

HB # 2587

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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



# ENROLLED

*Com. Sub. for*

HOUSE BILL No. *2587*

(By Delegate *Fragale*)



Passed *March 12,* 1994

In Effect *90 Day From* Passage

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 2587**  
**(By DELEGATE FRAGALE)**

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[Passed March 12, 1994; in effect ninety days from passage.]

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AN ACT to amend and reenact section thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to voting procedures generally; voting procedures where the voter is handicapped; elimination, under certain circumstances, of requirement that person assisting handicapped voters sign a certain oath or affirmation; and criminal penalties.

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

That section thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

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

1       (a) Any person desiring to vote in an election shall,  
2       upon entering the election room, clearly state his name  
3       and residence to one of the poll clerks who shall  
4       thereupon announce the same in a clear and distinct  
5       tone of voice. If such person is found to be duly  
6       registered as a voter at that precinct, he shall be  
7       required to sign his name in the space marked "signa-

8 ture of voter” on the pollbook prescribed and provided  
9 for the precinct. If such person be physically or  
10 otherwise unable to sign his name, his mark shall be  
11 affixed by one of the poll clerks in the presence of the  
12 other and the name of the poll clerk affixing the voter’s  
13 mark shall be indicated immediately under such  
14 affixation. No ballot shall be given to such person until  
15 he so signs his name on the pollbook or his signature  
16 is so affixed thereon.

17 (b) The clerk of the county commission is authorized,  
18 upon verification that the precinct at which a handi-  
19 capped person is registered to vote is not handicap  
20 accessible, to transfer such person’s registration to the  
21 nearest polling place in the county which is handicap  
22 accessible. Requests by such persons for a transfer of  
23 registration shall be received by the county clerk no  
24 later than thirty days prior to the date of the election.  
25 Any handicapped person who has not made a request  
26 for a transfer of registration at least thirty days prior  
27 to the date of the election may vote a challenged ballot,  
28 at a handicap accessible polling place in the county of  
29 his or her registration, and, if during the canvass the  
30 county commission determines that the person had been  
31 registered in a precinct not handicap accessible, the  
32 voted ballot, if otherwise valid, shall be counted. The  
33 handicapped person may vote in the precinct to which  
34 the registration was transferred only as long as the  
35 disability exists or the precinct from which the handi-  
36 capped person was transferred remains inaccessible to  
37 the handicapped. To ensure confidentiality of such  
38 transferred ballot, the county clerk processing the ballot  
39 shall provide the voter with an unmarked envelope and  
40 an outer envelope designated “challenged bal-  
41 lot/handicapped voter.” After validation of the ballot at  
42 the canvass, the outer envelope shall be destroyed and  
43 the handicapped voter’s ballot shall be placed with other  
44 approved challenged ballots prior to removal of the  
45 ballot from the unmarked envelope.

46 (c) When the voter’s signature is properly on the  
47 pollbook, the two poll clerks shall sign their names in  
48 the places indicated on the back of the official ballot and

49 shall deliver the ballot to the voter to be voted by him  
50 then without leaving the election room. If he returns the  
51 ballot spoiled to the clerks, they shall immediately mark  
52 such ballot "spoiled" and the same shall be preserved  
53 and placed in a spoiled ballot envelope together with  
54 other spoiled ballots to be delivered to the board of  
55 canvassers and deliver to the voter another official  
56 ballot, signed by the clerks on the reverse side as before  
57 done. The voter shall thereupon retire alone to the booth  
58 or compartment prepared within the election room for  
59 voting purposes and there prepare his ballot, using a  
60 ballpoint pen of not less than five inches in length or  
61 other indelible marking device of not less than five  
62 inches in length. In voting for candidates in general and  
63 special elections, the voter shall comply with the rules  
64 and procedures prescribed in section five, article six of  
65 this chapter.

66 (d) It shall be the duty of a poll clerk, in the presence  
67 of the other poll clerk, to indicate by a check mark  
68 inserted in the appropriate place on the registration  
69 record of each voter the fact that such voter voted in the  
70 election. In primary elections the clerk shall also insert  
71 thereon a distinguishing initial or initials of the political  
72 party for whose candidates the voter voted. If a person  
73 is challenged at the polls, such fact shall be indicated  
74 by the poll clerks on the registration record together  
75 with the name of the challenger. The subsequent  
76 removal of the challenge shall be recorded on the  
77 registration record by the clerk of the county  
78 commission.

79 (e) (1) No voter shall receive any assistance in voting  
80 unless, by reason of blindness, disability, advanced age  
81 or inability to read and write, that voter is unable to vote  
82 without assistance. Any voter qualified to receive  
83 assistance in voting under the provisions of this section  
84 may:

85 (A) Declare his or her choice of candidates to an  
86 election commissioner of each political party who, in the  
87 presence of the voter and in the presence of each other,  
88 shall prepare the ballot for voting in the manner  
89 hereinbefore provided, and, on request, shall read over

90 to such voter the names of candidates on the ballot as  
91 so prepared; or

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

97 (C) Be assisted by any person of the voter's choice:  
98 *Provided*, That such assistance may not be given by the  
99 voter's present or former employer or agent of that  
100 employer or by the officer or agent of a labor union of  
101 which the voter is a past or present member.

102 (2) Any voter who requests assistance in voting but  
103 who is believed not to be qualified for such assistance  
104 under the provisions of this section shall nevertheless be  
105 permitted to vote a challenged ballot with the assistance  
106 of any person herein authorized to render assistance.

107 (3) Any one or more of the election commissioners or  
108 poll clerks in the precinct may challenge such ballot on  
109 the ground that the voter thereof received assistance in  
110 voting it when in his or their opinion that the person  
111 who received assistance in voting is not so illiterate,  
112 blind, disabled or of such advanced age as to have been  
113 unable to vote without assistance. The election commis-  
114 sioner or poll clerk or commissioners or poll clerks  
115 making such challenge shall enter the challenge and  
116 reason therefor on the form and in the manner pre-  
117 scribed or authorized by article three of this chapter.

118 (4) An election commissioner or other person who  
119 assists a voter in voting:

120 (A) Shall not in any manner request, or seek to  
121 persuade, or induce the voter to vote any particular  
122 ticket or for any particular candidate or for or against  
123 any public question, and shall not keep or make any  
124 memorandum or entry of anything occurring within the  
125 voting booth or compartment, and shall not, directly or  
126 indirectly, reveal to any person the name of any  
127 candidate voted for by the voter, or which ticket he had  
128 voted, or how he had voted on any public question, or

129 anything occurring within the voting booth or compart-  
130 ment or voting machine booth, except when required  
131 pursuant to law to give testimony as to such matter in  
132 a judicial proceeding; and

133 (B) Shall sign a written oath or affirmation before  
134 assisting such voter on a form prescribed by the  
135 secretary of state stating that he or she will not override  
136 the actual preference of the voter being assisted,  
137 attempt to influence the voter's choice or mislead the  
138 voter into voting for someone other than the candidate  
139 of voter's choice. Such person assisting the voter shall  
140 also swear or affirm that he or she believes that the  
141 voter is voting free of intimidation or manipulation:  
142 *Provided*, That no person providing assistance to such  
143 voter shall be required to sign such oath or affirmation  
144 where the reason for requesting such assistance is the  
145 voter's inability to vote without assistance because of  
146 blindness as defined in section three, article fifteen,  
147 chapter five of this code, and such inability to vote  
148 without assistance because of blindness is certified in  
149 writing by a physician of the voter's choice and is on file  
150 in the office of the clerk of the county commission.

151 (5) In accordance with instructions issued by the  
152 secretary of state, the clerk of the county commission  
153 shall provide a form entitled "List of Assisted Voters,"  
154 the form of which list shall likewise be prescribed by  
155 the secretary of state. The commissioners shall enter the  
156 name of each voter receiving assistance in voting the  
157 ballot, together with the poll slip number of that voter  
158 and the signature of the person or the commissioner  
159 from each party who assisted the voter. If no voter shall  
160 have been assisted in voting the ballot as herein  
161 provided, the commissioners shall likewise make and  
162 subscribe to an oath of that fact on such list.

163 (f) After preparing the ballot the voter shall fold the  
164 same so that the face shall not be exposed and so that  
165 the names of the poll clerks thereon shall be seen. The  
166 voter shall then announce his name and present his  
167 ballot to one of the commissioners who shall hand the  
168 same to another commissioner, of a different political  
169 party, who shall deposit it in the ballot box, if such

170 ballot is the official one and properly signed. The  
171 commissioner of election may inspect every ballot before  
172 it is deposited in the ballot box, to ascertain whether it  
173 is single, but without unfolding or unrolling it, so as to  
174 disclose its content. When the voter has voted, he shall  
175 retire immediately from the election room, and beyond  
176 the sixty-foot limit thereof, and shall not return, except  
177 by permission of the commissioners.

178 (g) Following the election, the oaths or affirmations  
179 required by this section from those assisting voters  
180 together with the "List of Assisted Voters," shall be  
181 returned by the election commissioners to the clerk of  
182 the county commission along with the election supplies,  
183 records and returns, who shall make such oaths,  
184 affirmations and list available for public inspection and  
185 who shall preserve the same for a period of twenty-two  
186 months or until disposition is authorized or directed by  
187 the secretary of state, or court of record.

188 (h) Any person making an oath or affirmation  
189 required under the provisions of this section who shall  
190 therein knowingly swear falsely, or any person who shall  
191 counsel, or advise, aid or abet another in the commission  
192 of false swearing under this section, shall be guilty of  
193 a misdemeanor, and, upon conviction thereof, shall be  
194 fined not more than one thousand dollars, or imprisoned  
195 in the county jail for a period of not more than one year,  
196 or both.

197 (i) Any election commissioner or poll clerk who  
198 authorizes or provides unchallenged assistance to a voter  
199 when such voter is known to such election commissioner  
200 or poll clerk not to require assistance in voting, shall be  
201 guilty of a felony, and, upon conviction thereof, shall be  
202 fined not more than five thousand dollars, or imprisoned  
203 in the penitentiary for a period of not less than one year  
204 nor more than five years, or both fined and imprisoned.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Handwritten Signature]*  
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Chairman Senate Committee

*[Handwritten Signature]*  
-----  
Ernest C Moore  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*[Handwritten Signature]*  
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Clerk of the Senate

*[Handwritten Signature]*  
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Clerk of the House of Delegates

*[Handwritten Signature]*  
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President of the Senate

*[Handwritten Signature]*  
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Speaker of the House of Delegates

The within *is approved* this the *30<sup>th</sup>*  
day of *March*, 1994.

*[Handwritten Signature]*  
-----  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/28/94

Time 9:28 am