

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2602**

**2015 Carryover**

(BY DELEGATES KURCABA, HOUSEHOLDER, FAST,  
FAIRCLOTH, D. EVANS, CADLE, WAGNER, ZATEZALO AND  
IHLE)

[Introduced January 13, 2016; referred to the  
Committee on the Judiciary.]

1 A BILL to amend and reenact §3-1-34 of the Code of West Virginia, 1931, as amended, relating  
 2 to voting procedures; requiring a voter to present an identifying document issued by  
 3 the State of West Virginia or a United States military identification card that contains the  
 4 name, address and a photograph of the person desiring to vote; and criminal penalties for  
 5 violations.

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

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

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

**§3-1-34. Voting procedures generally; identification documents required; assistance to voters; voting records; penalties.**

1 (a) Any person desiring to vote in an election shall, upon entering the election room, clearly  
 2 state his or her name and residence to one of the poll clerks who shall thereupon announce the  
 3 same in a clear and distinct tone of voice. The person desiring to vote shall present to one of  
 4 the poll clerks an identifying document issued by the State of West Virginia, such as a driver's  
 5 license or personal identification card issued to the person by the Division of Motor Vehicles, that  
 6 has not expired or that expired no earlier than sixty days before the date of presentation, or a  
 7 United States military identification card that contains the person's photograph that has not  
 8 expired or that expired no earlier than sixty days before the date of presentation. If that person  
 9 is found to be duly registered as a voter at that precinct, he or she shall sign his or her name in  
 10 the designated location provided at the precinct. If that person is physically or otherwise unable  
 11 to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence  
 12 of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately  
 13 under the affixation. No ballot may be given to the person until he or she signs his or her name

14 on the designated location or his or her signature is affixed thereon.

15 (b) The clerk of the county commission is authorized, upon verification that the precinct at  
16 which a handicapped person is registered to vote is not handicap accessible, to transfer that  
17 person's registration to the nearest polling place in the county which is handicap accessible. A  
18 request by a handicapped person for a transfer of registration must be received by the county  
19 clerk no later than thirty days prior to the date of the election. Any handicapped person who has  
20 not made a request for a transfer of registration at least thirty days prior to the date of the election  
21 may vote a provisional ballot at a handicap accessible polling place in the county of his or her  
22 registration. If during the canvass the county commission determines that the person had been  
23 registered in a precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall  
24 be counted. The handicapped person may vote in the precinct to which the registration was  
25 transferred only as long as the disability exists or the precinct from which the handicapped person  
26 was transferred remains inaccessible to the handicapped. To ensure confidentiality of the  
27 transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked  
28 envelope and an outer envelope designated "provisional ballot/handicapped voter". After  
29 validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped  
30 voter's ballot shall be placed with other approved provisional ballots prior to removal of the ballot  
31 from the unmarked envelope.

32 (c) When the voter's signature is properly marked, the two poll clerks shall sign their names  
33 in the places indicated on the back of the official ballot and deliver the ballot to the voter to be  
34 voted by him or her without leaving the election room. If he or she returns the ballot spoiled to  
35 the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed  
36 in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of  
37 canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse

38 side. The voter shall thereupon retire alone to the booth or compartment prepared within the  
39 election room for voting purposes and there prepare his or her ballot. In voting for candidates in  
40 general and special elections, the voter shall comply with the rules and procedures prescribed in  
41 section five, article six of this chapter.

42 (d) It is the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check  
43 mark, or by other means, inserted in the appropriate place on the registration record of each voter  
44 the fact that the voter voted in the election. In primary elections the clerk shall also insert thereon  
45 a distinguishing initial or initials of the political party for whose candidates the voter voted. If a  
46 person is challenged at the polls, the challenge shall be indicated by the poll clerks on the  
47 registration record, together with the name of the challenger. The subsequent removal of the  
48 challenge shall be recorded on the registration record by the clerk of the county commission.

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

53 (A) Declare his or her choice of candidates to an election commissioner of each political  
54 party who, in the presence of the voter and in the presence of each other, shall prepare the ballot  
55 for voting in the manner hereinbefore provided and, on request, shall read to the voter the names  
56 of the candidates selected on the ballot;

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

60 (C) Be assisted by any person of the voter's choice, other than the voter's present or  
61 former employer or agent of that employer, the officer or agent of a labor union of which the voter

62 is a past or present member or a candidate on the ballot or an official write-in candidate; or

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

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

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

69 (2) The voted ballot shall then be returned to the precinct officials and secured in a sealed  
70 envelope to be returned to the clerk of the county commission with all other election materials.

71 The ballot shall then be tabulated using the appropriate method provided in section eight of this  
72 chapter as it relates to the specific voting system in use.

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

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

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

84 (A) May not in any manner request or seek to persuade or induce the voter to vote any  
85 particular ticket or for any particular candidate or for or against any public question and must not

86 keep or make any memorandum or entry of anything occurring within the voting booth or  
87 compartment and must not, directly or indirectly, reveal to any person the name of any candidate  
88 voted for by the voter or which ticket he or she had voted or how he or she had voted on any  
89 public question or anything occurring within the voting booth or compartment or voting machine  
90 booth except when required pursuant to law to give testimony as to the matter in a judicial  
91 proceeding; and

92 (B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed  
93 by the Secretary of State stating that he or she will not override the actual preference of the voter  
94 being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone  
95 other than the candidate of voter's choice. The person assisting the voter shall also swear or  
96 affirm that he or she believes that the voter is voting free of intimidation or manipulation:  
97 *Provided*, That no person providing assistance to a voter is required to sign an oath or affirmation  
98 where the reason for requesting assistance is the voter's inability to vote without assistance  
99 because of blindness as defined in section three, article fifteen, chapter five of this code and the  
100 inability to vote without assistance because of blindness is certified in writing by a physician of  
101 the voter's choice and is on file in the office of the clerk of the county commission.

102 (6) In accordance with instructions issued by the Secretary of State, the clerk of the county  
103 commission shall provide a form entitled "list of assisted voters", the form of which list shall  
104 likewise be prescribed by the Secretary of State. The commissioners shall enter the name of  
105 each voter receiving assistance in voting the ballot, together with the poll slip number of that voter  
106 and the signature of the person or the commissioner from each party who assisted the voter. If  
107 no voter has been assisted in voting, the commissioners shall likewise make and subscribe to an  
108 oath of that fact on the list.

109 (f) After preparing the ballot, the voter shall fold the ballot so that the face is not exposed

110 and so that the names of the poll clerks thereon are seen. The voter shall announce his or her  
111 name and present his or her ballot to one of the commissioners who shall hand the same to  
112 another commissioner, of a different political party, who shall deposit it in the ballot box if the ballot  
113 is the official one and properly signed. The commissioner of election may inspect every ballot  
114 before it is deposited in the ballot box to ascertain whether it is single, but without unfolding or  
115 unrolling it so as to disclose its content. When the voter has voted, he or she shall retire  
116 immediately from the election room and beyond the sixty-foot limit thereof and may not return  
117 except by permission of the commissioners.

118 (g) Following the election, the oaths or affirmations required by this section from those  
119 assisting voters, together with the "list of assisted voters", shall be returned by the election  
120 commissioners to the clerk of the county commission along with the election supplies, records  
121 and returns. The clerk of the county commission shall make the oaths, affirmations and list  
122 available for public inspection and shall preserve them for a period of twenty-two months or until  
123 disposition is authorized or directed by the Secretary of State or court of record: *Provided*, That  
124 the clerk may use these records to update the voter registration records in accordance with  
125 subsection (d), section eighteen, article two of this chapter.

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

131 (i) Any election commissioner or poll clerk who authorizes or provides unchallenged  
132 assistance to a voter when the voter is known to the election commissioner or poll clerk not to  
133 require assistance in voting is guilty of a felony and, upon conviction thereof, shall be fined not

134 more than \$5,000 or imprisoned in a state correctional facility for a period of not less than one  
135 year nor more than five years, or both fined and imprisoned.

NOTE: The purpose of this bill is to require a voter to present an identifying document issued by the State of West Virginia or a military identification card issued by the United States Government that contains the name, address and a photograph of the person desiring to vote. The bill continues the misdemeanor and felony criminal penalties for violations of this section.

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