WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED
Committee Substitute to
Senate Bill No. 617

(Senators Kessler, Edgell, Minard,
Hunter and Foster, original sponsors)

[Passed March 6, 2007; in effect ninety days from passage.]
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COMMITTEE SUBSTITUTE

FOR

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AN ACT to amend and reenact §3-2-4a, §3-2-5, §3-2-6, §3-2-11, §3-2-13 and §3-2-30 of the Code of West Virginia, 1931, as amended, all relating to voter registration; providing for the voting history of a voter on the statewide registration system; providing that agencies may not withhold information for statewide voter registration system without a court order; allowing for Division of Motor Vehicles' identification card in lieu of
driver's license for voter registration purposes; providing that the voter has four business days to correct errors on voter registration card; requiring the Department of Revenue to provide a check box for voter registration interest; requiring voting coordinators to receive training; removing provisions requiring manual voter registration lists by county clerks in lieu of electronic files; requiring county clerk to provide a copy of voter registration list availability policy to the Secretary of State's office; and modifying the cost of purchasing the voter registration list.

Be it enacted by the Legislature of West Virginia:

That §3-2-4a, §3-2-5, §3-2-6, §3-2-11, §3-2-13 and §3-2-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-4a. Statewide voter registration list.

(a) The Secretary of State shall implement and maintain a single, official, statewide, centralized, interactive computerized voter registration list of every legally registered voter in the state, which shall include the following:

(1) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state.

(2) The computerized list shall contain the name, registration information and voter history of every legally registered voter in the state.
(3) Under the computerized list, the Secretary of State shall assign a unique identifier to each legally registered voter in the state.

(4) The computerized list shall be coordinated with other agency databases within the state.

(5) The Secretary of State and any clerk of the county commission may obtain immediate electronic access to the information contained in the computerized list.

(6) The clerk of the county commission shall electronically enter voter registration information into the computerized list on an expedited basis at the time the information is provided to the clerk.

(7) The Secretary of State shall provide necessary support to enable every clerk of the county commission in the state to enter information as described in subdivision (6) of this subsection.

(8) The computerized list shall serve as the official voter registration list for conducting all elections in the state.

(b) The Secretary of State or any clerk of a county commission shall perform maintenance with respect to the computerized list on a regular basis as follows:

(1) If an individual is to be removed from the computerized list, he or she shall be removed in accordance with the provisions of 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993.

(2) The Secretary of State shall coordinate the computerized list with state agency records and remove
the names of individuals who are not qualified to vote because of felony status or death: Provided, That no state agency may withhold information regarding a voter’s status as deceased or as a felon unless ordered by a court of law.

(c) The list maintenance performed under subsection (b) of this section shall be conducted in a manner that ensures that:

(1) The name of each registered voter appears in the computerized list;

(2) Only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(3) Duplicate names are eliminated from the computerized list.

(d) The Secretary of State and the clerks of all county commissions shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(e) The Secretary of State shall ensure that voter registration records in the state are accurate and updated regularly, including the following:

(1) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under the system, consistent with 42 U. S. C. §1973gg, et seq., registrants who have not responded to a notice sent pursuant to section twenty-four, article three of this chapter and who have not voted in two consecutive
general elections for federal office shall be removed
from the official list of eligible voters, except that no
registrant may be removed solely by reason of a failure
to vote; and

(2) Safeguards to ensure that eligible voters are not
removed in error from the official list of eligible voters.

(f) Applications for voter registration may only be
accepted when the following information is provided:

(1) Except as provided in subdivision (2) of this
subsection and notwithstanding any other provision of
law to the contrary, an application for voter registration
may not be accepted or processed unless the application
includes:

(A) In the case of an applicant who has been issued a
current and valid driver's license, the applicant's
driver's license number;

(B) In the case of an applicant who has been issued an
identification card by the Division of Motor Vehicles,
the applicant's identification number; or

(C) In the case of any other applicant, the last four
digits of the applicant's social security number; and

(2) If an applicant for voter registration has not been
issued a current and valid driver's license, Division of
Motor Vehicles' identification card or a social security
number, the Secretary of State shall assign the
applicant a number which will serve to identify the
applicant for voter registration purposes. To the extent
that the state has a computerized list in effect under this
section and the list assigns unique identifying numbers to registrants, the number assigned under this section shall be the unique identifying number assigned under the list.

(g) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement to match and transfer applicable information in the database of the statewide voter registration system with information in the database of the Division of Motor Vehicles to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration.

(h) The Commissioner of the Division of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security under 42 U. S. C. §301, et seq., the Social Security Act. All fees associated with this agreement shall be paid for from moneys in the fund created under section twelve, article two of this chapter.

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

(a)(1) All state forms for application for voter registration shall be prescribed by the Secretary of State and shall conform with the requirements of 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993 and the requirements of the provisions of this article. Separate application forms may be prescribed for voter registration conducted by the clerk of the county commission, registration by mail, registration in conjunction with an application for
motor vehicle driver's license and registration at designated agencies. These forms may consist of one or more parts, may be combined with other forms for use in registration by designated agencies or in conjunction with driver licensing and may be revised and reissued as required by the Secretary of State to provide for the efficient administration of voter registration.

(2) Notwithstanding any provisions of subdivision (1) of this subsection to the contrary, the federal postcard application for voter registration issued pursuant to 42 U. S. C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, and the mail voter registration application form prescribed by the Federal Election Commission pursuant to 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993, shall be accepted as a valid form of application for registration pursuant to the provisions of this article.

(b) Each application form for registration shall include:

(1) A statement specifying the eligibility requirements for registration and an attestation that the applicant meets each eligibility requirement;

(2) Any specific notice or notices required for a specific type or use of application by 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993;

(3) A notice that a voter may be permitted to vote the partisan primary election ballot of a political party only if the voter has designated that political party on the
application for registration unless the political party has determined otherwise;

(4) The applicant's driver's license number or an identification number issued by the Division of Motor Vehicles. If the applicant does not have a driver's license or an identification card issued by the Division of Motor Vehicles, then the last four digits of the applicant's social security number; and

(5) Any other instructions or information essential to complete the application process.

(c) Each application form shall require that the following be provided by the applicant, under oath, and any application which does not contain each of the following shall be considered incomplete:

(1) The applicant's legal name, including the first name, middle or maiden name, if any, and last name;

(2) The month, day and year of the applicant's birth;

(3) The applicant's residence address, including the number and street or route and city and county of residence except:

(A) In the case of a person eligible to register under the provisions of 42 U. S. C. §1973ff, et seq., the Uniformed and Overseas Citizens Absentee Voting Act, the address at which he or she last resided before leaving the United States or entering the uniformed services, or if a dependent child of such a person, the address at which his or her parent last resided; and
(B) In the case of a homeless person having no fixed residence address who nevertheless resides and remains regularly within the county, the address of a shelter, assistance center or family member with whom he or she has regular contact or other specific location approved by the clerk of the county commission for the purposes of establishing a voting residence; and

(4) The applicant's signature, under penalty of perjury as provided in section thirty-six of this article, to the attestation of eligibility to register to vote and to the truth of the information given.

(d) The applicant shall be requested to provide the following information, but no application shall be rejected for lack of this information:

(1) An indication whether the application is for a new registration, change of address, change of name or change of party affiliation;

(2) The applicant's choice of political party affiliation, if any, or an indication of no affiliation: Provided, That any applicant who does not enter any choice of political party affiliation shall be listed as having no party affiliation on the voting record;

(3) The applicant's residence mailing address if different than the residence street address;

(4) The last four digits of the applicant's social security number;

(5) The applicant's telephone number;

(6) The address at which the applicant was last
registered to vote, if any, for the purpose of canceling or transferring the previous registration; and

(7) The applicant’s gender.

(e) The Secretary of State shall prescribe the printing specifications of each type of voter registration application and the voter registration application portion of any form which is part of a combined agency form.

(f) Application forms prescribed in this section may refer to various public officials by title or official position, but in no case may the actual name of any officeholder be printed on the voter registration application or on any portion of a combined application form.

(g) No later than the first day of July of each odd-numbered year, the Secretary of State shall submit the specifications of the voter registration application by mail for statewide bidding for a contract period beginning the first day of September of each odd-numbered year and continuing for two calendar years. The successful bidder shall produce and supply the required mail voter registration forms at the contract price to all purchasers of the form for the period of the contract.

§3-2-6. Time of registration application before an election.

(a) Voter registration before an election shall close on the twenty-first day before the election, or on the first day thereafter which is not a Saturday, Sunday or legal holiday.
(b) An application for voter registration, change of name or change of political party affiliation submitted by an eligible voter by the close of voter registration shall be effective for any subsequent primary, general or special election if the following conditions are met:

(1) The application contains the information required by subsection (c), section five of this article: Provided, That incomplete applications for registration containing information which are submitted within the required time may be corrected within four business days after the close of registration if the applicant provides the required information; and

(2) The application is received by the appropriate clerk of the county commission no later than the hour of the close of registration or is otherwise submitted by the following deadlines:

(A) If mailed, the application shall be addressed to the appropriate clerk of the county commission and is postmarked by the postal service no later than the date of the close of registration: Provided, That if the postmark is missing or illegible, the application shall be presumed to have been mailed no later than the close of registration if it is received by the appropriate clerk of the county commission no later than the third day following the close of registration;

(B) If accepted by a designated agency or motor vehicle licensing office, the application is received by that agency or office no later than the close of registration;
(C) If accepted through a registration outreach program, the application is received by the clerk, deputy clerk or registrar no later than the close of registration; and

(3) The verification notice by the provisions of section sixteen of this article mailed to the voter at the residence indicated on the application is not returned as undeliverable.

§3-2-11. Registration in conjunction with driver licensing.

(a) The Division of Motor Vehicles or any other division or department that may be established by law to perform motor vehicle driver licensing services shall provide each qualified registrant, as an integral and simultaneous part of every process of application for the issuance, renewal or change of address of any motor vehicle driver's license or official identification card, pursuant to the provisions of article two, chapter seventeen-b of this code, a voter registration application as prescribed in section five of this article.

(b) Any person who fails to sign the voter registration application or who fails to return the voter registration application to a driver licensing facility or to an appropriate voter registration office shall be considered to have declined to register. Information regarding any person's failure to sign the voter registration application is confidential and may not be used for any purpose other than to determine voter registration.

(c) Any qualified voter who submits the application for registration pursuant to the provisions of subsection (a) of this section in person at a driver licensing facility
at the time of applying for, obtaining, renewing or
transferring his or her driver's license or official
identification card and who presents identification and
proof of age at that time shall not be required to make
his or her first vote in person or to again present
identification in order to make that registration valid.

(d) Any qualified voter who submits by mail or by
delivery by a third party an application for registration
on the form used in conjunction with driver licensing
shall be required to make his or her first vote in person
and present identification as required for other mail
registration in accordance with the provisions of
subsection (g), section ten of this article: Provided, That
if the applicant has been previously registered in the
jurisdiction and the application is for a change of
address, change of name, change of political party
affiliation or other correction, the presentation of
identification and first vote in person is not required.

(e) Any application for voter registration submitted
pursuant to the provisions of this section shall be
considered as updating any previous voter registration
by the applicant and shall authorize the cancellation of
registration in any other county or state in which the
applicant was previously registered.

(f) Any change of address from one residence to
another within the same county which is submitted for
driver licensing purposes in accordance with applicable
law shall also serve as a notice of change of address for
voter registration purposes unless the individual
indicates on the form that the change of address is not
for voter registration purposes.

(g) Completed applications for voter registration or
change of address for voting purposes received by any office providing driver licensing services shall be forwarded to the Secretary of State within five days of receipt, unless other means are available for a more expedited transmission. The Secretary of State shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

(h) Voter registration application forms containing voter information which are returned to a driver licensing office unsigned shall be collected and maintained for two years according to procedural rules promulgated by the Secretary of State.

§3-2-13. Agencies to provide voter registration services; designation of responsible employees; forms; prohibitions; confidentiality.

(a) For the purposes of this article, "agency" means a department, division or office of state or local government, or a program supported by state funds, which is designated under this section to provide voter registration services, but does not include departments, divisions or offices required by other sections of this article to provide voter registration services.

(b) The following agencies shall provide voter registration services pursuant to the provisions of this article:

(1) Those state agencies which administer or provide services under the food stamp program, the Aid to Families with Dependent Children (AFDC) program, the
Women, Infants and Children (WIC) program and the Medicaid program;

(2) Those state-funded agencies primarily engaged in providing services to persons with disabilities;

(3) County marriage license offices;

(4) Armed services recruitment offices, as required by federal law; and

(5) The Department of Revenue, if it provides a check box on any form provided to the general public authorizing the Department of Revenue to request a voter registration application by mail from the Secretary of State on behalf of the applicant.

(c) No later than the first day of October, one thousand nine hundred ninety-four, the Secretary of State shall, in conjunction with a designated representative of each of the appropriate state agencies, review those programs and offices established and operating with state funds which administer or provide public assistance or services to persons with disabilities and shall promulgate an emergency rule pursuant to the provisions of chapter twenty-nine-a of this code designating the specific programs and offices required to provide voter registration services in order to comply with the requirements of this section and the requirements of the National Voter Registration Act of 1993 (42 U. S. C. §1973gg, et seq.). The offices and programs so designated shall begin providing voter registration services on the first day of January, one thousand nine hundred ninety-five.
(d) In each even-numbered year, the Secretary of State shall, in conjunction with the designated representatives of the appropriate state agencies, perform the review as required by the provisions of subsection (c) of this section. The Secretary of State shall periodically review and revise, if necessary, the legislative rule designating the specific agencies required to provide voter registration services.

(e) Each state agency required to provide services pursuant to the provisions of this article shall designate a current employee of that agency to serve as a state supervisor to administer voter registration services required in all programs under the agency's jurisdiction. Each state supervisor is responsible for coordination with the Secretary of State, overall operation of the program in conjunction with services within the agency, designation and supervision of local coordinators and for the review of any complaints filed against employees relating to voter registration as provided in this chapter.

(f) The state supervisor shall designate a current employee as a local coordinator for voter registration services for each office or program delivery center who shall be responsible for the proper conduct of voter registration services, timely return of completed voter registration applications, proper handling of declinations and reporting requirements. Notice of the designation of these persons shall be made upon request of the Secretary of State and within five days following any change of designation. Each local coordinator shall receive biannual training provided by the Secretary of State.

(g) The registration application forms used for agency
registration shall be issued pursuant to the provisions of section five of this article.

(h) The Secretary of State, in conjunction with those agencies designated to provide voter registration services pursuant to the provisions of this section, shall prescribe the form or portion of the appropriate agency form required by the provisions of 42 U. S. C. §1973gg, et seq., section 7(a)(6)(B) of the National Voter Registration Act of 1993, containing the required notices and providing boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote. The form or portion of the form is designated the “declination form”.

(i) A person who provides voter registration services may not:

(1) Seek to influence an applicant’s political preference or party registration;

(2) Display to any applicant any political preference or party allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(j) No information relating to the identity of a voter
registration agency through which any particular voter is registered or to a declination to register to vote in connection with an application made at any designated agency may be used for any purpose other than voter registration.

§3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit.

(a) The active, inactive, rejected and canceled voter registration records shall be made available for public inspection during office hours of the clerk of the county commission in accordance with the provisions of chapter twenty-nine-b of this code as follows:

(1) When the active and inactive files are maintained on precinct registration books, any person shall be allowed to examine these files under the supervision of the clerk and obtain copies of records except when a precinct book is in temporary use for updating and preparing lists or during the time the books are sealed for use in an election. Other original voter registration records, including canceled voter records, pending applications, rejected applications, records of change requests, reinstatements and other documents, shall be available for inspection upon specific request; and

(2) When the active, inactive, rejected and canceled voter files are maintained in data format, any person shall be allowed to examine voter record information in printed form or in a read-only data format on a computer terminal set aside for public use, if available.
The data files available shall include all registration and voting information maintained in the file, except that the telephone number and social security number of any voter shall not be available for inspection or copying in any format.

(b) Printed lists of registered voters may be purchased for noncommercial use from the clerk of the county commission at a cost of one cent per name.

(c) In counties maintaining active and inactive files in digitized data format, the clerk of the county commission shall, upon request, prepare printed copies of the lists of voters for each precinct. No list prepared under this section may include the telephone number or social security number of the registrant. The clerk shall establish a written policy, which shall be posted within public view, listing the options which may be requested for selection and sorting criteria and available data elements, which shall include at least the name, residence address, political party affiliation and status and the format of the lists and the times at which lists will be prepared. A copy of the policy shall be filed with the Secretary of State no later than the first day of January of each even-numbered year.

(d) In counties which maintain voter files in a digitized data format, lists of registered voters may be obtained for noncommercial purposes in data format on disk provided and prepared by the clerk of the county commission at a cost of one cent per name plus ten dollars for each disk required. No data file prepared under this subsection may include the telephone number or social security number of the registrant.
(e) The fees received by the clerk of the county commission shall be kept in a separate fund under the supervision of the clerk for the purpose of defraying the cost of the preparation of the voter lists. Any unexpended balance in the fund shall be transferred to the general fund of the county commission.

(f) The Secretary of State may make voter lists available for sale subject to the limitations as provided in this section for counties. The cost for a partial list shall be one and one-half cents per name plus ten dollars for each disk required; the cost for a complete statewide list shall be one-half cent per name and a flat fee of one thousand dollars. One cent per name for each voter from a particular county on each partial list, and one-half cent per name for each voter from a particular county on each statewide list sold shall be reimbursed to the appropriate county. The disk fee and one-half cent per name associated with a partial list and the flat fee of one thousand dollars associated with a complete statewide list shall be deposited to a special revenue account for purpose of defraying the cost of the preparation of the lists.

(g) An update to a previously purchased list may be provided by the Secretary of State or the clerk of the county commission at a prorated cost based on the amount of additional information provided. The additional rates charged by the clerk of the county commission shall be specified in the policy established pursuant to subsection (c) of this section.

(h) No voter registration lists or data files containing the names, addresses or other information relating to voters derived from voter data files obtained pursuant
21 [Enr. Com. Sub. for S. B. No. 617]

85 to the provisions of this article may be used for
86 commercial or charitable solicitations or advertising,
87 sold or reproduced for resale.
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.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within .................... approved .................... this 28th Day of March .................... 2007.

Governor
PRESENTED TO THE GOVERNOR

MAR 20 2007

Time 4:07