

Senate Bill No. 570

(By Senators Beach, Miller, D. Hall and Wells)

[Introduced March 19, 2013; referred to the Committee on the
Judiciary.]

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10 A Bill to repeal §3-1-10 of the Code of West Virginia, 1931, as
11 amended; and to amend and reenact §3-1-2a, §3-1-4, §3-1-21,
12 §3-1-21a, §3-1-22, §3-1-26, §3-1-32, §3-1-36, §3-1-37,
13 §3-1-38, §3-1-39, §3-1-41, §3-1-42 and §3-1-49 of said code,
14 all relating to cleaning up outdated language in article one,
15 chapter three of the West Virginia Code.

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

17 That §3-1-10 of the Code of West Virginia, 1931, as amended,
18 be repealed; and that §3-1-2a, §3-1-4, §3-1-21, §3-1-21a, §3-1-22,
19 §3-1-26, §3-1-32, §3-1-36, §3-1-37, §3-1-38, §3-1-39, §3-1-41,
20 §3-1-42 and §3-1-49 of said code be amended and reenacted, all to
21 read as follows:

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

23 **§3-1-2a. Municipal elections.**

24 (a) Notwithstanding other provisions of this code or of any
25 special legislative or home rule city charter, the provisions of:
26 (1) Articles eight and nine of this chapter; (2) ~~any~~ rules

1 promulgated under authority granted in articles eight and nine of
2 this chapter; and (3) ~~any~~ provisions of this chapter making a
3 practice or conduct unlawful ~~shall apply~~ applies to every municipal
4 election held for any purpose.

5 (b) For purposes of:

6 (1) This section;

7 (2) The application of articles eight and nine of this
8 chapter;

9 (3) The application of the rules mentioned in this section;
10 and

11 (4) The application of provisions of this chapter making a
12 practice or conduct unlawful, the provisions of law which impose
13 ~~any~~ a duty upon or define ~~any~~ an offense or prohibition with
14 respect to the duty or authority of a county officer or county
15 election officer or body of county election officers ~~shall be~~
16 ~~construed to and shall apply~~ applies with equal force and effect to
17 the person or persons in a municipal election upon whom this code
18 or the city charter or ordinance imposes such duty or vests the
19 same or similar authority.

20 (c) Every municipality shall by charter or ordinance designate
21 the persons in the municipality who perform the same duties as any
22 officer in a county election. The designated persons shall attend
23 a ~~biannual election training held and~~ training conducted by the
24 Office of the Secretary of State every two years.

25 (d) This section ~~shall not be construed to~~ does not abrogate
26 the applicability of other provisions of this chapter to municipal

1 elections.

2 **§3-1-4. Manner of voting.**

3 In all elections, the mode of voting shall be by ballot but
4 the voter shall be left free to vote by either open, sealed or
5 secret ballot as ~~he~~ the voter may elect. Voting by ballot may be
6 accomplished as provided in articles three, ~~four~~, four-a, five and
7 six of this chapter.

8 **§3-1-21. Printing of official and sample ballots; number;**
9 **packaging and delivery; correction of ballots.**

10 (a) The board of ballot commissioners for each county shall
11 provide the ballots and sample ballots necessary for conducting
12 every election for public officers in which the voters of the
13 county participate.

14 (b) The persons required to provide the ballots necessary for
15 conducting all other elections are:

16 (1) The Secretary of State, for ~~any~~ a statewide special
17 election ordered by the Legislature;

18 (2) The board of ballot commissioners, for ~~any~~ a countywide
19 special election ordered by the county commission;

20 (3) The Board of Education, for ~~any~~ a special levy or bond
21 election ordered by the Board of Education; or

22 (4) The municipal board of ballot commissioners, for ~~any~~ an
23 election conducted for or within a municipality except an election
24 in which the matter affecting the municipality is placed on the
25 county ballot at a county election. Ballots other than those
26 printed by the proper authorities as specified in this section may

1 not be cast, received or counted in ~~any~~ an election.

2 (c) When paper ballots are used, the total number of regular
3 official ballots printed shall equal one and one-twentieth times
4 the number of registered voters eligible to vote that ballot. When
5 paper ballots are used in conjunction with or as part of an
6 electronic voting system, the total number of regular official
7 ballots printed shall equal at a minimum eighty percent of the
8 number of registered voters eligible to vote that ballot. The
9 clerk of the county commission shall determine the number of
10 absentee official ballots.

11 (d) The number of regular official ballots packaged for each
12 precinct shall equal at a minimum seventy-five percent of the
13 number of registered voters of the precinct. The remaining regular
14 official ballots shall be packaged and delivered to the clerk of
15 the county commission who shall retain them unopened until they are
16 required for an emergency. Each package of ballots shall be
17 wrapped and sealed in a manner which will immediately make apparent
18 any attempt to open, alter or tamper with the ballots. Each
19 package of ballots for a precinct shall be clearly labeled in a
20 manner which cannot be altered with the county name, the precinct
21 number and the number of ballots contained in each package. If the
22 packaging material conceals the face of the ballot, a sample ballot
23 identical to the official ballots ~~contained therein~~ shall be
24 securely attached to the outside of the package or, in the case of
25 ballot cards, the type of ballot shall be included in the label.

26 (e) All absentee ballots necessary for conducting absentee

1 voting in all voting systems shall be delivered to the clerk of the
2 county commission of the appropriate county not later than the
3 ~~forty-second~~ forty-sixth day before the election. All official
4 ballots in paper ballot systems shall be delivered to the clerk of
5 the county commission of the appropriate county not later than
6 twenty-eight days before the election.

7 (f) Upon a finding of the board of ballot commissioners that
8 an official ballot contains an error which, in the opinion of the
9 board, is of sufficient magnitude to confuse or mislead the voters,
10 the board shall cause the error to be corrected either by the
11 reprinting of the ballots or by the use of stickers printed with
12 the correction and of suitable size to be placed over the error
13 without covering any other portion of the ballot.

14 **§3-1-21a. Vendors authorized to print ballots; eligibility;**
15 **application and certification; denial, suspension**
16 **and revocation of authorization; appeal.**

17 (a) The printing of ballots for ~~any~~ an election to be held
18 pursuant to the provisions of this chapter shall be contracted for
19 with a vendor authorized in accordance with the provisions of this
20 section.

21 (b) ~~Any~~ A vendor authorized to do business in West Virginia
22 and in good standing may apply for a certificate of authorization
23 to print ballots for elections in this state. ~~Provided, That any~~
24 ~~individual, partnership, association or corporation who does not~~
25 ~~qualify as a resident vendor pursuant to the provisions of section~~
26 ~~thirty-seven-a, article three, chapter five-a of this code or who~~

1 ~~prints the ballots in a state which prohibits that state or any of~~
2 ~~its political subdivisions from contracting with West Virginia~~
3 ~~resident vendors for the printing of ballots or which prohibits the~~
4 ~~printing of ballots outside of such state, is not eligible to~~
5 ~~obtain a certificate of authorization.~~

6 (c) (1) Every vendor desiring to print ballots for elections
7 held pursuant to the provisions of this chapter shall, prior to the
8 execution of ~~any~~ a contract for the printing of ballots with ~~any~~ a
9 state, county, or municipal government, obtain a certificate of
10 authorization to print ballots.

11 (2) A certificate of authorization may be obtained by
12 application to the Secretary of State upon a form prescribed by the
13 Secretary of State. The form shall include a statement that all
14 printing, packaging and delivery specifications for ballots set
15 forth in this chapter will be substantially met and that the vendor
16 applying for certification is eligible in accordance with the
17 provisions of this section.

18 (3) Upon receipt of the completed application, the Secretary
19 of State shall issue a certificate of authorization to print
20 ballots which ~~shall~~ will remain in effect for two years from the
21 date of issuance and may be renewed upon application. ~~therefor:~~
22 ~~Provided, That~~ The Secretary of State may deny the application to
23 issue or renew the certificate of authorization or may suspend or
24 revoke the certificate of authorization upon a determination that
25 the vendor has not substantially complied with the printing,
26 packaging and delivery specifications in the printing of ballots

1 for ~~any~~ a state, county or municipal election or that the vendor is
2 not eligible or is no longer eligible to print ballots pursuant to
3 the provisions of this section. The Secretary of State shall give
4 written notice of ~~any such~~ the determination by certified mail,
5 return receipt requested, to the vendor setting forth the reason
6 for the suspension, revocation or the denial of the application or
7 the denial of the renewal. ~~thereof~~. The applicant may, within
8 sixty days of the receipt of ~~such~~ the denial, file a written appeal
9 with the State Election Commission. The State Election Commission
10 shall promulgate rules establishing a hearing process for such
11 appeals.

12 (d) On or before the second Monday of January of each year,
13 the Secretary of State shall provide a list of all vendors
14 authorized to print ballots for state, county and municipal
15 elections to the clerk of each county commission of this state.

16 (e) The provision of electronic ballots for elections held
17 pursuant to the provisions of this chapter shall be authorized by
18 the Secretary of State.

19 **§3-1-22. County commission clerks to provide election supplies;**
20 **requirements for poll books and ballot boxes.**

21 The clerk of the county ~~court~~ commission of each county shall
22 provide poll books, a list of all precincts within the county,
23 tally sheets, ballot boxes, voting booths, registration records and
24 forms, strong and durable envelopes upon which to make returns,
25 blank forms for certifying returns and whatever further supplies
26 are needed for holding the elections and making the returns

1 thereof. ~~The poll books shall bear upon each page the following~~
 2 heading: ~~"Names of persons voting at precinct No. in the~~
 3 District of in the county of
 4 on this (the) day of
 5 in the year" Such poll books shall
 6 have columns headed respectively: ~~"Number of Voters," "Signature~~
 7 of Voter" and ~~"Challenge of Voter", and shall have under the~~
 8 heading ~~"Number of Voters" numbers in consecutive order to the~~
 9 bottom of each page. ~~Forms for oaths of commissioners of election~~
 10 and poll clerks shall be written or printed on the poll books. The
 11 poll books shall be printed from the statewide voter registration
 12 system. Each ballot box shall be provided with two locks with
 13 different keys so that the key for one lock will not open the other
 14 and shall be so constructed as to be safely and securely closed and
 15 locked with an opening in the lid of the box sufficient only for
 16 the passage of a single ballot.

17 **§3-1-26. Election supplies in emergencies.**

18 If, by ~~any~~ an accident or casualty, the ballots or ballot box
 19 or boxes delivered to a commissioner of election, or to ~~any~~ a
 20 messenger, ~~shall be~~ are lost or destroyed, it ~~shall be the duty of~~
 21 ~~such~~ is the duty of the commissioner or messenger to report the
 22 loss forthwith to the board of ballot commissioners and clerk of
 23 the county ~~court~~ commission from whom ~~the same were or was,~~ these
 24 were obtained and make affidavit of the circumstances of the loss.
 25 ~~whereupon such~~ The board and clerk shall at once send a new supply
 26 by special messenger as provided in other cases. If, for any

1 reason, there should be found no ballots or ballot box or other
2 necessary means or contrivances for voting at the opening of the
3 polls, it ~~shall be~~ is the duty of the commissioners of election to
4 secure ~~the same~~ these as speedily as possible and, if necessary,
5 the ballot commissioners may have ballots printed or written and
6 the election commissioners may have a ballot box or boxes made.

7 **§3-1-32. Opening and closing polls; procedure.**

8 At the time of opening the polls in all precincts ~~wherein~~
9 where voting machines are not to be used, the election
10 commissioners shall examine the ballot box and ascertain that there
11 are no ballots in the ~~same,~~ box and ~~they shall thereupon~~ securely
12 lock the box and give one key to one of the commissioners and one
13 to a commissioner of the opposite political party who shall hold
14 the same. ~~and such~~ The boxes shall not be again opened until the
15 time to begin counting the votes arrives and for that purpose. At
16 or before opening the polls, the commissioners of election shall
17 open the package containing the ballots in such manner as to
18 preserve the seals full and ~~thereupon~~
19 the poll clerk. Before ~~any~~ a voter is permitted to vote, the
20 commissioners of election shall proclaim that such election is
21 opened. When the polls are closed, proclamation must be made of
22 the fact by one of the commissioners of election to the people
23 outside in a loud and audible tone of voice and a minute of ~~such~~
24 the proclamation and of the time when it was made must be entered
25 on the ~~pollbooks~~ form provided by the clerks. The election
26 commissioner shall permit those electors to vote who are present at

1 the polling place prior to the hour specified for the closing of
2 the polls: *Provided*, That at that time they are in a line awaiting
3 their turn to vote within the voting room itself or, if the line
4 extends outside of the voting room itself, within that line. In
5 that event an election commissioner from each party shall
6 immediately, after the closing proclamation, begin with the last
7 voter in line and together supply the voters within the line with
8 waiting-voter permits which shall be prescribed by the Secretary of
9 State. Each voter shall sign his or her permit in the presence of
10 both commissioners who shall ~~then likewise~~ affix their signatures
11 to the permit in the presence of the voter and each other. After
12 each ~~such~~ voter in line has received and signed his or her permit
13 and the election commissioners have affixed their signatures
14 thereto, voting shall be resumed. Each voter shall present his or
15 her permit to one of the poll clerks so that the signature thereon
16 may be compared to the voter's signature when ~~he~~ the voter signs
17 the pollbook. Each permit so presented shall be attached to the
18 page in the pollbook on which the voter affixed his or her
19 signature. In no case ~~shall any~~ may a person who arrives at the
20 polling place after the closing hour be given a waiting-voter
21 permit or be allowed to vote. After the final voter presents his
22 or her waiting-voter permit and casts his or her ballot no more
23 ballots shall be cast or received.

24 **§3-1-36. Report on and disposition of ballots spoiled or not used.**

25 ~~Any~~ A voter who shall spoil, deface or mutilate the ballot
26 delivered to him or her, on returning the ~~same~~ ballot to the poll

1 clerks, shall receive another in place thereof. Every person who
2 does not vote ~~any~~ a ballot delivered to him or her shall, before
3 leaving the election room, return ~~such~~ the ballot to the poll
4 clerks. When a spoiled or defaced ballot is returned, the poll
5 clerks shall make a minute of the fact on the pollbooks, at the
6 time, and the word "spoiled" shall be written across the face of
7 the ballot and ~~such~~ the ballot shall be placed in an envelope for
8 spoiled ballots.

9 Immediately on closing the polls, the commissioners of
10 election shall ascertain the number of ballots spoiled during the
11 election and the number of ballots remaining not voted. The
12 commissioners of election shall also ascertain from the pollbooks
13 the number of persons who voted and shall report, over their
14 signatures, to the clerk of the county commission, the number of
15 votes ~~cast,~~ cast, the number of ballots spoiled during the election
16 and the number of ballots not voted. All unused ballots shall at
17 the same time be returned to the clerk of the county commission who
18 shall separately package the unused ballots from each precinct,
19 mark the name and number of the precinct on the package and retain
20 them securely along with other election materials.

21 Each commissioner who is a member of an election board which
22 fails to account for every ballot delivered to it is guilty of a
23 misdemeanor and, upon conviction thereof, shall be fined not more
24 than \$1,000 or confined in the county jail for not more than one
25 year, or both fined and imprisoned.

26 The board of ballot commissioners of each county, or the

1 chairman thereof, shall preserve the ballots that are left over in
2 their hands, after supplying the precincts as provided, until
3 twenty-two months after the election.

4 **§3-1-37. Restrictions on presence and conduct at polls.**

5 (a) Except as otherwise provided in this section, no person
6 other than the election officers and voters going to the election
7 room to vote and returning therefrom, may be or remain within three
8 hundred feet of the outside entrance to the building housing the
9 polling place while the polls are open. This subsection does not
10 apply to persons who reside or conduct business within such
11 distance of the entrance to the building housing the polling place
12 while in the discharge of their legitimate business or to persons
13 whose business requires them to pass ~~and repass~~ within three
14 hundred feet of ~~such~~ the entrance.

15 (b) A person who is delivering a voter to a polling place by
16 motor vehicle may drive ~~such~~ his or her vehicle to a convenient and
17 accessible location to discharge the voter notwithstanding that the
18 location is within three hundred feet of the outside entrance to
19 the building housing the polling place. Upon discharging ~~such~~ the
20 voter from the vehicle, the person shall remove the vehicle from
21 within three hundred feet of the entrance until such time as the
22 voter is to be transported from the polling place or another voter
23 delivered. ~~Provided, That~~ Vehicles delivering voters who require
24 assistance by reason of blindness, disability or advanced age may
25 remain within three hundred feet of the entrance until ~~such time as~~
26 the voter is to be transported from the polling place.

1 (c) The election ~~commissions~~ commissioners shall limit the
2 number of voters in the election room ~~so as~~ to preserve order. No
3 person may approach nearer than five feet to any booth or
4 compartment while the election is being held except the voters to
5 prepare their ballots or the poll clerks when called on by a voter
6 to assist in the preparation of his or her ballot. ~~and~~ No person,
7 other than election officers and voters engaged in receiving,
8 preparing and depositing their ballots, may be permitted to be
9 within five feet of any ballot box except by authority of the board
10 of election commissioners and then only for the purpose of keeping
11 order and enforcing the law.

12 (d) Not more than one person may be permitted to occupy ~~any a~~
13 booth or compartment at one time. No person may remain in or
14 occupy a booth or compartment longer than ~~may be~~ necessary to
15 prepare his or her ballot and in no event longer than five minutes.
16 ~~except that any~~ A person who claims a disability pursuant to
17 section thirty-four of this article shall have additional time up
18 to ten additional minutes to prepare his or her ballot. No voter
19 or person offering to vote may hold any conversation or
20 communication with ~~any a~~ person, other than the poll clerks or
21 commissioners of election, while in the election room.

22 (e) The provisions of this section do not apply to persons
23 rendering assistance to blind voters as provided in section
24 thirty-four of this article or to ~~any a~~ child fourteen years of age
25 or younger who accompanies a parent, grandparent or legal guardian
26 who is voting. ~~Any~~ A dispute concerning the age of a child

1 accompanying a parent, grandparent or legal guardian who is voting
2 shall be determined by the election commissioners.

3 **§3-1-38. Disorder at polls; procedure.**

4 The commissioners of election shall preserve order at and in
5 the vicinity of the polls, ~~and~~ keep the way to the polls open and
6 free from obstruction and may direct disorderly persons to be
7 removed. ~~therefrom, and, if necessary and proper, to be taken and~~
8 ~~held in custody until sunrise of the next day, or for any shorter~~
9 ~~time, which may be done by any sheriff or constable or other person~~
10 ~~or persons designated by the commissioners of election. For such~~
11 ~~purpose no warrant or authority in writing shall be necessary. The~~
12 ~~jail of the county or other place designated by the commissioners~~
13 ~~of election may be used as the place of custody. But any person so~~
14 ~~arrested shall have an opportunity to vote, if he be entitled to do~~
15 ~~so, before he shall be committed to jail, if he so desires and~~
16 ~~shall be prepared to do so promptly.~~

17 **§3-1-39. Illegal voting; affidavit; procedure.**

18 (a) If at any time during the election, ~~any~~ a qualified voter
19 ~~shall appear~~ appears at the polls for the purpose of stating that
20 ~~any~~ a person who has voted is an illegal voter in the precinct,
21 that person shall be admitted to the election room and shall appear
22 before a commissioner of election to make an affidavit explaining
23 why he or she believes the accused to be an illegal voter.

24 (b) All affidavits alleging illegal voting shall be placed in
25 a strong and durable envelope by the commissioners of election.
26 The envelope shall be securely sealed and each of the commissioners

1 shall endorse his or her name on the back of the envelope. At the
 2 close of the count, the envelope shall be delivered to the clerk of
 3 the ~~circuit court~~ county commission in accordance with section
 4 sixteen, article five of this chapter and section eight, article
 5 six of this chapter. The clerk of the ~~circuit court~~ county
 6 commission shall carefully preserve the envelope containing the
 7 affidavits and deliver it, with the seal unbroken, to the
 8 prosecuting attorney in the county. The prosecuting attorney shall
 9 proceed as if it had been made before him or her.

10 **§3-1-41. Challenged and provisional voter procedures; counting of**
 11 **provisional voters' ballots; ballots of election**
 12 **officials.**

13 (a) It is the duty of the members of the receiving board,
 14 jointly or severally, to challenge the right of ~~any~~ a person
 15 requesting a ballot to vote in ~~any~~ an election:

16 (1) If the person's registration record is not available at
 17 the time of the election;

18 (2) If the signature written by the person in the poll book
 19 does not correspond with the signature ~~purported to be his or hers~~
 20 ~~on the registration record;~~ on file in the poll book;

21 (3) If the registration record of the person indicates any
 22 other legal disqualification; or

23 (4) If any other valid challenge exists against the voter
 24 pursuant to section ten, article three of this chapter.

25 (b) ~~Any~~ A person challenged shall nevertheless be permitted to
 26 vote in the election. He or she shall be furnished ~~an official~~ a

1 provisional ballot not endorsed by the poll clerks. In lieu of the
2 endorsements, the poll clerks shall complete and sign an
3 appropriate form indicating the challenge, the reason thereof and
4 the name or names of the challengers. The form shall be ~~securely~~
5 ~~attached to the voter's ballot and~~ deposited together with the
6 ballot in a ~~separate box or~~ envelope marked "provisional ballots".

7 (c) At the time ~~that~~ an individual casts a provisional ballot,
8 the poll clerk shall give the individual written information
9 stating that an individual who casts a provisional ballot will be
10 able to ascertain under the free access system established in this
11 section whether the vote was counted and, if the vote was not
12 counted, the reason that the vote was not counted.

13 (d) Before an individual casts a provisional ballot, the poll
14 clerk shall provide the individual written instructions, supplied
15 by the board of ballot commissioners, stating that if the voter is
16 casting a ballot in the incorrect precinct, the ballot cast may not
17 be counted for that election. ~~Provided, That~~ If the voter is found
18 to be in the incorrect precinct, ~~then~~ the poll worker shall attempt
19 to ascertain the appropriate precinct for the voter to cast a
20 ballot and immediately give the voter the information if
21 ascertainable.

22 (e) Provisional ballots may not be counted by the election
23 officials. The county commission shall, on its own motion, at the
24 time of canvassing of the election returns, sit in session to
25 determine the validity of any challenges according to the
26 provisions of this chapter. If the county commission determines

1 that the challenges are unfounded, each provisional ballot of each
2 challenged voter, if otherwise valid, shall be counted and tallied
3 together with the regular ballots cast in the election. The county
4 commission, as the board of canvassers, shall protect the privacy
5 of each provisional ballot cast. The county commission shall
6 disregard technical errors, omissions or oversights if it can
7 reasonably be ascertained that the challenged voter was entitled to
8 vote.

9 (f) ~~Any~~ A person duly appointed as an election commissioner or
10 clerk under the provisions of section twenty-eight of this article
11 who serves in that capacity in a precinct other than the precinct
12 in which the person is legally entitled to vote, may cast a
13 provisional ballot in the precinct in which the person is serving
14 as a commissioner or clerk. The ballot is not invalid for the sole
15 reason of having been cast in a precinct other than the precinct in
16 which the person is legally entitled to vote. The county
17 commission shall record the provisional ballot on the voter's
18 ~~permanent registration record:~~ record in the statewide voter
19 registration system and ~~Provided, That the county commission~~ may
20 count only the votes for the offices that the voter was legally
21 authorized to vote for in his or her own precinct.

22 (g) The Secretary of State shall establish a free access
23 system which may include a toll-free telephone number or an
24 Internet website that may be accessed by ~~any~~ an individual who
25 ~~casts~~ cast a provisional ballot to discover whether his or her vote
26 was counted and, if not, the reason that the vote was not counted.

1 **§3-1-42. Time off for voting.**

2 Every person entitled to vote at ~~any~~ an election who may be
3 employed by ~~any~~ a person, company or corporation on the day ~~on~~
4 ~~which such election shall be~~ the election is held in this state,
5 shall, on written demand of ~~such~~ the employee made at least three
6 days prior thereto, be given a period of not more than three hours,
7 if necessary, between the opening and the closing of the polls on
8 such day, for the purpose of enabling such person to ~~repair~~ go to
9 the place of voting to cast his or her vote and return, without
10 liability to ~~any~~ a penalty or deduction from his or her usual
11 salary or wages. ~~on account of such absence, except that any~~
12 ~~employee,~~ An employee, however, who has three or more hours of his
13 or her own time away from his or her work or place of employment at
14 any time between the hours of the opening and the closing of the
15 polls on election day and who fails or neglects to vote or elects
16 not to vote during ~~such~~ the free time away from his or her work or
17 employment, may be subject to wage or salary deductions for the
18 time actually absent from his or her work or employment for voting
19 in ~~such~~ the election.

20 In essential government, health, hospital, transportation and
21 communication services and in production, manufacturing and
22 processing works requiring continuity in operation, the employer
23 may, upon receipt of ~~such~~ a written demand for voting time off,
24 arrange and schedule a calendar of time off for ~~any~~ and all of his
25 or her employees ~~for voting so as~~ to avoid impairment or disruption
26 of essential services and operations. ~~but every such~~ The schedule

1 ~~or calendar~~ of time off for voting ~~so arranged~~ shall provide ample
2 and convenient time and opportunity for each employee ~~of such~~
3 ~~services or works~~ to cast his or her vote. ~~as herein provided.~~

4 **§3-1-49. Voting system standards.**

5 (a) In accordance with 42 U. S. C. §1530, *et seq.*, the Help
6 America Vote Act of 2002, Public Law 107-252, each voting system
7 used in an election for federal office shall:

8 (1) Permit the voter to verify, in a private and independent
9 manner, the votes selected by the voter on the ballot before the
10 ballot is cast and counted;

11 (2) Provide the voter with the opportunity, in a private and
12 independent manner, to change the ballot or correct any error
13 before the ballot is cast and counted including the opportunity to
14 correct the error through the issuance of a replacement ballot if
15 the voter was ~~otherwise~~ unable to change the ballot or correct any
16 error; and

17 (3) If the voter selects votes for more than one candidate for
18 a single office: (A) Notify the voter that the voter has selected
19 more than one candidate for a single office on the ballot; (B)
20 notify the voter before the ballot is cast and counted of the
21 effect of casting multiple votes for the office; and (C) provide
22 the voter with the opportunity to correct the ballot before the
23 ballot is cast and counted. ~~Provided, That~~ A county that uses a
24 paper ballot voting system ~~a punch card voting system~~ or an optical
25 scan voting system may meet the requirements of this paragraph by
26 establishing a voter education program specific to that voting

1 system that notifies each voter of the effect of casting multiple
2 votes for an office and providing the voter with instructions on
3 how to correct the ballot before it is cast and counted including
4 instructions on how to correct the error through the issuance of a
5 replacement ballot if the voter was ~~otherwise~~ unable to change the
6 ballot or correct any error.

7 (4) Ensure that any notification required under this section
8 preserves the privacy of the voter and the confidentiality of the
9 ballot.

10 (b) Each voting system used in an election for federal office
11 shall produce a record with an audit capacity for the system which
12 ~~shall meet~~ meets the following requirements:

13 (1) ~~Produce~~ Produces a permanent paper record with a manual
14 audit capacity for the system; and

15 (2) ~~Provide~~ Provides the voter with an opportunity to change
16 the ballot or correct any error before the ballot is cast and
17 counted and before the permanent paper record is produced.

18 (c) Each voting system used in an election for federal office
19 shall be accessible for individuals with disabilities including
20 nonvisual accessibility for the blind and visually impaired in a
21 manner that provides the same opportunity for access and
22 participation, including privacy and independence, as for other
23 voters. ~~Provided, That~~ The provisions of this subsection may be
24 satisfied through the use of at least one direct recording
25 electronic voting system or other voting system equipped for
26 individuals with disabilities at each polling place.

NOTE: The purpose of this bill is to clean up existing language in select sections of article one, chapter three of the West Virginia Code, 1931, as amended.

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