of the election returns, sit in session to determine the validity of any challenges according to the provisions of this chapter. If the county commission determines that the challenges are unfounded, each provisional ballot of each challenged voter, if otherwise valid, shall be counted and tallied together with the regular ballots cast in the election

Polling Place

- Polling Place availability and requirements
 - **3-1-5:** Voting precincts and places established; number of voters in precincts; precinct map; municipal map
- Electioneering must not be closer than **100** feet to the entrance of the polling place
 - **3-9-9(a):** “Electioneering” definition
 - **3-9-9(c):** No electioneering within 100 feet of any polling place unless on his or her own private property, regardless of distance from the polling place, so long as that electioneering conforms to other existing laws and ordinances
- Other:



- **3-1-34(b):** The clerk of the county commission is authorized, upon verification that the precinct at which a handicapped person is registered to vote is not handicap accessible, to transfer that person's registration to the nearest polling place in the county which is handicap accessible. A request by a handicapped person for a transfer of registration must be received by the county clerk no later than thirty days prior to the date of the election
- **3-1-34(e):** No voter may receive assistance in voting unless, by reason of blindness, disability, advanced age or inability to read and write, that voter is unable to vote without assistance.
- **3-4A-22:** Assistance to illiterate and disabled voters
- **3-9-6:** Excepting those individuals provided for expressly in this or other sections of the code, only full-time employees of the Secretary of State's office or full-time employees of the respective county offices of the county clerk or the county prosecutor may enter or otherwise disturb the polling place

State Emergency Rules and How Elections are Affected

- The Secretary of State shall also have the power, after consultation with the Secretary of the Department of Military Affairs and Public Safety, to implement emergency procedures and rules to ensure that all eligible voters have the opportunity to cast a valid ballot and to uphold the integrity of an election in the event of natural disaster as declared by the Governor of this state, terrorist attack, war or general emergency, if any of which occur during or immediately preceding an election. **3-1A-6(e)(1)**
- Listed triggers for Emergency Rules **3-1A-6(e)(2)**
 - A "general emergency" means circumstances preventing the casting of ballots in one or more voting precincts. The chief judge of the circuit court of the county where the casting of ballots is being prevented must declare by order that a general emergency exists.
- Explicit remedies in election statute
 - **3-1-26:** The commissioners of elections must procure new ballots or ballot boxes if the originals are destroyed.
 - **3-1-7:** In the case of an emergency, the county commission may make the precinct change no later than sixty days prior to an election
- Other:
 - **3-3-1(d):** Emergency absentee ballot availability
 - **3-3-5:** Procedures for voting an emergency absentee ballot



Counting Rules

- Voting system requirements
 - **3-4A-1:** Use of electronic voting systems authorized
 - **3-4A-9:** Minimum requirements for voting systems
 - **3-4A-9a:** Minimum requirements for ballot-marking voting systems
 - **3-4A-9b:** Minimum requirements for precinct ballot-scanning device
- Counting procedures
 - **3-6-6:** Ballot counting procedures in paper ballot system
 - **3-6-7:** Ballot irregularity procedures
 - **3-6-9:** Canvass of returns; declaration of results; recounts; recordkeeping

Contest/Protest, Recount Rules

- Contest filing guidelines **3-7-1 through 3-7-9**
- Challenging a candidate **3-7-1**
- Challenging a voter
 - **3-3-10:** Challenging of absent voter's ballots
- Contest/Protest recount
 - **3-6-9:** Recounts in general
 - **3-6-9(b):** Within the 48-hour period, a candidate on the ballot in entirely one county may demand the board to open and examine any of the sealed packages of ballots and recount them
 - **3-6-9(c):** If a candidate is on the ballot in more than one county, then within the 48-hour period after the final county's board has made a public declaration of the results, such candidate may demand the board to open and examine any of the sealed packages of ballots and recount them
- Other:
 - **3-4A-24:** Voting by challenged voter
 - **3-4A-24a:** Voting by challenged voter where touch-screen systems are used
 - **3-6-12:** Tie vote procedures

