

1 **H. B. 4302**

2
3 (By Delegates Skaff, Brown, Manchin and Lawrence)

4 [Introduced January 26, 2012; referred to the
5 Committee on the Judiciary.]

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10 A BILL to amend and reenact §3-6-5 of the Code of West Virginia,
11 1931, as amended, relating to elections and write-in
12 candidates.

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

14 That §3-6-5 of the Code of West Virginia, 1931, as amended, be
15 amended and reenacted to read as follows:

16 **ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.**

17 **§3-6-5. Rules and procedures in election other than primaries.**

18 The provisions of article one of this chapter relating to
19 elections generally shall govern and control arrangements and
20 election officials for the conduct of elections under this article.
21 The following rules and procedures shall govern the voting for
22 candidates in general and special elections:

23 (a) If the voter desires to vote a straight ticket, or in

1 other words, for each and every candidate for one party for
2 whatever office nominated, the voter shall either:

3 (1) Mark the position designated for a straight ticket in the
4 manner appropriate to the voting system; or

5 (2) Mark the voting position for each and every candidate of
6 the chosen party in the manner appropriate to the voting system.

7 (b) If the voter desires to vote a mixed ticket, or in other
8 words, for candidates of different parties, the voter shall either:

9 (1) Omit marking any straight ticket voting position and mark,
10 in the manner appropriate to the voting system, the name of each
11 candidate for whom he or she desires to vote on whatever ticket the
12 name may be; or

13 (2) Mark the position designated for a straight ticket for the
14 party for some of whose candidates he or she desires to vote and
15 then mark the name of any candidate of any other party for whom he
16 or she may desire to vote, in which case the cross mark in the
17 circular space above the name of the party straight ticket mark
18 will cast his or her vote for every candidate on the ticket of the
19 party except for offices for which candidates are marked on other
20 party tickets and the marks for the candidates will cast a vote for
21 them; or

22 (3) Write with ink or other means or affix a sticker or label
23 or place an ink-stamped impression of the name of an official
24 write-in candidate for an office for whom he or she desires to vote

1 in the space designated for write-in votes for the particular
2 voting system or for paper ballot systems, write or place the name
3 and office designation in any position on the face of the ballot
4 which makes the intention of the voter clear as to both the office
5 and the candidate chosen. However, where electronic voting systems
6 authorized by section 1, article 4A, chapter 3, et seq., are used,
7 the voter shall mark the location necessary to indicate that a
8 write-in vote is to be cast.

9 © If in marking either a straight or mixed ticket as above
10 defined, a straight ticket voting position is marked, and also one
11 or more marks are made for candidates on the same ticket for
12 offices for which candidates on other party tickets are not
13 individually marked, the marks before the name of candidate on the
14 ticket so marked shall be treated as surplusage and ignored.

15 (d) When a voter casts a straight ticket vote and also writes
16 in any name for an office, the straight ticket vote for that office
17 shall be rejected, whether or not a vote can be counted for a
18 write-in candidate.

19 (e) The Secretary of State may proscribe devices for casting
20 write-in votes which would cause mechanical difficulty with voting
21 machines or electronic devices or which would obliterate or deface
22 a paper ballot or any portion thereof, but the Secretary of State
23 shall preserve the right to vote by a write-in vote for those
24 candidates who have filed and have been certified as official

1 write-in candidates under the provisions of section four-a of this
2 article.

3 (f) If the voter marks more names than there are persons to be
4 elected to an office or if, for any reason, it is impossible to
5 determine the voter's choice for an office to be filled, the ballot
6 shall not be counted for the office. The intention of the voter
7 shall be deemed to be clear if the write-in vote cast for an office
8 contains both the first and last name of an official write-in
9 candidate for that office; and if no two official write-in
10 candidates for that office share a first or last name, either the
11 first name or last name alone shall be deemed to express the clear
12 intention of the voter.

13 (g) Except as otherwise specifically provided in this chapter,
14 no ballot shall be rejected for any technical error which does not
15 make it impossible to determine the voter's choice.

NOTE: The purpose of this bill is to require the voter to mark
the location necessary to indicate that a write-in vote is to be
cast.

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