

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2781**

BY DELEGATES BLAIR, ZATEZALO, HOUSEHOLDER,  
AMBLER, HAMRICK, ANDERSON, MARTIN, MAYNARD AND  
LEWIS

[Introduced March 3, 2017; 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; and to  
2 amend and reenact §3-2-11 of said code, all relating to voting procedures; setting forth  
3 the effective date for voter identification requirements passed in the 2016 Legislative  
4 session; removing the requirement that the Division of Motor Vehicles forward information  
5 of persons who decline voter registration to the Secretary of State; amending the effective  
6 date for voter registration requirements passed in the 2016 Legislative session; and,  
7 providing that the Division of Motor Vehicles shall report to the Joint Committee on  
8 Government and Finance by January 1, 2018 with a full and complete list of all  
9 infrastructure they require to achieve certain purposes.

*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  
2 reenacted; and that §3-2-11 of said code be amended and reenacted, all to read as follows:

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

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

1 (a) A 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. For elections occurring on or after January 1, 2018, the  
4 person desiring to vote shall present to one of the poll clerks a valid identifying document meeting  
5 the requirements of subdivisions (1) or (2) of this subsection, and the poll clerk shall inspect and  
6 confirm that the name on the valid identifying document conforms to the name in the individual's  
7 voter registration record and that, if the valid identifying document contains a photograph, the  
8 image displayed is truly an image of the person presenting the document. If that person is found  
9 to be duly registered as a voter at that precinct, he or she shall sign his or her name in the  
10 designated location provided at the precinct. If that person is physically or otherwise unable to  
11 sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of

12 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 (1) A document shall be deemed to be a valid identifying document if it:

16 (A) Has been issued either by the State of West Virginia, or one of its subsidiaries, or by  
17 the United States Government; and

18 (B) Contains the name of the person desiring to vote.

19 (2) Notwithstanding the provisions of subdivision (1) of this subsection, the following  
20 documents, if they contain the voter's name, shall be considered valid identifying documents, and  
21 a person desiring to vote may produce any of the following:

22 (A) A valid West Virginia driver's license or valid West Virginia identification card issued  
23 by the West Virginia Division of Motor Vehicles;

24 (B) A valid driver's license issued by a state other than the State of West Virginia;

25 (C) A valid United States passport or passport card;

26 (D) A valid employee identification card with a photograph of the eligible voter issued by  
27 any branch, department, agency, or entity of the United States Government or of the State of  
28 West Virginia, or by any county, municipality, board, authority, or other political subdivision of  
29 West Virginia;

30 (E) A valid student identification card with a photograph of the eligible voter issued by an  
31 institution of higher education in West Virginia, or a valid high school identification card issued by  
32 a West Virginia high school;

33 (F) A valid military identification card issued by the United States with a photograph of the  
34 person desiring to vote.

35 (G) A valid concealed carry (pistol/revolver) permit issued by the sheriff of the county with  
36 a photograph of the person desiring to vote;

37 (H) A valid Medicare card or Social Security card;

- 38 (I) A valid birth certificate;
- 39 (J) A valid voter registration card issued by a county clerk in the State of West Virginia;
- 40 (K) A valid hunting or fishing license issued by the State of West Virginia;
- 41 (L) A valid identification card issued to the voter by the West Virginia Supplemental  
42 Nutrition Assistance (SNAP) program;
- 43 (M) A valid identification card issued to the voter by the West Virginia Temporary  
44 Assistance for Needy Families (TANF) program;
- 45 (N) A valid identification card issued to the voter by West Virginia Medicaid;
- 46 (O) A valid bank card or valid debit card;
- 47 (P) A valid utility bill issued within six months of the date of the election;
- 48 (Q) A valid bank statement issued within six months of the date of the election; or
- 49 (R) A valid health insurance card issued to the voter.
- 50 (3) In lieu of providing a valid identifying document, as required by this section, a registered  
51 voter may be accompanied at the polling place by an adult known to the registered voter for at  
52 least six months. That adult may sign an affidavit on a form provided to clerks and poll workers  
53 by the Secretary of State, which states under oath or affirmation that the adult has known the  
54 registered voter for at least six months, and that in fact the registered voter is the same person  
55 who is present for the purpose of voting. For the affidavit to be considered valid, the adult shall  
56 present a valid identifying document with his or her name, address, and photograph.
- 57 (4) A poll worker may allow a voter, whom the poll worker has known for at least six  
58 months, to vote without presenting a valid identifying document.
- 59 (5) If the person desiring to vote is unable to furnish a valid identifying document, or if the  
60 poll clerk determines that the proof of identification presented by the voter does not qualify as a  
61 valid identifying document, the person desiring to vote shall be permitted to cast a provisional  
62 ballot after executing an affidavit affirming his or her identity pursuant to paragraph (B) of this  
63 subdivision.

64 (A) The provisional ballot is entitled to be counted once the election authority verifies the  
65 identity of the individual by comparing that individual's signature to the current signature on file  
66 with the election authority and determines that the individual was otherwise eligible to cast a ballot  
67 at the polling place where the ballot was cast.

68 (B) The affidavit to be used for voting shall be substantially in the following form:

69 "State of West Virginia

70 County of.....

71 I do solemnly swear (or affirm) that my name is .....; that I  
72 reside at.....; and that I am the person listed in the precinct register under this name  
73 and at this address.

74 I understand that knowingly providing false information is a violation of law and subjects  
75 me to possible criminal prosecution.

76 .....

77 Signature of voter

78 Subscribed and affirmed before me this..... day of ....., 20....

79 .....

80 Name of Election Official

81 .....

82 Signature of Election Official".

83 (6) A voter who votes in person at a precinct polling place that is located in a building  
84 which is part of a state licensed care facility where the voter is a resident is not required to provide  
85 proof of identification as a condition before voting in an election.

86 (7) The person entering voter information into the centralized voter registration database  
87 shall cause the records to indicate when a voter has not presented a valid identifying document  
88 and has executed a voter identity affidavit.

89           (8) If a voter participating in the Address Confidentiality Program established by section  
90 one hundred three, article twenty-eight-a, chapter forty-eight of this code, executes a voter identity  
91 affidavit, the program participant's residential or mailing address is subject to the confidentiality  
92 provisions of section one hundred eight, article twenty-eight-a, chapter forty-eight of this code and  
93 shall be used only for those statutory and administrative purposes authorized by this section.

94           (9) Prior to the primary and general elections to be held in calendar year 2018, the  
95 Secretary of State shall educate voters about the requirement to present a valid identifying  
96 document and develop a program to help ensure that all eligible voters are able to obtain a valid  
97 identifying document.

98           (b) The clerk of the county commission is authorized, upon verification that the precinct at  
99 which a handicapped person is registered to vote is not handicap accessible, to transfer that  
100 person's registration to the nearest polling place in the county which is handicap accessible. A  
101 request by a handicapped person for a transfer of registration must be received by the county  
102 clerk no later than thirty days prior to the date of the election. A handicapped person who has not  
103 made a request for a transfer of registration at least thirty days prior to the date of the election  
104 may vote a provisional ballot at a handicap accessible polling place in the county of his or her  
105 registration. If during the canvass the county commission determines that the person had been  
106 registered in a precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall  
107 be counted. The handicapped person may vote in the precinct to which the registration was  
108 transferred only as long as the disability exists or the precinct from which the handicapped person  
109 was transferred remains inaccessible to the handicapped. To ensure confidentiality of the  
110 transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked  
111 envelope and an outer envelope designated "provisional ballot/handicapped voter". After  
112 validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped  
113 voter's ballot shall be placed with other approved provisional ballots prior to removal of the ballot  
114 from the unmarked envelope.

115 (c) When the voter's signature is properly marked and the voter has presented a valid  
116 identifying document, the two poll clerks shall sign their names in the places indicated on the back  
117 of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the  
118 election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the  
119 ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with  
120 other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another  
121 official ballot, signed by the clerks on the reverse side. The voter shall thereupon retire alone to  
122 the booth or compartment prepared within the election room for voting purposes and there  
123 prepare his or her ballot. In voting for candidates in general and special elections, the voter shall  
124 comply with the rules and procedures prescribed in section five, article six of this chapter.

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

133 (e) (1) No voter may receive any assistance in voting unless, by reason of blindness,  
134 disability, advanced age or inability to read and write, that voter is unable to vote without  
135 assistance. Any voter so qualified to receive assistance in voting may:

136 (A) Declare his or her choice of candidates to an Election Commissioner of each political  
137 party who, in the presence of the voter and in the presence of each other, shall prepare the ballot  
138 for voting in the manner provided in this section and, on request, shall read to the voter the names  
139 of the candidates selected on the ballot;



140 (B) Require the Election Commissioners to indicate to him or her the relative position of  
141 the names of the candidates on the ballot, the voter shall then retire to one of the booths or  
142 compartments to prepare his or her ballot in the manner provided in this section;

143 (C) Be assisted by any person of the voter's choice, other than the voter's present or  
144 former employer or agent of that employer, the officer or agent of a labor union of which the voter  
145 is a past or present member or a candidate on the ballot or an official write-in candidate; or

146 (D) If he or she is handicapped, vote from an automobile outside the polling place or  
147 precinct by the absentee balloting method provided in subsection (e), section five, article three of  
148 this chapter in the presence of an Election Commissioner of each political party if all of the  
149 following conditions are met:

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

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

152 (2) The voted ballot shall then be returned to the precinct officials and secured in a sealed  
153 envelope to be returned to the clerk of the county commission with all other election materials.  
154 The ballot shall then be tabulated using the appropriate method provided in section eight of this  
155 chapter as it relates to the specific voting system in use.

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

159 (4) One or more of the Election Commissioners or poll clerks in the precinct may challenge  
160 the ballot on the ground that the voter received assistance in voting it when in his, her or their  
161 opinion the person who received assistance in voting is not so illiterate, blind, disabled or of such  
162 advanced age as to have been unable to vote without assistance. The Election Commissioner or  
163 poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and the  
164 reason for such challenge on the form and in the manner prescribed or authorized by article three  
165 of this chapter.

166 (5) An Election Commissioner or other person who assists a voter in voting:

167 (A) May not in any manner request or seek to persuade or induce the voter to vote a  
168 particular ticket or for a particular candidate or for or against any public question and must not  
169 keep or make any memorandum or entry of anything occurring within the voting booth or  
170 compartment and must not, directly or indirectly, reveal to any person the name of a candidate  
171 voted for by the voter, which ticket he or she had voted or how he or she had voted on any public  
172 question or anything occurring within the voting booth, compartment, or voting machine booth  
173 except when required by law to give testimony as to the matter in a judicial proceeding; and

174 (B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed  
175 by the Secretary of State stating that he or she will not override the actual preference of the voter  
176 being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone  
177 other than the candidate of voter's choice. The person assisting the voter shall also swear or  
178 affirm that he or she believes that the voter is voting free of intimidation or manipulation. No person  
179 providing assistance to a voter is required to sign an oath or affirmation where the reason for  
180 requesting assistance is the voter's inability to vote without assistance because of blindness as  
181 defined in section three, article fifteen, chapter five of this code and the inability to vote without  
182 assistance because of blindness is certified in writing by a physician of the voter's choice and is  
183 on file in the office of the clerk of the county commission.

184 (6) In accordance with instructions issued by the Secretary of State, the clerk of the county  
185 commission shall provide a form entitled "list of assisted voters", on a form as prescribed by the  
186 Secretary of State. The commissioners shall enter the name of each voter receiving assistance  
187 in voting the ballot, together with the poll slip number of that voter and the signature of the person  
188 or the commissioner from each party who assisted the voter. If no voter has been assisted in  
189 voting, the commissioners shall make and subscribe to an oath of that fact on the list.

190 (f) After preparing the ballot, the voter shall fold the ballot so that the face is not exposed  
191 and the names of the poll clerks on it are seen. The voter shall announce his or her name and

192 present his or her ballot to one of the commissioners who shall hand the same to another  
193 commissioner, of a different political party, who shall deposit it in the ballot box if the ballot is the  
194 official one and properly signed. The commissioner of election may inspect every ballot before it  
195 is deposited in the ballot box to ascertain whether it is single; but without unfolding or unrolling it  
196 so as to disclose its content. When the voter has voted, he or she shall retire immediately from  
197 the election room and beyond the sixty-foot limit and not return except by permission of the  
198 commissioners.

199 (g) Following the election, the oaths or affirmations required by this section from those  
200 assisting voters, together with the "list of assisted voters", shall be returned by the Election  
201 Commissioners to the clerk of the county commission along with the election supplies, records  
202 and returns. The clerk of the county commission shall make the oaths, affirmations and list  
203 available for public inspection and preserve them for a period of twenty-two months or until  
204 disposition is authorized or directed by the Secretary of State or court of record. The clerk may  
205 use these records to update the voter registration records in accordance with subsection (d),  
206 section eighteen, article two of this chapter.

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

212 (i) Any Election Commissioner or poll clerk who authorizes or provides unchallenged  
213 assistance to a voter when the voter is known to the Election Commissioner or poll clerk not to  
214 require assistance in voting, is guilty of a felony and, upon conviction thereof, shall be fined not  
215 more than \$5,000 or imprisoned in a state correctional facility for a period of not less than one  
216 year nor more than five years, or both fined and imprisoned.

217           (j) The changes made to this section during the 2016 Regular Legislative Session shall  
218 become effective on July 1, 2019.

**ARTICLE 2. REGISTRATION OF VOTERS**

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

1           (a) The Division of Motor Vehicles or other division or department that may be established  
2 by law to perform motor vehicle driver licensing services shall obtain, as an integral and  
3 simultaneous part of every process of application for the issuance, renewal or change of address  
4 of a motor vehicle driver's license or official identification card pursuant to the provisions of article  
5 two, chapter seventeen-b of this code, when the division's regional offices are open for regular  
6 business, the following information from each qualified registrant:

7           (1) Full name, including first, middle, last and any premarital names;

8           (2) Date of birth;

9           (3) Residence address and mailing address, if different;

10          (4) The applicant's electronic signature;

11          (5) Telephone number, if available;

12          (6) Email address, if available;

13          (7) Political party membership, if any;

14          (8) Driver's license number and last four digits of social security number;

15          (9) A notation that the applicant has attested that he or she meets all voter eligibility  
16 requirements, including United States citizenship;

17          (10) Whether the applicant affirmatively declined to become registered to vote during the  
18 transaction with the Division of Motor Vehicles;

19          (11) Date of application; and

20          (12) Any other information specified in rules adopted to implement this section.

21          (b) Unless the applicant affirmatively declines to become registered to vote or update their  
22 voter registration during the transaction with the Division of Motor Vehicles, the Division of Motor

23 Vehicles shall release all of the information obtained pursuant to subsection (a) of this section, to  
24 the Secretary of State, who shall forward the information to the county clerk for the relevant county  
25 to process the newly registered voter or updated information for the already-registered voter  
26 pursuant to law. ~~Notwithstanding any other provision of this code to the contrary, if the applicant~~  
27 ~~affirmatively declines to become registered to vote, the Division of Motor Vehicles is required to~~  
28 ~~release the first name, middle name, last name, premarital name, if applicable, complete~~  
29 ~~residence address, complete date of birth of an applicant and the applicant's electronic signature,~~  
30 ~~entered in the division's records for driver license or nonoperator identification purposes to the~~  
31 ~~Secretary of State in order to facilitate any future attempt of the applicant to register to vote online,~~  
32 ~~along with the notation that the applicant affirmatively declined to become registered at that time.~~  
33 The Division of Motor Vehicles shall notify that applicant that by submitting his or her signature,  
34 the applicant grants written consent for the submission of the information obtained and required  
35 to be submitted to the Secretary of State pursuant to this section.

36 (c) Information regarding a person's failure to sign the voter registration application is  
37 confidential and may not be used for any purpose other than to determine voter registration.

38 (d) A qualified voter who submits the required information or update to his or her voter  
39 registration, pursuant to the provisions of subsection (a) of this section, in person at a driver  
40 licensing facility at the time of applying for, obtaining, renewing or transferring his or her driver's  
41 license or official identification card and who presents identification and proof of age at that time  
42 is not required to make his or her first vote in person or to again present identification in order to  
43 make that registration valid.

44 (e) A qualified voter who submits by mail or by delivery by a third party an application for  
45 registration on the form used in conjunction with driver licensing is required to make his or her  
46 first vote in person and present identification as required for other mail registration in accordance  
47 with the provisions of subsection (g), section ten of this article. If the applicant has been previously  
48 registered in the jurisdiction and the application is for a change of address, change of name,

49 change of political party affiliation or other correction, the presentation of identification and first  
50 vote in person is not required.

51 (f) An application for voter registration submitted pursuant to the provisions of this section  
52 updates a previous voter registration by the applicant and authorizes the cancellation of  
53 registration in any other county or state in which the applicant was previously registered.

54 (g) A change of address from one residence to another within the same county which is  
55 submitted for driver licensing or nonoperator's identification purposes in accordance with  
56 applicable law serves as a notice of change of address for voter registration purposes if requested  
57 by the applicant after notice and written consent of the applicant.

58 (h) Completed applications for voter registration or change of address for voting purposes  
59 received by an office providing driver licensing services shall be forwarded to the Secretary of  
60 State within five days of receipt unless other means are available for a more expedited  
61 transmission. The Secretary of State shall remove and file any forms which have not been signed  
62 by the applicant and shall forward completed, signed applications to the clerk of the appropriate  
63 county commission within five days of receipt.

64 (i) Voter registration application forms containing voter information which are returned to  
65 a driver licensing office unsigned shall be collected by the Division of Motor Vehicles, submitted  
66 to the Secretary of State and maintained by the Secretary of State's office according to the  
67 retention policy adopted by the Secretary of State.

68 (j) The Secretary of State shall establish procedures to protect the confidentiality of the  
69 information obtained from the Division of Motor Vehicles, including any information otherwise  
70 required to be confidential by other provisions of this code.

71 (k) A person registered to vote pursuant to this section may cancel his or her voter  
72 registration at any time by any method available to any other registered voter.

73 (l) This section shall not be construed as requiring the Division of Motor Vehicles to  
74 determine eligibility for voter registration and voting.

75 (m) The changes made to this section during the 2016 Regular Legislative Session shall  
76 become effective on July 1, 2017~~9~~, and any costs associated therewith shall be paid by the  
77 Division of Motor Vehicles. If the Division of Motor Vehicles is unable to meet the requirements  
78 of this section by February 1, 2017~~9~~, it shall make a presentation to the Joint Committee on  
79 Government and Finance explaining any resources necessary to meet the requirements or any  
80 changes to the code that it recommends immediately prior to the 2017~~9~~ Regular Legislative  
81 Session: Provided, That the Division of Motor Vehicles shall report to the Joint Committee on  
82 Government and Finance by January 1, 2018 with a full and complete list of all infrastructure they  
83 require to achieve the purposes of this section.

84 (n) The Secretary of State shall propose rules for legislative approval in accordance with  
85 the provisions of article three, chapter twenty-nine-a of this code in order to implement the  
86 requirements of this section.

NOTE: The purpose of this bill is to amend the effective dates for the voter identification and registration provisions adopted in the 2016 legislative session and to eliminate the requirement that DMV forward information to the Secretary of State for persons who decline to be registered to vote.

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