

1 **H. B. 2865**

2  
3 (By Delegates Miley, Manchin, Ferro,  
4 Moore and Manypenny)

5 (By Request of the Secretary of State)

6 [Introduced March 7, 2013; referred to the  
7 Committee on the Judiciary.]

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9  
10 A BILL to repeal §3-2-24 of the Code of West Virginia, 1931, as  
11 amended; and to amend and reenact §3-2-5, §3-2-6, §3-2-7,  
12 §3-2-10, and §3-2-11 of said code, all relating to electronic  
13 registration of voters.

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

15 That §3-2-24 of the Code of West Virginia, 1931, as amended,  
16 be repealed; and that §3-2-5, §3-2-6 §3-2-7, §3-2-10 and §3-2-11 of  
17 said code be amended and reenacted, all to read as follows:

18 **ARTICLE 2. REGISTRATION OF VOTERS.**

19 **§3-2-5. Forms for application for registration; information**  
20 **required and requested; types of application forms;**  
21 **notices.**

22 (a) (1) All state forms for application for voter registration  
23 shall be prescribed by the Secretary of State and shall conform

1 with the requirements of 42 U.S.C. §1973gg, *et seq.*, the National  
2 Voter Registration Act of 1993 and the requirements of the  
3 provisions of this article. Separate application forms may be  
4 prescribed for voter registration conducted by the clerk of the  
5 county commission, registration by mail, registration in  
6 conjunction with an application for motor vehicle driver's license  
7 and registration at designated agencies. These forms may consist  
8 of one or more parts, may be combined with other forms for use in  
9 registration by designated agencies or in conjunction with driver  
10 licensing and may be revised and reissued as required by the  
11 Secretary of State to provide for the efficient administration of  
12 voter registration.

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

22 (3) A secure electronic voter registration system is approved  
23 for use in accordance with procedures promulgated by the Secretary

1 of State.

2 (b) Each application form for registration shall include:

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

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

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

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

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

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

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

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

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

6 (A) In the case of a person eligible to register under the  
7 provisions of 42 U.S.C. §1973ff, *et seq.*, the Uniformed and  
8 Overseas Citizens Absentee Voting Act, the address at which he or  
9 she last resided before leaving the United States or entering the  
10 uniformed services, or if a dependent child of such a person, the  
11 address at which his or her parent last resided; ~~and~~

12 (B) In the case of a homeless person having no fixed residence  
13 address who nevertheless resides and remains regularly within the  
14 county, the address of a shelter, assistance center or family  
15 member with whom he or she has regular contact or other specific  
16 location approved by the clerk of the county commission for the  
17 purposes of establishing a voting residence; ~~and~~ or

18 (C) In the case of a participant in the Address  
19 Confidentiality Program administered by the Secretary of State in  
20 accordance with section one hundred three, article twenty-eight  
21 (a), chapter forty-eight of this code, the designated address  
22 assigned to the participant by the Secretary of State; and

23 (4) The applicant's signature, under penalty of perjury as

1 provided in section thirty-six of this article, to the attestation  
2 of eligibility to register to vote and to the truth of the  
3 information given. The clerk may accept the electronically  
4 transmitted signature kept on file with another approved state  
5 database for an applicant who applies to register to vote using an  
6 approved electronic voter registration system in accordance with  
7 procedures promulgated by the Secretary of State.

8 (d) The applicant shall be requested to provide the following  
9 information but no application ~~shall~~ may be rejected for lack of  
10 this information:

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

14 (2) The applicant's choice of political party affiliation, if  
15 any, or an indication of no affiliation. ~~Provided, That any An~~  
16 applicant who does not enter ~~any~~ a choice of political party  
17 affiliation ~~shall be~~ is listed as having no party affiliation on  
18 the voting record;

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

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

23 (5) The applicant's telephone number;

1        (6) The applicant's e-mail address;

2        ~~(6)~~ (7) The address ~~at which~~ where the applicant was last  
3 registered to vote, if any, for the purpose of canceling or  
4 transferring the previous registration; and

5        ~~(7)~~ (8) The applicant's gender.

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

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

15        (g) No later than July 1 of each odd-numbered year, the  
16 Secretary of State shall submit the specifications of the voter  
17 registration application by mail for statewide bidding for a  
18 contract period beginning September 1 of each odd-numbered year and  
19 continuing for two calendar years. The successful bidder shall  
20 produce and supply the required mail voter registration forms at  
21 the contract price to all purchasers of the form for the period of  
22 the contract.

23 **§3-2-6. Time of registration application before an election.**

1 (a) Voter registration before an election ~~shall close~~ closes  
2 on the twenty-first day before the election or on the first day  
3 thereafter which is not a Saturday, Sunday or legal holiday.

4 (b) An application for voter registration, transfer of  
5 registration, change of name or change of political party  
6 affiliation submitted by an eligible voter by the close of voter  
7 registration ~~shall be~~ is effective for any subsequent primary,  
8 general or special election if the following conditions are met:

9 (1) The application contains the information required by  
10 subsection (c), section five of this article. ~~Provided, That~~  
11 Incomplete applications for registration containing information  
12 which are submitted within the required time may be corrected  
13 within four business days after the close of registration if the  
14 applicant provides the required information; and

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

18 (A) If mailed, the application shall be addressed to the  
19 appropriate clerk of the county commission and is postmarked by the  
20 postal service no later than the date of the close of registration.  
21 ~~Provided, That~~ If the postmark is missing or illegible, the  
22 application ~~shall be~~ is presumed to have been mailed no later than  
23 the close of registration if it is received by the appropriate

1 clerk of the county commission no later than the third day  
2 following the close of registration;

3 (B) If accepted by a designated agency or motor vehicle  
4 licensing office, the application is received by that agency or  
5 office no later than the close of registration;

6 (C) If accepted through a registration outreach program, the  
7 application is received by the clerk, deputy clerk or registrar no  
8 later than the close of registration; ~~and~~

9 (D) If accepted through an approved electronic voter  
10 registration system, the application is received by the clerk of  
11 the county commission or other entity designated by the Secretary  
12 of State no later than the close of business on the final day of  
13 registration; and

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

17 **§3-2-7. Hours and days of registration in the office of the clerk**  
18 **of the county commission; in-person application for**  
19 **voter registration; identification required.**

20 (a) The clerk of the county commission shall provide voter  
21 registration services at all times when the office of the clerk is  
22 open for regular business.

23 (b) ~~Any~~ An eligible voter who desires to apply for voter



1 registration in person at the office of the clerk of the county  
2 commission shall complete a voter registration application on the  
3 prescribed form and shall sign the oath required on that  
4 application in the presence of the clerk of the county commission  
5 or his or her deputy: Provided, that an individual may apply for  
6 voter registration using an approved electronic voter registration  
7 system if available at the office of the clerk. Such system may  
8 electronically transfer the voter's signature stored in the  
9 database of another state agency in accordance with procedures  
10 promulgated by the Secretary of State. The applicant shall present  
11 valid identification and proof of age. ~~except that~~ The clerk may  
12 waive the proof of age requirement if the applicant is clearly over  
13 the age of eighteen.

14 (c) The clerk shall attempt to establish whether the residence  
15 address given is within the boundaries of an incorporated  
16 municipality and, if so, make the proper entry required for  
17 municipal residents to be properly identified for municipal voter  
18 registration purposes.

19 (d) Upon receipt of the completed registration application,  
20 the clerk shall either:

21 (1) Provide a notice of procedure for verification and notice  
22 of disposition of the application and immediately begin the  
23 verification process prescribed by the provisions of section

1 sixteen of this article; or

2 (2) Upon presentation of a current driver's license or  
3 state-issued identification card containing the residence address  
4 as it appears on the voter registration application, issue the  
5 receipt of registration.

6 **§3-2-10. Application for registration by mail.**

7 (a) ~~Any~~ A qualified person may apply to register, change,  
8 transfer or correct his or her voter registration by mail.  
9 Application shall be made on a prescribed form as provided by  
10 section five of this article.

11 (b) To the extent possible, with funds allocated annually for  
12 such purpose, the Secretary of State shall make state mail  
13 registration forms available for distribution through governmental  
14 and private entities and organized voter registration programs.  
15 The Secretary of State shall make a record of all requests by  
16 entities or organizations for two hundred or more forms with a  
17 description of the dates and locations in which the proposed  
18 registration drive is to be conducted. The Secretary of State  
19 shall also require the entity or organization requesting the forms  
20 to provide contact information on a form prescribed by the  
21 Secretary of State. The Secretary of State may limit the  
22 distribution to a reasonable amount per group.

23 (c) The clerk of the county commission shall provide up to

1 four mail registration forms to ~~any~~ a resident of the county upon  
2 request. To the extent possible with funds allocated annually for  
3 the purpose, the clerk of the county commission shall make state  
4 mail registration forms available for distribution through  
5 organized voter registration programs within the county. The clerk  
6 of the county commission shall make a record of all requests by  
7 entities or organizations for ten or more forms with a description  
8 of the dates and locations in which the proposed registration drive  
9 is to be conducted. The clerk may limit the distribution to a  
10 reasonable amount per group.

11 (d) The applicant shall provide all required information and,  
12 only after completing the information, sign the prescribed  
13 applicant's oath under penalty of perjury as provided in section  
14 thirty-six of this article. No person may alter or add any entry  
15 or make any mark which would alter any material information on the  
16 voter registration application after the applicant has signed the  
17 oath. ~~Provided, That~~ The clerk of the county commission may  
18 correct ~~any~~ an entry upon the request of the applicant provided the  
19 request is properly documented and the correction is dated and  
20 initialed by the clerk.

21 (e) Completed applications shall be mailed or delivered to the  
22 clerk of the county commission of the county in which the voter  
23 resides. If a clerk receives a completed mail application form

1 from a voter whose residence address is located in another county,  
2 the clerk shall forward that application within three days to the  
3 clerk of the county commission of the county of the applicant's  
4 residence.

5 (f) Upon receipt of the application for registration by the  
6 appropriate clerk of the county commission, the clerk shall:

7 (1) Attempt to establish whether the residence address given  
8 is within the boundaries of an incorporated municipality and, if  
9 so, make the proper entry required for municipal residents to be  
10 properly identified for municipal voter registration purposes; and

11 (2) Immediately begin the verification process required by the  
12 provisions of section sixteen of this article.

13 (g) ~~Any~~ A person who registers by mail pursuant to this  
14 section and who has not previously voted in an election in the  
15 state ~~shall be~~ is required to present the following forms of  
16 identification to the Secretary of State or clerk of the county  
17 commission:

18 (1) In the case of an individual who votes in person, a  
19 current and valid photo identification or a copy of a current  
20 utility bill, bank statement, government check, paycheck or other  
21 government document that shows the name and address of the voter;  
22 or

23 (2) In the case of an individual who votes by mail, a copy of

1 a current and valid photo identification or a copy of a current  
2 utility bill, bank statement, government check, paycheck or other  
3 government document that shows the name and address of the voter,  
4 submitted with the ballot.

5 (h) An individual who desires to vote in person or by mail but  
6 who does not meet the requirements of subsection (g) of this  
7 section may cast a provisional ballot.

8 (i) Subsection (g) of this section does not apply in the case  
9 of a person:

10 (1) Who registers to vote by mail under 42 U.S.C. §1973gg-4,  
11 *et seq.*, and submits as part of his or her registration either a  
12 copy of a current and valid photo identification or a copy of a  
13 current utility bill, bank statement, government check, paycheck or  
14 government document that shows the name and address of the voter;

15 (2) (A) Who registers to vote by mail under 42 U.S.C.  
16 §1973gg-4, *et seq.*, and submits with his or her registration either  
17 a driver's license number or at least the last four digits of the  
18 individual's social security number; and

19 (B) With respect to whom the Secretary of State or clerk of  
20 the county commission matches the information submitted under  
21 paragraph (A) of this subdivision with an existing state  
22 identification record bearing the same number, name and date of  
23 birth as provided in the registration; or

1 (3) Who is:

2 (A) Entitled to vote by absentee ballot under 42 U.S.C.  
3 §1973ff-1, *et seq.*, the Uniformed and Overseas Citizens Absentee  
4 Voting Act;

5 (B) Provided the right to vote otherwise than in person under  
6 42 U.S.C. §1973ee-1(b)(2)(B)(ii); or 25 (iii), section  
7 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and  
8 Handicapped Act;

9 (C) Entitled to vote otherwise than in person under any other  
10 federal law. ~~Provided, That any~~ A person who has applied for an  
11 absentee ballot ~~pursuant to the provisions of~~ under subdivision  
12 (1), subsection (b), section one, article three of this chapter;  
13 paragraph (B), subdivision (2), ~~of said~~ subsection (b), section  
14 one, article three of this chapter; subdivision (3), ~~of said~~  
15 subsection (b), section one, article three of this chapter or  
16 subsection (c), of said section one, article three of this chapter  
17 may not have his or her ballot in that election challenged for  
18 failure to appear in person or for failure to present  
19 identification.

20 (j) ~~Any~~ A person who submits a state mail voter registration  
21 application to the clerk of the county commission in the county in  
22 which he or she is currently registered for the purpose of entering  
23 a change of address within the county, making a change of party

1 affiliation or recording a change of legal name ~~shall not be~~ is not  
2 required to make his or her first vote in person or to present  
3 identification or proof of age.

4 (k) On and after July 1, 2006, ~~any~~ a person who agrees to mail  
5 or to deliver a signed voter registration application to the  
6 Secretary of State or the clerk of the county commission and who  
7 intentionally interferes with the applicant's effort to register  
8 either by altering or destroying the application or by failing to  
9 mail or to deliver the application in a timely manner is guilty of  
10 a misdemeanor and, upon conviction thereof, shall be fined not more  
11 than \$1,000, or confined in a jail for not more than one year, or  
12 both. For purposes of this subsection, the mailing or delivery of  
13 an application is timely if it is mailed or delivered within  
14 fifteen days after the applicant signs the application or in  
15 accordance with the provisions of article two, chapter three of  
16 this code for processing before the closing of the registration  
17 records for the pending election, whichever comes first.

18 (l) On or after July 1, 2006, ~~any~~ a person who intentionally  
19 solicits multiple registrations from any one person or who  
20 intentionally falsifies a registration application is guilty of a  
21 misdemeanor and, upon conviction thereof, shall be fined not more  
22 than \$1,000, or confined in jail for not more than one year, or  
23 both.

1       (m) A person who agrees to mail or to deliver a signed voter  
2 registration application to the Secretary of State or to the clerk  
3 of the county commission and who exerts improper influence on the  
4 choice of party affiliation of an applicant or otherwise attempts  
5 to improperly interfere with or intimidate an applicant relating to  
6 that applicant's decision to register or not to register is guilty  
7 of a misdemeanor and, upon conviction thereof, shall be fined not  
8 more than \$1,000 or confined in jail for not more than one year, or  
9 both fined and confined.

10       (n) Any person who agrees to mail or to deliver a signed voter  
11 registration application to the Secretary of State or to the clerk  
12 of the county commission and who copies or causes to be copied,  
13 manually or electronically, any information contained within the  
14 registration document other than the name of the applicant and the  
15 date of the applicants's signature is guilty of a misdemeanor and,  
16 upon conviction thereof, shall be fined not more than \$1,000 or  
17 confined in jail for not more than one year, or both fined and  
18 confined.

19 **§3-2-11. Registration in conjunction with driver licensing.**

20       (a) The Division of Motor Vehicles or ~~any~~ other division or  
21 department that may be established by law to perform motor vehicle  
22 driver licensing services shall provide each qualified registrant,  
23 as an integral and simultaneous part of every process of



1 application for the issuance, renewal or change of address of ~~any~~  
2 a motor vehicle driver's license or official identification card  
3 pursuant to the provisions of article two, chapter seventeen-b of  
4 this code, a voter registration application as prescribed in  
5 section five of this article when the Division's regional offices  
6 are open for regular business. An individual may apply for voter  
7 registration using an approved electronic voter registration system  
8 if available at a Division of Motor Vehicles regional office.

9 (b) Notwithstanding any other provision of this code to the  
10 contrary, the Division of Motor Vehicles is required to release the  
11 personal information of an applicant, including the electronic  
12 signature, entered in its records for driver license or  
13 nonoperator's identification purposes that is also required by the  
14 voter registration laws to the Secretary of State upon notice and  
15 written consent of the applicant. The notice and consent is a  
16 required component of an electronic voter registration application  
17 made available to the general public by the Secretary of State. The  
18 release of an applicant's signature by the Division of Motor  
19 Vehicles to the Office of the Secretary of State applies to any  
20 voter registration application approved through an electronic voter  
21 registration system promulgated by the Secretary of State  
22 regardless of the location of the online user and provided the user  
23 grants written consent upon notice.

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

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

16        ~~(d)~~ (e) ~~Any~~ A qualified voter who submits by mail or by  
17 delivery by a third party an application for registration on the  
18 form used in conjunction with driver licensing ~~shall be~~ is required  
19 to make his or her first vote in person and present identification  
20 as required for other mail registration in accordance with the  
21 provisions of subsection (g), section ten of this article.  
22 ~~Provided, That~~ If the applicant has been previously registered in  
23 the jurisdiction and the application is for a change of address,

1 change of name, change of political party affiliation or other  
2 correction, the presentation of identification and first vote in  
3 person is not required.

4 ~~(e)~~ (f) ~~Any~~ An application for voter registration submitted  
5 pursuant to the provisions of this section ~~shall be considered as~~  
6 ~~updating any~~ updates a previous voter registration by the applicant  
7 and ~~shall authorize~~ authorizes the cancellation of registration in  
8 any other county or state in which the applicant was previously registered.

9 ~~(f)~~ (g) ~~Any~~ A change of address from one residence to another  
10 within the same county which is submitted for driver licensing or  
11 nonoperator's identification purposes in accordance with applicable  
12 law ~~shall also serve~~ serves as a notice of change of address for  
13 voter registration purposes ~~unless the individual indicates on the~~  
14 ~~form that the change of address is not for voter registration~~  
15 ~~purposes.~~ if requested by the applicant after notice and written  
16 consent of the applicant.

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

1 the clerk of the appropriate county commission within five days of  
2 receipt.

3       ~~(h)~~ (i) Voter registration application forms containing voter  
4 information which are returned to a driver licensing office  
5 unsigned shall be collected ~~and maintained for two years according~~  
6 ~~to procedural rules promulgated by the Division of Motor Vehicles,~~  
7 submitted to the Secretary of State and maintained by that office  
8 according to the retention policy adopted by the Secretary of  
9 State.

NOTE: The purpose of this bill is to provide an electronic voter registration system allowing for greater utilization of the Statewide Voter Registration System (SVRS), to allow for use of a designated address for voter registration purposes for participants in the Address Confidentiality Program, to establish an offense and related penalty for tampering with or copying voter registration information collected by third-party registration drives, to delete obsolete language related to manual voter registration systems, to shorten the period of time during which county clerks may enter voter history data into the statewide voter registration system, to clarify certain record-keeping requirements related to confirmation mailings required by the National Voter Registration Act of 1993 and to restrict the public release of voter e-mail addresses.

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