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
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.
(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked “signature of voter” on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her 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 the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her 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 that person’s registration to the nearest polling place in the county which is handicap accessible. Requests by these 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 the 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 or her then without leaving the election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot “spoiled” and it 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 or her 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 is 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 the 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, the challenge 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 may 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 the voter the names of candidates on the ballot as so prepared;

(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 or her ballot in the manner hereinbefore provided; or

(C) Be assisted by any person of the voter’s choice: Provided, That 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.

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

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

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

(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 the 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 the 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) May not in any manner request, or seek to persuade, or
induce the voter to vote any particular ticket or for any particu-
lar candidate or for or against any public question, and must not
keep or make any memorandum or entry of anything occurring
within the voting booth or compartment, and must not, directly
or indirectly, reveal to any person the name of any candidate
voted for by the voter, or which ticket he or she had voted, or
how he or she 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 the matter in a judicial proceeding; and

(B) Shall sign a written oath or affirmation before assisting
the 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. The 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 a voter is required to sign an oath or affirmation where the reason for requesting 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 the 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 has been assisted in voting the ballot as herein provided, the commissioners shall likewise make and subscribe to an oath of that fact on the list.

(f) After preparing the ballot the voter shall fold the same so that the face is not exposed and so that the names of the poll clerks thereon are seen. The voter shall then announce his or her name and present his or her 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 the 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 or she shall retire immediately from the election room, and beyond the sixty-foot limit thereof, and may 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 the oaths, affirmations and list available for public inspection and who shall preserve these 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 knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county or regional jail for a period of not more than one year, or both fined and imprisoned.

(i) Any election commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when the voter is known to the election commissioner or poll clerk not to require assistance in voting, is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in a state correctional facility for a period of not less than one year nor more than five years, or both fined and imprisoned.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In 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 approved this the 28th day of November 2000.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/20/00
Time 3:47 pm