

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1968



ENROLLED

HOUSE BILL No. 330

(By Mr. Rockefeller and Mr. Armistead)



PASSED February 7, 1968

In Effect Ninety days from Passage



FILED IN THE OFFICE
OF
D. SALEY
SECRETARY OF STATE
THIS DATE 2-16-68

330

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(By MR. ROCKEFELLER and MR. ARMISTEAD)

[Passed February 7, 1968: in effect ninety days from passage.]

AN ACT to amend and reenact sections three, nine, eleven, sixteen, twenty-two and thirty-six, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section nine, article six, of said chapter, all relating to the review, cancellation and reinstatement of the voter registration of persons who have failed to vote within a specified period, to the powers and duties of the secretary of state as the chief registration official of the state, to the completion date of a biennial or quadrennial checkup, to the removal of registration records from the custody of the county court to comply with a subpoena duces tecum issued by the chief

registration official of the state, to the cancellation of voter registrations of persons shown to be deceased by certificates of death, to the imposition of penalties for a wilful delay, neglect or refusal to perform duties imposed by the rules, regulations or directions promulgated or issued by the chief registration official of the state, and to the preservation of poll books following elections.

Be it enacted by the Legislature of West Virginia:

That sections three, nine, eleven, sixteen, twenty-two and thirty-six, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that section nine, article six of said chapter, be amended and reenacted, all to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-3. Registration, cancellation and reinstatement.

1 A permanent registration system shall hereby be
2 established which shall be uniform throughout the state
3 and all of its subdivisions. No voter so registered shall
4 be required to register again for any election while he
5 continues to reside at the same address, or, having moved
6 from such address, is properly transferred according to

7 the provisions of section twenty-seven of this article, un-
8 less his registration is cancelled as provided in this ar-
9 ticle.

10 Within one hundred and twenty days folowing any
11 election, the clerk of the county court shall, as evidenced
12 by the presence or absence of signatures on the poll
13 books for such election, correct any errors or omissions
14 on the voter registration records appertaining to such
15 election resulting from the poll clerks erroneously
16 checking or failing to check the registration records as
17 required by the provisions of section thirty-four, article
18 one of this chapter; and, within the same time period
19 following each state-wide primary and general election
20 and at the same time that such checkup is made
21 as is by this paragraph required, the clerk shall cancel
22 the registration of each person who has failed to vote
23 at least once during a period covering two state-wide
24 primary and general elections as indicated by his regis-
25 tration record. Any person who has had his registra-
26 tion for that reason cancelled shall, by letter, be given
27 proper notice thereof by the clerk of the county court,

28 to the effect that in order to vote he must register again
29 or execute and file, not later than twenty-nine days before
30 the next primary or general election, with the clerk,
31 an affidavit, the form of which shall be prescribed by
32 the secretary of state, stating that he desires to be
33 reinstated as a qualified voter at the same address and
34 the clerk shall replace the registration card of the voter
35 in the registration records. A blank form of such
36 affidavit shall be included with and accompany the
37 aforesaid notice to the voter.

**§3-2-9. Election rules; powers and duties of secretary of state;
exercise of powers by appointees.**

1 The secretary of state shall be the chief registration
2 official of the state. He shall have authority, upon
3 consultation with the state election commission, of which
4 he is a member, to make, amend and rescind such rules,
5 regulations and orders as may be necessary to carry
6 out the policy of the Legislature, as contained in this
7 article. It shall be the duty of all registration officials
8 to abide by such rules, regulations and orders, which
9 shall include:

10 (a) Uniform rules of procedure for registrars and
11 other registration officials in the performance of their
12 duties, as to time and manner of performance;

13 (b) Uniform rules for the purging of registration
14 records;

15 (c) Uniform rules for challenging registrants; and

16 (d) Any other rules, regulations, or directions neces-
17 sary to standardize and make effective the administration
18 of the provisions of this article.

19 It shall be his further duty to advise with registration
20 officials; to furnish to the registration officials a sufficient
21 number of indexed copies of the current registration
22 laws of West Virginia and the administrative orders
23 and rules and regulations issued or promulgated there-
24 under; to investigate the administration of registration
25 laws, frauds, and irregularities in any registration; to
26 report violations of registration laws to the appro-
27 priate prosecuting officials, and to prepare an annual
28 report of registration.

29 The secretary of state shall also have the power to
30 administer oaths and affirmations, issue subpoenas for

31 the attendance of witnesses, issue subpoena duces tecum
32 to compel the production of books, papers, records,
33 registration records and other evidence, and fix the time
34 and place for hearing any matters relating to the
35 administration and enforcement of this article, or the
36 rules, regulations and directions promulgated or issued
37 hereunder by the secretary of state as the chief regis-
38 tration official of the state. In case of disobedience to
39 a subpoena or subpoena duces tecum, he may invoke the
40 aid of any circuit court in requiring the attendance,
41 evidence and testimony of witnesses and the production
42 of papers, books, records, registration records and other
43 evidence.

44 All powers and duties vested in the secretary of state
45 under this article may be exercised by appointees of the
46 secretary of state at his discretion, but the secretary
47 of state shall be responsible for their acts.

§3-2-11. Appointment of registrars; qualifications and duties.

1 The county court of each county shall, not less than
2 eighteen nor more than twenty weeks prior to the date
3 of a state-wide primary election, appoint two competent

4 persons, for one or more but not to exceed ten voting
5 precincts in the county, to act as registrars for the
6 purpose of making a biennial or quadrennial checkup
7 required by this article. No person shall be eligible
8 to appointment as a registrar, or in any way act as
9 such, if he has been convicted of a felony or if he holds
10 any elective or appointive office, or is a public employee,
11 under the laws of this State or of the United States;
12 or cannot read or write the English language; or is a
13 candidate to be voted for at such election. If any such
14 registrar shall fail or refuse to serve or is properly
15 dismissed, the vacancy shall be filled either by the
16 county court or by the clerk thereof in vacation, in the
17 manner provided for the appointment of registrars.
18 Each registrar, before entering upon the discharge of his
19 duties, shall take an oath that he will perform the
20 duties of the office to the best of his ability, which
21 oath shall be filed in the office of the clerk of the county
22 court.

23 An equal number of such registrars shall be selected
24 from the two political parties which at the last pre-

25 ceding election, cast the highest number and next high-
26 est number of votes in the county in which the election
27 is to be held. The county court shall, at least four weeks
28 prior to making such appointment, request the county
29 executive committee of each of the said two political
30 parties to submit a list of names, equal to one half
31 of the total number to be appointed, of persons qualified
32 to act as registrars; and the county court shall, if such
33 lists are submitted, appoint the respective registrars
34 therefrom, and shall notify each registrar of his appoint-
35 ment. Every such list so presented shall be filed and
36 preserved for one year by the clerk of such court in
37 his office. Any and every act performed by any registrar
38 under the provisions of this article shall be void unless
39 performed in conjunction with a registrar of the
40 opposite political party at the same time and place.
41 Before acting, all such registrars shall attend a
42 session, or sessions, of instruction by the clerk of the
43 county court, or some person designated by him, con-
44 cerning the performance of their duties.

45 Immediately following such instruction the clerk of

46 the county court shall deliver to the registrar a copy
47 of the laws and regulations relating to registration of
48 voters and all necessary forms and other supplies, in-
49 cluding a certified list of all registered voters within
50 the precinct or precincts for which such registrars were
51 appointed, upon such form as may be prescribed by
52 the secretary of state. Such registrars shall there-
53 upon proceed together to make a house-to-house can-
54 vass in their precincts for the purpose of making the
55 biennial or quadrennial checkup required by section
56 twenty-one of this article. Each biennial or quadrennial
57 checkup subsequent to the year one thousand nine
58 hundred sixty-eight shall be completed at least sixty
59 days before the state-wide primary election following
60 the appointment of the registrars. In making such
61 checkup the registrars shall not again register any per-
62 son who is already registered in such precinct, but
63 shall determine whether or not such person is duly
64 registered and qualified to vote therein.

§3-2-16. Custody of registration records; public inspection.

1 The registration records shall not be removed from

2 the custody of the county court except for use in an
3 election or by the order of a court of record or in com-
4 pliance with a subpoena duces tecum issued by the
5 secretary of state under the authority of section nine
6 of this article. The registration records shall be open
7 for public inspection under reasonable regulations pre-
8 scribed by the county court.

**§3-2-22. Registration in clerk's office; cancellation of registra-
tions of deceased persons.**

1 The clerk of the county court may register any quali-
2 fied person as a voter by having him fill in and complete
3 the prescribed voter registration form and having him
4 sign same under oath or affirmation. The clerk, upon
5 proper proof, may alter, amend, correct, or cancel the
6 registration record of any voter. Such registration or
7 alteration, amendment, correction or cancellation of
8 registration records shall be carried on throughout the
9 year.

10 Within fifteen days following receipt by the clerk
11 from the state registrar of vital statistics or from the
12 local registrar of vital statistics of a certificate of death

13 which has occurred in his county or of a person who
14 last resided prior to death in his county, the clerk of
15 the county court shall cancel the voter registration,
16 if any, of the person shown to be deceased by such cer-
17 tificate.

18 For purposes of making certain that the voter regis-
19 tration records of the various counties do not contain
20 voter registration of persons who are deceased, the
21 clerks of the county courts shall prior to September one,
22 one thousand nine hundred sixty-eight, review each
23 certificate of death received by him from the state regis-
24 trar of vital statistics or from the local registrar of vital
25 statistics since January one, one thousand nine hundred
26 sixty-four, and shall cancel the voter registration,
27 if any, of each person shown to be deceased by any such
28 certificate and whose voter registration has not pre-
29 viously been cancelled. Between September one and
30 September fifteen, one thousand nine hundred and sixty-
31 eight, each clerk of a county court shall certify to the
32 secretary of state, as the chief registration official of the
33 state, that he has performed the duty required by this
34 paragraph.

35 If found necessary, the county court may order and
36 direct the clerk of the county court to maintain addi-
37 tional office hours in the evening or at other proper
38 times and places for accommodation of voter registra-
39 tion.

§3-2-36. Neglect of duty by registration officers; penalties.

1 Any registrar or clerk of the county court or their
2 authorized deputies or any other persons upon whom a
3 duty is laid by the Permanent Registration Law, or the
4 rules, regulations or directions promulgated or issued
5 by the secretary of state as the chief registration official
6 of the state, who shall wilfully delay, neglect, or refuse
7 to perform such duty, shall be guilty of a misdemeanor,
8 and, upon conviction, shall be fined not more than one
9 thousand dollars or confined in the county jail for not
10 more than one year, or both, at the discretion of the
11 court.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-9. Canvass of returns; recounts; preservation and subsequent destruction of ballots, records, etc.

1 The commissioners of the county court shall be ex
2 officio a board of canvassers, and, as such, shall keep

3 in a well-bound book, marked "election record," a com-
4 plete record of all their proceedings in ascertaining and
5 declaring the result of every election in their respec-
6 tive counties. They shall convene as such canvassing
7 board at the courthouse on the fifth day (Sundays ex-
8 cepted) after every election held in their county, or
9 in any district thereof, and the officers in whose custody
10 the ballots, poll books, registration records, tally sheets
11 and certificates have been placed shall lay the same
12 before them for examination. They may, if deemed
13 necessary, require the attendance of any of the com-
14 missioners, poll clerks or other persons present at the
15 election, to appear and testify respecting the same, and
16 make such other orders as shall seem proper, to
17 procure correct returns and ascertain the true result
18 of the election in their county; but in such case all the
19 questions to the witnesses and all the answers thereto,
20 and evidence, shall be taken down in writing and filed
21 and preserved. All orders made shall be entered upon
22 the record. They may adjourn from time to time, but
23 no longer than absolutely necessary, and, when a ma-

24 jority of the commisioners are not present, their meeting
25 shall stand adjourned until the next day, and so from
26 day to day, until a quorum be present. The board shall
27 proceed to open each sealed package of ballots so laid
28 before them, and, without unfolding them, count the
29 number in each package and enter the same upon their
30 record. The ballots shall then be again sealed up care-
31 fully in a new envelope, and each member of the board
32 shall write his name across the place where such
33 envelope is sealed. After canvassing the returns of the
34 election, the board shall, upon the demand of any can-
35 didate voted for at such election, open and examine
36 any one or more of the sealed packages of ballots, and
37 recount the same; but in such case they shall seal the
38 same again, along with the envelope above named, and
39 the clerk of the county court and each member of the
40 board shall write his name across the place or places
41 where it is sealed, and endorse in ink, on the outside:
42 "Ballots of the election held at precinct No.....,
43 in the district of....., and county of....., on
44 the day of....." Every candidate who demands

45 such recount shall be required to furnish bond in a
46 reasonable amount with good sufficient surety to guar-
47 antee payment of the costs and the expenses of such
48 recount in the event the result of the election be not
49 changed by such recount; but the amount of such bond
50 shall in no case, exceed three hundred dollars. When
51 they have made their certificates and declared the re-
52 sults as hereinafter provided, they shall deposit the
53 sealed packages of ballots, absent voter ballots, regis-
54 tration records, poll books, tally sheets, and precinct
55 certificates with the clerks of the county and circuit
56 courts for whom they were received, who shall care-
57 fully preserve the same for sixty days, and if there be
58 no contest pending as to any such election, and their
59 further preservation be not required by any order of a
60 court, such ballots, poll books, tally sheets and certifi-
61 cates shall be destroyed by fire or otherwise, without
62 opening the sealed packages of ballots; and if there be
63 such contest pending, then they shall be so destroyed as
64 soon as the contest is ended: *Provided*, That the poll
65 books shall be preserved until such time as the clerk

66 of the county court has completed the duties imposed
67 upon him by section three, article two of this chapter.
68 If the result of the election be not changed by such re-
69 count, the costs and expenses thereof shall be paid by
70 the party at whose instance the same was made.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompaz
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Meyer
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Howard Carson
President of the Senate

H. Lahan White
Speaker of the House of Delegates

The within approved this the 14
day of February, 1968.

Hullett C. Smith
Governor



PRESENTED TO THE
GOVERNOR

Date 2/12/68
Time 3:02 P.M.

RECEIVED

FEB 16 1 11 PM '68

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA