

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4137**

BY DELEGATES HIGGINBOTHAM, HAMRICK, BARNHART,

HANNA AND FOSTER

[Referred to the Committee on Political Subdivisions.]



1 A BILL to amend and reenact §3-2-4, §3-2-5, and §3-2-29 of the Code of West Virginia, 1931, as  
2 amended, relating to allowing counties to store and maintain voter registration records in  
3 a digital format; directing the clerk of the county commission to follow designated statutory  
4 record destruction process and digital copy creation requirements; providing that physical  
5 voter registration records may be destroyed under designated statutory process; and,  
6 providing that following approval of the Secretary of State the clerk of the county  
7 commission may destroy original registration records, if digital or facsimile copies are  
8 made and stored in an electronic format in a designated secure manner.

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

**ARTICLE 2. REGISTRATION OF VOTERS.**

**§3-2-4. Authority and responsibility of the clerk of the county commission and of the  
county commission relating to voter registration.**

1 (a) Subject to the authority of the Secretary of State, the clerk of the county commission  
2 shall be the chief registration authority in each respective county and all subdivisions therein, and  
3 shall supervise their deputies, employees, and registrars in the performance of their respective  
4 duties.

5 (b) The county commission of each county shall allocate sufficient resources for the proper  
6 and efficient performance of duties relating to voter registration as required by law, and shall  
7 provide for temporary clerical assistance necessary for systematic purging procedures or other  
8 duties of short duration required by the provisions of this article.

9 (c) The county commission shall have authority on its own motion to summon and examine  
10 any person concerning the registration of voters, to investigate any irregularities in registration, to  
11 summon and examine witnesses, to require the production of any relevant books and papers, and  
12 to conduct hearings on any matters relating to the registration of voters.

13 (d) The clerk of the county commission shall be responsible for the administration of voter  
14 registration within the county and shall establish procedures and practices which ensure the full

15 implementation of the requirements of federal and state laws and rules relating to voter  
16 registration, and which ensure nondiscriminatory practices. The clerk of the county commission,  
17 at his or her discretion, may maintain and store all voter registration records in a digital format.  
18 Provided, That prior to destroying any physical voter registration records, the clerk of the county  
19 commission shall follow the records destruction process and digital copy creation requirements  
20 set forth in W.Va. Code § 3-2-29.

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

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

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

16 (3) The Secretary of State is authorized to promulgate procedures to permit persons to  
17 register to vote through a secure electronic voter registration system.

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

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

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

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

26 (4) The applicant's driver's license number or an identification number issued by the  
27 Division of Motor Vehicles. If the applicant does not have a driver's license or an identification  
28 card issued by the Division of Motor Vehicles, then the last four digits of the applicant's Social  
29 Security number; and

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

31 (c) Each application form shall require that the following be provided by the applicant,  
32 under oath, and an application which does not contain each of the following is incomplete:

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

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

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

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

42 (B) In the case of a homeless person having no fixed residence address who  
43 nevertheless resides and remains regularly within the county, the address of a shelter,  
44 assistance center or family member with whom he or she has regular contact or other specific

45 location approved by the clerk of the county commission for the purposes of establishing a  
46 voting residence; or

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

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

57 (d) The applicant shall be requested to provide the following information but no  
58 application may be rejected for lack of this information:

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

61 (2) The applicant's choice of political party affiliation, if any, or an indication of no  
62 affiliation. An applicant who does not enter a choice of political party affiliation is listed as having  
63 no party affiliation on the voting record;

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

66 (4) The last four digits of the applicant's Social Security number;

67 (5) The applicant's telephone number;

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

69 (7) The address where the applicant was last registered to vote, if any, for the purpose of  
70 cancelling or transferring the previous registration; and

71 (8) The applicant's gender.

72 (e) The Secretary of State shall prescribe the printing specifications of each type of voter  
73 registration application and the voter registration application portion of any form which is part of  
74 a combined agency form: Provided, That any physical voter registration records created under  
75 this article may be destroyed under the process described in W.Va. Code § 3-2-29.

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

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

**§3-2-29. Custody of original registration records.**

1 (a) All original registration records in paper format shall remain in the custody of the  
2 county commission, by its clerk, or, electronically, in the statewide voter registration database  
3 and shall not be removed except for use in an election or by the order of a court of record or in  
4 compliance with a subpoena duces tecum issued by the Secretary of State pursuant to the  
5 provisions of section six, article one-a of this chapter.

6 (b) All original voter registration records shall be retained for a minimum of five years  
7 following the last recorded activity relating to the record, except that any application which  
8 duplicates and does not alter an existing registration shall be retained for a minimum of two  
9 years following its receipt: Provided, That following approval by the Secretary of State pursuant  
10 to subsection (c) of this section, the clerk of the county commission may destroy original  
11 registration records that have been retained for a period of time if an exact digital or facsimile  
12 copy of each of the records is made and stored in an electronic format in a secure manner on

13 one or more servers under the control of the clerk of the county commission. Digital or facsimile  
14 copies may include but are not limited to PDF or JPEG formats. The Secretary of State shall  
15 promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code for the specific  
16 retention times and procedures required for original voter registration records.

17 (c) Prior to the destruction of original voter registration applications or registration cards  
18 of voters whose registration has been canceled at least five years previously, the clerk of the  
19 county commission shall notify the Secretary of State of the intention to destroy those records. If  
20 the Secretary of State determines, within ninety days of the receipt of the notice, that those  
21 records are of sufficient historical value that microfilm or other permanent data storage is  
22 desirable, the Secretary of State may require that the records be delivered to a specified  
23 location for processing at state expense.

24 (d) Active, inactive, pending, rejected, and canceled registration records shall be  
25 maintained as a permanent record, as follows:

26 (1) Individual canceled registration records shall be maintained in the statewide voter  
27 registration database for a period of at least five years following cancellation. Upon the  
28 expiration of five years, those individual records may be removed from the statewide voter  
29 registration database and disposed of in accordance with the appropriate document retention  
30 policy.

31 (2) Rejected registration records shall be maintained in the same manner as provided for  
32 cancelled registration records.

NOTE: The purpose of this bill is to allow county voter registration records to be maintained and stored in a digital format.

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