WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

ENROLLED
Com. Sub. for
HOUSE BILL No. 2587

(By Delegate Tragale)

Passed March 12, 1994
In Effect 90 Days from Passage
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; voting procedures where the voter is handicapped; elimination, under certain circumstances, of requirement that person assisting handicapped voters sign a certain oath or affirmation; and 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 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 “signa-
tute 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.

(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 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 ensure 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 commis-
sioner 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 pre-
scribed 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:

Provided, That no person providing assistance to such voter shall be required to sign such oath or affirmation where the reason for requesting such assistance is the voter's inability to vote without assistance because of blindness as defined in section three, article fifteen, chapter five of this code, and such inability to vote without assistance because of blindness is certified in writing by a physician of the voter's choice and is on file in the office of the clerk of the county commission.

(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 oaths or affirmations 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, affirmations 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 oath or affirmation 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

Ernest E. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th day of __________________________, 1994.

Governor