

COMMITTEE SUBSTITUTE

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Senate Bill No. 80

(By Senators Foster, Stollings, Hall,
Palumbo, Beach and Klempa)

[Originating in the Committee on the Judiciary;
reported January 25, 2011.]

A BILL to amend and reenact §52-1-8 of the Code of West Virginia, 1931, as amended, relating to redefining the basis for disqualification of prospective jurors to include those who have been convicted of any crime punishable by imprisonment in excess of one year or any crime involving dishonesty or false statement, regardless of the punishment; creating exceptions thereto excusing women who are breast feeding from jury duty upon request; and requiring reasonable accommodations for breast feeding juror upon request if she chooses to serve.

Be it enacted by the Legislature of West Virginia:

That §52-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PETIT JURIES.

§52-1-8. Disqualification from jury service.

1 (a) The court, upon request of a prospective juror or on its
2 own initiative, shall determine on the basis of information
3 provided on the juror qualification form or interview with
4 the prospective juror or other competent evidence whether
5 the prospective juror is disqualified for jury service. The
6 clerk shall enter this determination in the space provided on
7 the juror qualification form and on the alphabetical lists of
8 names drawn from the jury wheel or jury box.

9 (b) A prospective juror is disqualified to serve on a jury if
10 the prospective juror:

11 (1) Is not a citizen of the United States, at least eighteen
12 years old and a resident of the county;

13 (2) Is unable to read, speak and understand the English
14 language. For the purposes of this section, the requirement
15 of speaking and understanding the English language is met
16 by the ability to communicate in American sign language or
17 signed English;

18 (3) Is incapable, by reason of substantial physical or mental
19 disability, of rendering satisfactory jury service; but a person
20 claiming this disqualification may be required to submit a
21 physician's certificate as to the disability and the certifying
22 physician is subject to inquiry by the court at its discretion;

23 (4) Has, within the preceding two years, been summoned to
24 serve as a petit juror, grand juror or magistrate court juror,
25 and has actually attended sessions of the magistrate or
26 circuit court and been reimbursed for his or her expenses as
27 a juror pursuant to the provisions of section twenty-one of
28 this article, section thirteen, article two of this chapter, or
29 pursuant to an applicable rule or regulation of the Supreme
30 Court of Appeals promulgated pursuant to the provisions of
31 section eight, article five, chapter fifty of this code;

32 (5) Has lost the right to vote because of a criminal
33 conviction; or

34 (6) Has been convicted of perjury, ~~false swearing or other~~
35 ~~infamous offense~~ any crime punishable by imprisonment in
36 excess of one year under the applicable law or any crime
37 involving dishonesty or false statement, regardless of the
38 punishment: *Provided*, That offenses set forth in sections
39 thirty-nine and thirty-nine-a, article three, chapter sixty-one

40 of this code shall not be deemed disqualifying offenses under
41 this section;

42 (c) A prospective juror seventy years of age or older is not
43 disqualified from serving, but shall be excused from service
44 by the court upon the juror's request.

45 (d) a prospective juror who is breast feeding her child or
46 children is not disqualified from service by virtue of such
47 breast feeding but she shall be excused from serving upon
48 her request. Should a prospective juror who is breast feeding
49 choose to serve as a juror and is chosen to serve, the court
50 shall reasonably accommodate her ability to breast feed her
51 child or children.

52 ~~(d)~~ (e) A prospective grand juror is disqualified to serve on
53 a grand jury if the prospective grand juror is an officeholder
54 under the laws of the United States or of this state except
55 that the term "officeholder" does not include notaries public.

56 ~~(e)~~(f) A person who is physically disabled and can render
57 competent service with reasonable accommodation shall not
58 be ineligible to act as juror or be dismissed from a jury panel
59 on the basis of disability alone: *Provided*, That the circuit
60 judge shall, upon motion by either party or upon his or her
61 own motion, disqualify a disabled juror if the circuit judge

62 finds that the nature of potential evidence in the case
63 including, but not limited to, the type or volume of exhibits
64 or the disabled juror's ability to evaluate a witness or
65 witnesses, unduly inhibits the disabled juror's ability to
66 evaluate the potential evidence. For purposes of this section:

67 (1) Reasonable accommodation includes, but is not limited
68 to, certified interpreters for the hearing impaired,
69 spokespersons for the speech impaired and readers for the
70 visually impaired.

71 (2) The court shall administer an oath or affirmation to any
72 person present to facilitate communication for a disabled
73 juror. The substance of such oath or affirmation shall be
74 that any person present as an accommodation to a disabled
75 juror will not deliberate on his or her own behalf, although
76 present throughout the proceedings, but act only to
77 accurately communicate for and to the disabled juror.

78 ~~(f)~~(g) Nothing in this article shall be construed so as to
79 limit in any way a party's right to preemptory strikes in civil
80 or criminal actions.

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