

No. 1

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



## ENROLLED

*Committee Substitute for*  
SENATE BILL NO. 1

(By Senator *Shutler*)



PASSED *February 19,* 1988

In Effect *July 1, 1988* ~~\_\_\_\_\_~~



# **ENROLLED**

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 1**

(SENATOR WHITLOW, *original sponsor*)

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[Passed February 19, 1988; to take effect July 1, 1988.]

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AN ACT to amend and reenact section thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to voting procedures generally; setting forth procedure for voting in person on election day; providing for transfer of registration at least thirty days prior to an election when precinct of registration not handicap accessible; permitting handicapped voter to vote challenged ballot in another precinct when registration not transferred; providing for confidentiality of such challenged ballot; when ballot to be delivered to voter; disposition of "spoiled" ballots; providing for conduct of voter after receipt of ballot; recordation of voter's appearance and of challenged ballots; prohibiting voting assistance except in certain cases; setting forth procedure for voting assistance and providing for challenge thereto; requiring county clerk to prepare a list of assisted voters; disposition of voted ballots, affidavits, lists, election supplies, records and returns; providing for crimes; and setting forth criminal penalties.

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

That section thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.**

1 (a) Any person desiring to vote in an election shall, upon  
2 entering the election room, clearly state his name and  
3 residence to one of the poll clerks who shall thereupon  
4 announce the same in a clear and distinct tone of voice. If  
5 such person is found to be duly registered as a voter at that  
6 precinct, he shall be required to sign his name in the space  
7 marked "signature of voter" on the pollbook prescribed and  
8 provided for the precinct. If such person be physically or  
9 otherwise unable to sign his name, his mark shall be affixed  
10 by one of the poll clerks in the presence of the other and the  
11 name of the poll clerk affixing the voter's mark shall be  
12 indicated immediately under such affixation. No ballot  
13 shall be given to such person until he so signs his name on  
14 the pollbook or his signature is so affixed thereon.

15 (b) The clerk of the county commission is authorized,  
16 upon verification that the precinct at which a handicapped  
17 person is registered to vote is not handicap accessible, to  
18 transfer such person's registration to the nearest polling  
19 place in the county which is handicap accessible. Requests  
20 by such persons for a transfer of registration shall be  
21 received by the county clerk no later than thirty days prior  
22 to the date of the election. Any handicapped person who has  
23 not made a request for a transfer of registration at least  
24 thirty days prior to the date of the election may vote a  
25 challenged ballot, at a handicap accessible polling place in  
26 the county of his or her registration, and, if during the  
27 canvass the county commission determines that the person  
28 had been registered in a precinct not handicap accessible,  
29 the voted ballot, if otherwise valid, shall be counted. The  
30 handicapped person may vote in the precinct to which the  
31 registration was transferred only as long as the disability  
32 exists or the precinct from which the handicapped person  
33 was transferred remains inaccessible to the handicapped.

34 To insure confidentiality of such transferred ballot, the  
35 county clerk processing the ballot shall provide the voter  
36 with an unmarked envelope and an outer envelope  
37 designated "challenged ballot/handicapped voter." After  
38 validation of the ballot at the canvass, the outer envelope  
39 shall be destroyed and the handicapped voter's ballot shall  
40 be placed with other approved challenged ballots prior to  
41 removal of the ballot from the unmarked envelope.

42 (c) When the voter's signature is properly on the  
43 pollbook, the two poll clerks shall sign their names in the  
44 places indicated on the back of the official ballot and shall  
45 deliver the ballot to the voter to be voted by him then  
46 without leaving the election room. If he returns the ballot  
47 spoiled to the clerks, they shall immediately mark such  
48 ballot "spoiled" and the same shall be preserved and placed  
49 in a spoiled ballot envelope together with other spoiled  
50 ballots to be delivered to the board of canvassers and  
51 deliver to the voter another official ballot, signed by the  
52 clerks on the reverse side as before done. The voter shall  
53 thereupon retire alone to the booth or compartment  
54 prepared within the election room for voting purposes and  
55 there prepare his ballot, using a ballpoint pen of not less  
56 than five inches in length or other indelible marking device  
57 of not less than five inches in length. In voting for  
58 candidates in general and special elections, the voter shall  
59 comply with the rules and procedures prescribed in section  
60 five, article six of this chapter.

61 (d) It shall be the duty of a poll clerk, in the presence of  
62 the other poll clerk, to indicate by a check mark inserted in  
63 the appropriate place on the registration record of each  
64 voter the fact that such voter voted in the election. In  
65 primary elections the clerk shall also insert thereon a  
66 distinguishing initial or initials of the political party for  
67 whose candidates the voter voted. If a person is challenged  
68 at the polls, such fact shall be indicated by the poll clerks on  
69 the registration record together with the name of the  
70 challenger. The subsequent removal of the challenge shall  
71 be recorded on the registration record by the clerk of the  
72 county commission.

73 (e) (1) No voter shall receive any assistance in voting  
74 unless, by reason of blindness, disability, advanced age or  
75 inability to read and write, that voter is unable to vote

76 without assistance. Any voter qualified to receive  
77 assistance in voting under the provisions of this section  
78 may:

79 (A) Declare his or her choice of candidates to an election  
80 commissioner of each political party who, in the presence of  
81 the voter and in the presence of each other, shall prepare the  
82 ballot for voting in the manner hereinbefore provided, and,  
83 on request, shall read over to such voter the names of  
84 candidates on the ballot as so prepared; or

85 (B) Require the election commissioners to indicate to  
86 him or her the relative position of the names of the  
87 candidates on the ballot, whereupon the voter shall retire to  
88 one of the booths or compartments to prepare his ballot in  
89 the manner hereinbefore provided; or

90 (C) Be assisted by any person of the voter's choice:  
91 *Provided*, That such assistance may not be given by the  
92 voter's present or former employer or agent of that  
93 employer or by the officer or agent of a labor union of which  
94 the voter is a past or present member.

95 (2) Any voter who requests assistance in voting but who  
96 is believed not to be qualified for such assistance under the  
97 provisions of this section shall nevertheless be permitted to  
98 vote a challenged ballot with the assistance of any person  
99 herein authorized to render assistance.

100 (3) Any one or more of the election commissioners or  
101 poll clerks in the precinct may challenge such ballot on the  
102 ground that the voter thereof received assistance in voting it  
103 when in his or their opinion that the person who received  
104 assistance in voting is not so illiterate, blind, disabled or of  
105 such advanced age as to have been unable to vote without  
106 assistance. The election commissioner or poll clerk or  
107 commissioners or poll clerks making such challenge shall  
108 enter the challenge and reason therefor on the form and in  
109 the manner prescribed or authorized by article three of this  
110 chapter.

111 (4) An election commissioner or other person who  
112 assists a voter in voting:

113 (A) Shall not in any manner request, or seek to  
114 persuade, or induce the voter to vote any particular ticket or  
115 for any particular candidate or for or against any public  
116 question, and shall not keep or make any memorandum or  
117 entry of anything occurring within the voting booth or

118 compartment, and shall not, directly or indirectly, reveal to  
119 any person the name of any candidate voted for by the voter,  
120 or which ticket he had voted, or how he had voted on any  
121 public question, or anything occurring within the voting  
122 booth or compartment or voting machine booth, except  
123 when required pursuant to law to give testimony as to such  
124 matter in a judicial proceeding; and

125 (B) Shall sign a written oath or affirmation before  
126 assisting such voter on a form prescribed by the secretary of  
127 state stating that he or she will not override the actual  
128 preference of the voter being assisted, attempt to influence  
129 the voter's choice or mislead the voter into voting for  
130 someone other than the candidate of voter's choice. Such  
131 person assisting the voter shall also swear or affirm that he  
132 or she believes that the voter is voting free of intimidation or  
133 manipulation.

134 (5) In accordance with instructions issued by the  
135 secretary of state, the clerk of the county commission shall  
136 provide a form entitled "List of Assisted Voters," the form  
137 of which list shall likewise be prescribed by the secretary of  
138 state. The commissioners shall enter the name of each voter  
139 receiving assistance in voting the ballot, together with the  
140 poll slip number of that voter and the signature of the  
141 person or the commissioner from each party who assisted  
142 the voter. If no voter shall have been assisted in voting the  
143 ballot as herein provided, the commissioners shall likewise  
144 make and subscribe to an oath of that fact on such list.

145 (f) After preparing the ballot the voter shall fold the  
146 same so that the face shall not be exposed and so that the  
147 names of the poll clerks thereon shall be seen. The voter  
148 shall then announce his name and present his ballot to one  
149 of the commissioners who shall hand the same to another  
150 commissioner, of a different political party, who shall  
151 deposit it in the ballot box, if such ballot is the official one  
152 and properly signed. The commissioner of election may  
153 inspect every ballot before it is deposited in the ballot box,  
154 to ascertain whether it is single, but without unfolding or  
155 unrolling it, so as to disclose its content. When the voter has  
156 voted, he shall retire immediately from the election room,  
157 and beyond the sixty-foot limit thereof, and shall not  
158 return, except by permission of the commissioners.

159 (g) Following the election, the affidavits required by  
160 this section from those assisting voters together with the  
161 "List of Assisted Voters," shall be returned by the election  
162 commissioners to the clerk of the county commission along  
163 with the election supplies, records and returns, who shall  
164 make such oaths and list available for public inspection and  
165 who shall preserve the same for a period of twenty-two  
166 months or until disposition is authorized or directed by the  
167 secretary of state, or court of record.

168 (h) Any person making an affidavit required under the  
169 provisions of this section who shall therein knowingly  
170 swear falsely, or any person who shall counsel, or advise,  
171 aid or abet another in the commission of false swearing  
172 under this section, shall be guilty of a misdemeanor, and,  
173 upon conviction thereof, shall be fined not more than one  
174 thousand dollars, or imprisoned in the county jail for a  
175 period of not more than one year, or both.

176 (i) Any election commissioner or poll clerk who  
177 authorizes or provides unchallenged assistance to a voter  
178 when such voter is known to such election commissioner or  
179 poll clerk not to require assistance in voting, shall be guilty  
180 of a felony, and, upon conviction thereof, shall be fined not  
181 more than five thousand dollars, or imprisoned in the  
182 penitentiary for a period of not less than one year nor more  
183 than five years, or both fined and imprisoned.


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

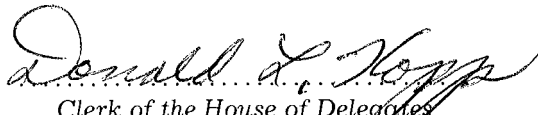
  
Chairman Senate Committee

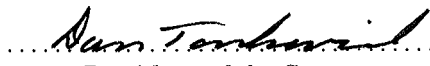
  
Chairman House Committee

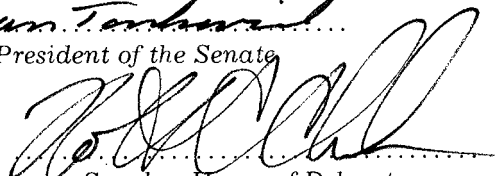
Originated in the Senate.

To take effect July 1, 1988.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker House of Delegates

The within  appeared this the   
day of  1988.

  
Governor



PRESENTED TO THE  
GOVERNOR

Date 2/23/88

Time 9:55 a.m.

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