

Senate Bill No. 477

(By Senator Palumbo)

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

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

Be it enacted by the Legislature of West Virginia:

That §3-2-24 of the Code of West Virginia, 1931, as amended, be repealed; and that §3-2-5, §3-2-6, §3-2-7, §3-2-10 and §3-2-11 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§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

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

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

23 (3) A secure electronic voter registration system is approved

1 for use in accordance with procedures promulgated by the Secretary
2 of State.

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

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

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

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

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

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

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

1 incomplete:

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

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

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

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

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

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

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

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

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

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

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

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

1 (5) The applicant's telephone number;

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

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

6 ~~(7)~~ (8) The applicant's gender.

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

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

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

1 **§3-2-6. Time of registration application before an election.**

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

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

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

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

19 (A) If mailed, the application shall be addressed to the
20 appropriate clerk of the county commission and is postmarked by the
21 postal service no later than the date of the close of registration.

22 ~~Provided, That~~ If the postmark is missing or illegible, the
23 application ~~shall be~~ is presumed to have been mailed no later than

1 the close of registration if it is received by the appropriate
2 clerk of the county commission no later than the third day
3 following the close of registration;

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

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

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

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

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

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

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

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

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

22 (1) Provide a notice of procedure for verification and notice
23 of disposition of the application and immediately begin the

1 verification process prescribed by the provisions of section
2 sixteen of this article; or

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

7 **§3-2-10. Application for registration by mail.**

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

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

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

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

22 (e) Completed applications shall be mailed or delivered to the
23 clerk of the county commission of the county in which the voter

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

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

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

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

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

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

24 (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

24 (3) Who is:

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

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

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

19 (j) ~~Any~~ A person who submits a state mail voter registration
20 application to the clerk of the county commission in the county in
21 which he or she is currently registered for the purpose of entering
22 a change of address within the county, making a change of party
23 affiliation or recording a change of legal name ~~shall not be~~ is not
24 required to make his or her first vote in person or to present

1 identification or proof of age.

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

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

22 (m) A person who agrees to mail or to deliver a signed voter
23 registration application to the Secretary of State or to the clerk
24 of the county commission and who exerts improper influence on the

1 choice of party affiliation of an applicant or otherwise attempts
2 to improperly interfere with or intimidate an applicant relating to
3 that applicant's decision to register or not to register is guilty
4 of a misdemeanor and, upon conviction thereof, shall be fined not
5 more than \$1,000 or confined in jail for not more than one year, or
6 both fined and confined.

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

16 **§3-2-11. Registration in conjunction with driver licensing.**

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

1 section five of this article when the Division's regional offices
2 are open for regular business. An individual may apply for voter
3 registration using an approved electronic voter registration system
4 if available at a Division of Motor Vehicles regional office.

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

20 ~~(b)~~ (c) Any A person who fails to sign the voter registration
21 application or who fails to return the voter registration
22 application to a driver licensing facility or to an appropriate
23 voter registration office ~~shall be~~ is considered to have declined
24 to register. Information regarding ~~any~~ a person's failure to sign

1 the voter registration application is confidential and may not be
2 used for any purpose other than to determine voter registration.

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

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

22 ~~(e)~~ (f) Any An application for voter registration submitted
23 pursuant to the provisions of this section ~~shall be considered as~~
24 ~~updating any~~ updates a previous voter registration by the applicant

1 and ~~shall authorize~~ authorizes the cancellation of registration in
2 any other county or state in which the applicant was previously registered.

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

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

20 ~~(h)~~ (i) Voter registration application forms containing voter
21 information which are returned to a driver licensing office
22 unsigned shall be collected ~~and maintained for two years according~~
23 ~~to procedural rules promulgated by the Division of Motor Vehicles,~~
24 submitted to the Secretary of State and maintained by that office

1 according to the retention policy adopted by the Secretary of
2 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.