

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

Do Not Mark In this Box

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: SECRETARY OF STATE TITLE NUMBER: 153

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23

TITLE OF RULE BEING AMENDED: ABSENTEE VOTING BY MILITARY VOTERS

WHO ARE MEMBERS OF RESERVE UNITS CALLED TO ACTIVE DUTY

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 162

SECTION §64-9-2, PASSED ON MARCH 25, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: JUNE 7, 1996

Ken Hechler



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

March 12, 1996

Mary Ratliff
Secretary of State
Suite 157-K Bldg 1
1900 Kanawha Blvd East
Charleston, WV 25305-0770

SB 162 authorizing, Title 153, Series 23, Absentee Voting by Military Voters Who are Members of Reserve Units Called to Active Duty passed the Legislature on March 9, 1996. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **SB 162** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 162 Section 64-9-2(d)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division

TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 23
ABSENTEE VOTING BY MILITARY VOTERS WHO ARE MEMBERS OF RESERVE
UNITS CALLED TO ACTIVE DUTY

§153-23-1. General.

1.1. Scope. -- This rule provides for absentee voting procedures to be used when a member of the reserves, who has been called to active duty, applies for an absentee ballot and is unable to receive and return that ballot within the time required using normal procedures.

1.2. Authority. -- W.Va. Code §3-1A-6; also see 42 U.S.C. §1973ff-1.

1.3. Filing date. --

1.4. Effective date. --

§153-23-2. Absentee Voting for Activated Reservists.

2.1. Any registered voter who is a member of a reserve unit that is called into active duty as a result of an order of the President of the United States and who, as a result of that order, will not be able to vote in any primary, general, or special election held in this state because they will be unable to vote in person or by special procedures for absentee voting, shall be allowed to cast an absentee ballot by mail or by voting in person at the office of the circuit clerk, in the county in which he or she is registered, as provided for in this rule.

2.2. For the purposes of this rule, a reserve unit includes all united that can be called into active duty as part of the United States Army, Navy, Air Force, Marine Corps or Coast Guard.

§153-23-3. Procedures.

3.1. Any person who has been ordered to active duty, pursuant to the terms of section two of this rule, may apply to the circuit clerk, in the county where registered, to cast an absentee ballot by completing a federal postcard application (FPCA) or a state Application for Voting an Absent Voters Ballot and Form A-8, entitled "Affidavit of Military Voter Called to Active Service Requesting to Vote Absentee."

3.2. The circuit clerk shall examine the application and the affidavit and if the voter requests that an absentee ballot be sent to the voter's home address, then a ballot shall be sent to the address provided by the voter in the affidavit and shall not be challenged for the reason of being returned from within the county. The request shall, in all other respects, be handled as provided for in §3-3-5 of the West Virginia Code.

3.3. If the voter requests permission to cast an absentee ballot in person, and

the application is made at the time within forty-two (42) days of the election, then the voter shall be allowed to vote at the circuit clerk's office pursuant to the provisions of §3-3-3 of the West Virginia Code.

AFFIDAVIT OF MILITARY VOTER CALLED TO ACTIVE SERVICE
REQUESTING TO VOTE ABSENTEE

I, _____, a registered voter in Precinct _____
in the County of _____, do solemnly swear or affirm under penalty of perjury, that I
am required to be absent from the county in which I am registered during the entire period of
absentee voting in the office of the Circuit Clerk, _____,
dates _____
and during the hours which polls are open on election day on _____
date _____

I further swear of affirm that, because I have been called to active service in the
_____(branch of service) on _____, I
will be unable to vote by mail at my service date address, therefore, I request: (Check one)
____(1) The official absentee ballot be mailed to my home address within the county at

(address/city)
before my departure, and that I will return the ballot from within the county before my departure
to active service.

OR

____(2) To vote an absentee ballot in person at the clerk's office before my departure because
I will be unable to receive and return a ballot by mail within the time allowed.

Signature of Voter

Subscribed and sworn before me this _____ day of _____, 19____.

Notary Public or Circuit Clerk

My commission expires _____.

(seal)

SENATE BILL NO. 219

1 (By Senators Ross, Anderson, Boley,
2 Buckalew, Grubb and Macnaughtan)

3 [Introduced January 29, 1996; referred
4 to the Committee on

5 THE JUDICIARY

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153-23

10 A BILL to amend and reenact section two, article nine,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the secretary of state to promulgate
14 legislative rules relating to absentee voting by
15 military voters who are members of reserve units
16 called to active duty.

17 Be it enacted by the Legislature of West Virginia:

18 That section two, article nine, chapter sixty-four of
19 the code of West Virginia, one thousand nine hundred
20 thirty-one, as amended, be amended and reenacted, to read
21 as follows:

22 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
23 BOARDS TO PROMULGATE LEGISLATIVE RULES.

24 §64-9-2. Secretary of state.

1 (a) The legislative rules filed in the state register
2 on the fifteenth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 three, article two, chapter three, of this code, modified
5 by the secretary of state to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the fourteenth day of November, one
8 thousand nine hundred ninety-four, relating to the
9 secretary of state (combined voter registration and driver
10 licensing fund, 153 CSR 28), are authorized.

11 (b) The legislative rules filed in the state register
12 on the twenty-fifth day of July, one thousand nine hundred
13 ninety-five, authorized under the authority of section six,
14 article one-a, chapter three, of this code, modified by the
15 secretary of state to meet the objections of the
16 legislative rule-making review committee and refiled in the
17 state register on the twenty-fourth day of January, one
18 thousand nine hundred ninety-six, relating to the secretary
19 of state (absentee voting by military voters who are
20 members of reserve units called to active duty, 153 CSR
21 23), are authorized.

22
23 NOTE: The purpose of this bill is to authorize the
24 Secretary of State to promulgate legislative rules relating
25 to absentee voting by military voters who are members of
26 reserve units called to active duty.

1 Strike-throughs indicate language that would be
2 stricken from the present law, and underscoring indicates
3 new language that would be added.

8826

H. B. 4288

(By Delegates Douglas, Gallagher, Faircloth, Compton,

Linch and Riggs)

(Introduced January 29, 1996 ; referred to the

Committee on the Judiciary.)

153-23

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4288

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REQUESTING TO VOTE ABSENTEE**

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in the County of _____, do solemnly swear or affirm under penalty of perjury, that I
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absentee voting in the office of the Circuit Clerk, _____,
dates _____
and during the hours which polls are open on election day on _____.
date _____

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I will be unable to receive and return a ballot by mail within the time allowed.

Signature of Voter

Subscribed and sworn before me this _____ day of _____, 19____.

Notary Public or Circuit Clerk

My commission expires _____.

(seal)



FILED

Dec 15 2 01 PM '95

West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vicki Douglas, Co-Chair

December 12, 1995

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Ken Hechler
Secretary of State
Capitol Complex
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Absentee Voting by Military Voters who are members of
Reserve Units called to active duty

The Legislative Rule-Making Review Committee recommends that the West Virginia
Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
(a) as originally filed
(b) as modified by the agency [X]
2. Authorize the agency to promulgate part of the Legislative
rule; a statement of reasons for such recommendation is
attached.
3. Authorize the agency to promulgate the Legislative rule
with certain amendments; amendments and a statement of
reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule
as modified with certain amendments; amendments and a
statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of
reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State
Register and with the agency proposing the rule.

cc: Mary Ratliff
Deputy Sec. of State

153-23

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

TO: BILL HARRINGTON

AGENCY: SECRETARY OF STATE

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: August 27, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 23 TITLE: 153 SECRETARY OF STATE

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Jan Caste

TITLE OF PERSON SIGNING: _____

DATE: 17 Oct 96

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

FILED
OCT 17 2 30 PM '96
OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA