

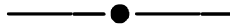
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WEST VIRGINIA
LEGISLATURE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4429

(By Delegates Smirl, Stemple and Romine)



Passed March 11, 2000

In Effect Ninety Days from Passage

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TITLE OF COMMITTEE
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4429

(By Delegates Smirl, Stemple and Romine)

[Passed March 11, 2000; in effect ninety 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 assistance in elections; and setting forth conditions under which a handicap voter may vote from an automobile outside the polling place.

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

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

36 ballot/handicapped voter.” After validation of the ballot at the
37 canvass, the outer envelope shall be destroyed and the handi-
38 capped voter’s ballot shall be placed with other approved
39 challenged ballots prior to removal of the ballot from the
40 unmarked envelope.

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

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

70 (e)(1) No voter may receive any assistance in voting unless,
71 by reason of blindness, disability, advanced age or inability to
72 read and write, that voter is unable to vote without assistance.
73 Any voter qualified to receive assistance in voting under the
74 provisions of this section may:

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

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

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

91 (D) If he or she is handicapped, vote from an automobile,
92 outside the polling place or precinct, in the presence of an
93 election commissioner of each political party if all of the
94 following conditions are met:

95 (i) The polling place is not handicap accessible; and

96 (ii) No voters are voting or waiting to vote inside the
97 polling place.

98 (2) Any voter who requests assistance in voting but who is
99 believed not to be qualified for such assistance under the

100 provisions of this section shall nevertheless be permitted to vote
101 a challenged ballot with the assistance of any person herein
102 authorized to render assistance.

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

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

115 (A) May not in any manner request, or seek to persuade, or
116 induce the voter to vote any particular ticket or for any particu-
117 lar candidate or for or against any public question, and must not
118 keep or make any memorandum or entry of anything occurring
119 within the voting booth or compartment, and must not, directly
120 or indirectly, reveal to any person the name of any candidate
121 voted for by the voter, or which ticket he or she had voted, or
122 how he or she had voted on any public question, or anything
123 occurring within the voting booth or compartment or voting
124 machine booth, except when required pursuant to law to give
125 testimony as to the matter in a judicial proceeding; and

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

132 also swear or affirm that he or she believes that the voter is
133 voting free of intimidation or manipulation: *Provided*, That no
134 person providing assistance to a voter is required to sign an oath
135 or affirmation where the reason for requesting assistance is the
136 voter's inability to vote without assistance because of blindness
137 as defined in section three, article fifteen, chapter five of this
138 code, and the inability to vote without assistance because of
139 blindness is certified in writing by a physician of the voter's
140 choice and is on file in the office of the clerk of the county
141 commission.

142 (5) In accordance with instructions issued by the secretary
143 of state, the clerk of the county commission shall provide a
144 form entitled "list of assisted voters," the form of which list
145 shall likewise be prescribed by the secretary of state. The
146 commissioners shall enter the name of each voter receiving
147 assistance in voting the ballot, together with the poll slip
148 number of that voter and the signature of the person or the
149 commissioner from each party who assisted the voter. If no
150 voter has been assisted in voting the ballot as herein provided,
151 the commissioners shall likewise make and subscribe to an oath
152 of that fact on the list.

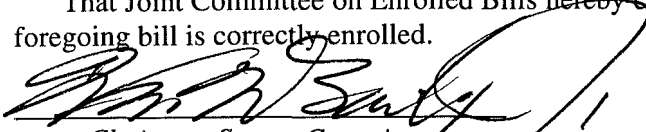
153 (f) After preparing the ballot the voter shall fold the same
154 so that the face is not exposed and so that the names of the poll
155 clerks thereon are seen. The voter shall then announce his or her
156 name and present his or her ballot to one of the commissioners
157 who shall hand the same to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

166 (g) Following the election, the oaths or affirmations
167 required by this section from those assisting voters together
168 with the “list of assisted voters,” shall be returned by the
169 election commissioners to the clerk of the county commission
170 along with the election supplies, records and returns, who shall
171 make the oaths, affirmations and list available for public
172 inspection and who shall preserve these for a period of twenty-
173 two months or until disposition is authorized or directed by the
174 secretary of state, or court of record.

175 (h) Any person making an oath or affirmation required
176 under the provisions of this section who knowingly swears
177 falsely, or any person who counsels, advises, aids or abets
178 another in the commission of false swearing under this section,
179 is guilty of a misdemeanor and, upon conviction thereof, shall
180 be fined not more than one thousand dollars, or imprisoned in
181 the county or regional jail for a period of not more than one
182 year, or both fined and imprisoned.

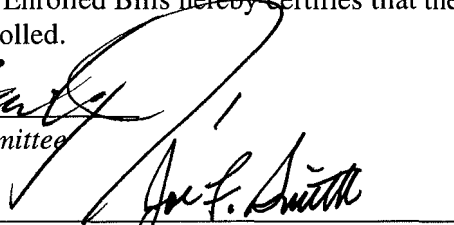
183 (i) Any election commissioner or poll clerk who authorizes
184 or provides unchallenged assistance to a voter when the voter
185 is known to the election commissioner or poll clerk not to
186 require assistance in voting, is guilty of a felony and, upon
187 conviction thereof, shall be fined not more than five thousand
188 dollars, or imprisoned in a state correctional facility for a period
189 of not less than one year nor more than five years, or both fined
190 and imprisoned.

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



[Handwritten Signature]

Chairman Senate Committee

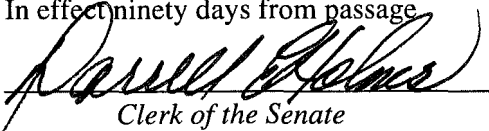


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Chairman House Committee

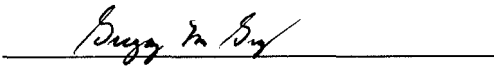
Originating in the House.

In effect ninety days from passage



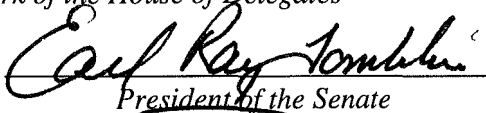
[Handwritten Signature]

Clerk of the Senate




[Handwritten Signature]

Clerk of the House of Delegates



[Handwritten Signature]

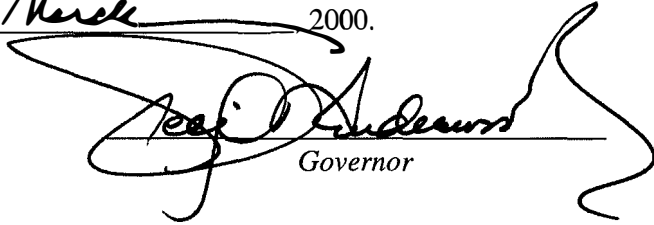
President of the Senate



[Handwritten Signature]

Speaker of the House of Delegates

The within approved this the 28th
day of March 2000.



[Handwritten Signature]

Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/00

Time 3:47pm

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