WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

ENROLLED
Committee Substitute for
SENATE BILL NO.______

(By Senator ____________)

PASSED February 19, 1988
In Effect July 1, 1988
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. Any person desiring to vote in an election shall, upon entering the election room, clearly state his name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If such person is found to be duly registered as a voter at that precinct, he shall be required to sign his name in the space marked “signature of voter” on the pollbook prescribed and provided for the precinct. If such person be physically or otherwise unable to sign his name, his mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter’s mark shall be indicated immediately under such affixation. No ballot shall be given to such person until he so signs his name on the pollbook or his signature is so affixed thereon.

2. 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 such person’s registration to the nearest polling place in the county which is handicap accessible. Requests by such persons for a transfer of registration shall be received by the county clerk no later than thirty days prior to the date of the election. Any 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 challenged ballot, at a handicap accessible polling place in the county of his or her registration, and, if during the canvass the county commission determines that the person had been registered in a precinct not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped.
To insure confidentiality of such transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated “challenged ballot/handicapped voter.” After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter’s ballot shall be placed with other approved challenged ballots prior to removal of the ballot from the unmarked envelope.

(c) When the voter’s signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and shall deliver the ballot to the voter to be voted by him then without leaving the election room. If he returns the ballot spoiled to the clerks, they shall immediately mark such ballot “spoiled” and the same 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 as before done. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his ballot, using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.

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

(e) (1) No voter shall receive any 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. Any voter qualified to receive assistance in voting under the provisions of this section may:

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

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

(C) Be assisted by any person of the voter's choice:

Provided, That such assistance may not be given by the voter's present or former employer or agent of that employer or by the officer or agent of a labor union of which the voter is a past or present member.

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

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

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

(A) Shall not in any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question, and shall not keep or make any memorandum or entry of anything occurring within the voting booth or
compartment, and shall not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he had voted, or how he had voted on any public question, or anything occurring within the voting booth or compartment or voting machine booth, except when required pursuant to law to give testimony as to such matter in a judicial proceeding; and

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

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

(f) After preparing the ballot the voter shall fold the same so that the face shall not be exposed and so that the names of the poll clerks thereon shall be seen. The voter shall then announce his name and present his ballot to one of the commissioners who shall hand the same to another commissioner, of a different political party, who shall deposit it in the ballot box, if such ballot is the official one and properly signed. The commissioner of election may inspect every ballot before it is deposited in the ballot box, to ascertain whether it is single, but without unfolding or unrolling it, so as to disclose its content. When the voter has voted, he shall retire immediately from the election room, and beyond the sixty-foot limit thereof, and shall not return, except by permission of the commissioners.
(g) Following the election, the affidavits required by this section from those assisting voters together with the "List of Assisted Voters," shall be returned by the election commissioners to the clerk of the county commission along with the election supplies, records and returns, who shall make such oaths and list available for public inspection and who shall preserve the same for a period of twenty-two months or until disposition is authorized or directed by the secretary of state, or court of record.

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

(i) Any election commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when such voter is known to such election commissioner or poll clerk not to require assistance in voting, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the penitentiary for a period of not less than one year nor more 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...........................................................................this the 25th day of February, 1988.

Governor