

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 80**

6 (By Senators Foster, Stollings, Hall, Palumbo, Beach and Klempa)

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8 [Originating in the Committee on the Judiciary;  
9 reported January 25, 2011.]  
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13 A BILL to amend and reenact §52-1-8 of the Code of West Virginia,  
14 1931, as amended, relating to redefining the basis for  
15 disqualification of prospective jurors to include those who  
16 have been convicted of any crime punishable by imprisonment in  
17 excess of one year or any crime involving dishonesty or false  
18 statement, regardless of the punishment; creating exceptions  
19 thereto excusing women who are breast feeding from jury duty  
20 upon request; and requiring reasonable accommodations for  
21 breast-feeding juror upon request if she chooses to serve.

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

23 That §52-1-8 of the Code of West Virginia, 1931, as amended,  
24 be amended and reenacted to read as follows:

25 **ARTICLE 1. PETIT JURIES.**

26 **§52-1-8. Disqualification from jury service.**

27 (a) The court, upon request of a prospective juror or on its

1 own initiative, shall determine on the basis of information  
2 provided on the juror qualification form or interview with the  
3 prospective juror or other competent evidence whether the  
4 prospective juror is disqualified for jury service. The clerk  
5 shall enter this determination in the space provided on the juror  
6 qualification form and on the alphabetical lists of names drawn  
7 from the jury wheel or jury box.

8 (b) A prospective juror is disqualified to serve on a jury if  
9 the prospective juror:

10 (1) Is not a citizen of the United States, at least eighteen  
11 years old and a resident of the county;

12 (2) Is unable to read, speak and understand the English  
13 language. For the purposes of this section, the requirement of  
14 speaking and understanding the English language is met by the  
15 ability to communicate in American sign language or signed English;

16 (3) Is incapable, by reason of substantial physical or mental  
17 disability, of rendering satisfactory jury service; but a person  
18 claiming this disqualification may be required to submit a  
19 physician's certificate as to the disability and the certifying  
20 physician is subject to inquiry by the court at its discretion;

21 (4) Has, within the preceding two years, been summoned to  
22 serve as a petit juror, grand juror or magistrate court juror, and  
23 has actually attended sessions of the magistrate or circuit court  
24 and been reimbursed for his or her expenses as a juror pursuant to  
25 the provisions of section twenty-one of this article, section  
26 thirteen, article two of this chapter, or pursuant to an applicable  
27 rule or regulation of the Supreme Court of Appeals promulgated  
28 pursuant to the provisions of section eight, article five, chapter

1 fifty of this code;

2 (5) Has lost the right to vote because of a criminal  
3 conviction; or

4 (6) Has been convicted of perjury, ~~false swearing or other~~  
5 infamous offense any crime punishable by imprisonment in excess of  
6 one year under the applicable law or any crime involving dishonesty  
7 or false statement, regardless of the punishment: Provided, That  
8 offenses set forth in sections thirty-nine and thirty-nine-a,  
9 article three, chapter sixty-one of this code shall not be deemed  
10 disqualifying offenses under this section;

11 (c) A prospective juror seventy years of age or older is not  
12 disqualified from serving, but shall be excused from service by the  
13 court upon the juror's request.

14 (d) a prospective juror who is breast-feeding her child or  
15 children is not disqualified from service by virtue of such breast-  
16 feeding but she shall be excused from serving upon her request.  
17 Should a prospective juror who is breast-feeding choose to serve as  
18 a juror and is chosen to serve, the court shall reasonably  
19 accommodate her ability to breast-feed her child or children.

20 ~~(d)~~ (e) A prospective grand juror is disqualified to serve on  
21 a grand jury if the prospective grand juror is an officeholder  
22 under the laws of the United States or of this state except that  
23 the term "officeholder" does not include notaries public.

24 ~~(e)~~ (f) A person who is physically disabled and can render  
25 competent service with reasonable accommodation shall not be  
26 ineligible to act as juror or be dismissed from a jury panel on the  
27 basis of disability alone: *Provided*, That the circuit judge shall,  
28 upon motion by either party or upon his or her own motion,

1 disqualify a disabled juror if the circuit judge finds that the  
2 nature of potential evidence in the case including, but not limited  
3 to, the type or volume of exhibits or the disabled juror's ability  
4 to evaluate a witness or witnesses, unduly inhibits the disabled  
5 juror's ability to evaluate the potential evidence. For purposes  
6 of this section:

7 (1) Reasonable accommodation includes, but is not limited to,  
8 certified interpreters for the hearing impaired, spokespersons for  
9 the speech impaired and readers for the visually impaired.

10 (2) The court shall administer an oath or affirmation to any  
11 person present to facilitate communication for a disabled juror.  
12 The substance of such oath or affirmation shall be that any person  
13 present as an accommodation to a disabled juror will not deliberate  
14 on his or her own behalf, although present throughout the  
15 proceedings, but act only to accurately communicate for and to the  
16 disabled juror.

17 ~~(f)~~(g) Nothing in this article shall be construed so as to  
18 limit in any way a party's right to preemptory strikes in civil or  
19 criminal actions.

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