

1 **H. B. 3219**

2 (By Delegates C. Miller, Sobonya and Nelson)

3 [Introduced February 21, 2011; referred to the
4 Committee on the Judiciary.]

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9 A BILL to amend and reenact §3-1-34 of the Code of West Virginia,
10 1931, as amended, relating to voting procedures; and requiring
11 a voter to present an identifying document which contains the
12 name, address and a photograph of that person.

13 *Be it enacted by the Legislature of West Virginia:*

14 That §3-1-34 of the Code of West Virginia, 1931, as amended,
15 be amended and reenacted to read as follows:

16 **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

17 **§3-1-34. Voting procedures generally; assistance to voters; voting
18 records; penalties.**

19 (a) Any person desiring to vote in an election shall, upon
20 entering the election room, clearly state his or her name and
21 residence to one of the poll clerks who shall thereupon announce
22 the same in a clear and distinct tone of voice. The person
23 desiring to vote shall present to one of the poll clerks an
24 identifying document which contains the name, address and a

1 photograph of the person desiring to vote, which the poll clerk
2 shall inspect and confirm is truly an image of the person
3 presenting the document. If that person is found to be duly
4 registered as a voter at that precinct, he or she shall sign his or
5 her name in the designated location provided at the precinct. If
6 that person is physically or otherwise unable to sign his or her
7 name, his or her mark shall be affixed by one of the poll clerks in
8 the presence of the other and the name of the poll clerk affixing
9 the voter's mark shall be indicated immediately under the
10 affixation. No ballot may be given to the person until he or she
11 signs his or her name on the designated location or his or her
12 signature is affixed thereon. Should the person desiring to vote be
13 unable to furnish an identifying document which contains the name,
14 address, and a photograph of the person desiring to vote, they
15 shall be allowed to vote, but must cast a provisional ballot.

16 (b) The clerk of the county commission is authorized, upon
17 verification that the precinct at which a handicapped person is
18 registered to vote is not handicap accessible, to transfer that
19 person's registration to the nearest polling place in the county
20 which is handicap accessible. A request by a handicapped person
21 for a transfer of registration must be received by the county clerk
22 no later than thirty days prior to the date of the election. Any
23 handicapped person who has not made a request for a transfer of
24 registration at least thirty days prior to the date of the election
25 may vote a provisional ballot at a handicap accessible polling

1 place in the county of his or her registration. If during the
2 canvass the county commission determines that the person had been
3 registered in a precinct that is not handicap accessible, the voted
4 ballot, if otherwise valid, shall be counted. The handicapped
5 person may vote in the precinct to which the registration was
6 transferred only as long as the disability exists or the precinct
7 from which the handicapped person was transferred remains
8 inaccessible to the handicapped. To ensure confidentiality of the
9 transferred ballot, the county clerk processing the ballot shall
10 provide the voter with an unmarked envelope and an outer envelope
11 designated "provisional ballot/handicapped voter". After
12 validation of the ballot at the canvass, the outer envelope shall
13 be destroyed and the handicapped voter's ballot shall be placed
14 with other approved provisional ballots prior to removal of the
15 ballot from the unmarked envelope.

16 (c) When the voter's signature is properly marked, the two
17 poll clerks shall sign their names in the places indicated on the
18 back of the official ballot and deliver the ballot to the voter to
19 be voted by him or her without leaving the election room. If he or
20 she returns the ballot spoiled to the clerks, they shall
21 immediately mark the ballot "spoiled" and it shall be preserved and
22 placed in a spoiled ballot envelope together with other spoiled
23 ballots to be delivered to the board of canvassers and deliver to
24 the voter another official ballot, signed by the clerks on the
25 reverse side. The voter shall thereupon retire alone to the booth

1 or compartment prepared within the election room for voting
2 purposes and there prepare his or her ballot. In voting for
3 candidates in general and special elections, the voter shall comply
4 with the rules and procedures prescribed in section five, article
5 six of this chapter.

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

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

22 (A) Declare his or her choice of candidates to an election
23 commissioner of each political party who, in the presence of the
24 voter and in the presence of each other, shall prepare the ballot
25 for voting in the manner hereinbefore provided and, on request,

1 shall read to the voter the names of the candidates selected on the
2 ballot;

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

8 (C) Be assisted by any person of the voter's choice, other
9 than the voter's present or former employer or agent of that
10 employer, the officer or agent of a labor union of which the voter
11 is a past or present member or a candidate on the ballot or an
12 official write-in candidate; or

13 (D) If he or she is handicapped, vote from an automobile
14 outside the polling place or precinct by the absentee balloting
15 method provided in subsection (e), section five, article three of
16 this chapter in the presence of an election commissioner of each
17 political party if all of the following conditions are met:

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

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

21 (2) The voted ballot shall then be returned to the precinct
22 officials and secured in a sealed envelope to be returned to the
23 clerk of the county commission with all other election materials.
24 The ballot shall then be tabulated using the appropriate method
25 provided in section eight of this chapter as it relates to the

1 specific voting system in use.

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

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

17 (5) An election commissioner or other person who assists a
18 voter in voting:

19 (A) May not in any manner request or seek to persuade or
20 induce the voter to vote any particular ticket or for any
21 particular candidate or for or against any public question and must
22 not keep or make any memorandum or entry of anything occurring
23 within the voting booth or compartment and must not, directly or
24 indirectly, reveal to any person the name of any candidate voted
25 for by the voter or which ticket he or she had voted or how he or

1 she had voted on any public question or anything occurring within
2 the voting booth or compartment or voting machine booth except when
3 required pursuant to law to give testimony as to the matter in a
4 judicial proceeding; and

5 (B) Shall sign a written oath or affirmation before assisting
6 the voter on a form prescribed by the Secretary of State stating
7 that he or she will not override the actual preference of the voter
8 being assisted, attempt to influence the voter's choice or mislead
9 the voter into voting for someone other than the candidate of
10 voter's choice. The person assisting the voter shall also swear or
11 affirm that he or she believes that the voter is voting free of
12 intimidation or manipulation: *Provided*, That no person providing
13 assistance to a voter is required to sign an oath or affirmation
14 where the reason for requesting assistance is the voter's inability
15 to vote without assistance because of blindness as defined in
16 section three, article fifteen, chapter five of this code and the
17 inability to vote without assistance because of blindness is
18 certified in writing by a physician of the voter's choice and is on
19 file in the office of the clerk of the county commission.

20 (6) In accordance with instructions issued by the Secretary of
21 State, the clerk of the county commission shall provide a form
22 entitled "list of assisted voters", the form of which list shall
23 likewise be prescribed by the Secretary of State. The
24 commissioners shall enter the name of each voter receiving
25 assistance in voting the ballot, together with the poll slip number

1 of that voter and the signature of the person or the commissioner
2 from each party who assisted the voter. If no voter has been
3 assisted in voting, the commissioners shall likewise make and
4 subscribe to an oath of that fact on the list.

5 (f) After preparing the ballot, the voter shall fold the
6 ballot so that the face is not exposed and so that the names of the
7 poll clerks thereon are seen. The voter shall announce his or her
8 name and present his or her ballot to one of the commissioners who
9 shall hand the same to another commissioner, of a different
10 political party, who shall deposit it in the ballot box if the
11 ballot is the official one and properly signed. The commissioner
12 of election may inspect every ballot before it is deposited in the
13 ballot box to ascertain whether it is single, but without unfolding
14 or unrolling it so as to disclose its content. When the voter has
15 voted, he or she shall retire immediately from the election room
16 and beyond the sixty-foot limit thereof and may not return except
17 by permission of the commissioners.

18 (g) Following the election, the oaths or affirmations required
19 by this section from those assisting voters, together with the
20 "list of assisted voters", shall be returned by the election
21 commissioners to the clerk of the county commission along with the
22 election supplies, records and returns. The clerk of the county
23 commission shall make the oaths, affirmations and list available
24 for public inspection and shall preserve them for a period of
25 twenty-two months or until disposition is authorized or directed by

1 the Secretary of State or court of record: *Provided*, That the
2 clerk may use these records to update the voter registration
3 records in accordance with subsection (d), section eighteen,
4 article two of this chapter.

5 (h) Any person making an oath or affirmation required under
6 the provisions of this section who knowingly swears falsely or any
7 person who counsels, advises, aids or abets another in the
8 commission of false swearing under this section is guilty of a
9 misdemeanor and, upon conviction thereof, shall be fined not more
10 than \$1,000 or confined in jail for a period of not more than one
11 year, or both fined and confined.

12 (i) Any election commissioner or poll clerk who authorizes or
13 provides unchallenged assistance to a voter when the voter is known
14 to the election commissioner or poll clerk not to require
15 assistance in voting is guilty of a felony and, upon conviction
16 thereof, shall be fined not more than \$5,000 or imprisoned in a
17 state correctional facility for a period of not less than one year
18 nor more than five years, or both fined and imprisoned.

NOTE: The purpose of this bill is to require voters to provide a photo ID when voting.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.