

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4839

BY DELEGATE BROWN

[Introduced February 11, 2020; Referred to the
Committee on Political Subdivisions then the
Judiciary]

1 A BILL to amend and reenact §3-1-41 of the Code of West Virginia, 1931, as amended, relating
2 to the procedures and standards for a board of canvassers to reasonably ascertain
3 whether a provisional or challenged ballot must be counted at the canvass of any election.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-41. Challenged and provisional voter procedures; counting of provisional voters' ballots; ballots of election officials.

1 (a) It is the duty of the members of the receiving board, jointly or severally, to challenge
2 the right of any person requesting a ballot to vote in any election:

3 (1) If the person's registration record is not available at the time of the election;

4 (2) If the signature written by the person in the poll book does not correspond with the
5 signature purported to be his or hers on the registration record;

6 (3) If the registration record of the person indicates any other legal disqualification;

7 (4) If the person fails to present a valid identifying document pursuant to section 34 of this
8 article; or

9 (5) If any other valid challenge exists against the voter pursuant to section 10, article three
10 of this chapter.

11 (b) Any person challenged shall nevertheless be permitted to vote in the election. He or
12 she shall be furnished an official ballot not endorsed by the poll clerks. In lieu of the
13 endorsements, the poll clerks shall complete and sign an appropriate form indicating the
14 challenge, the reason thereof and the name or names of the challengers. The form shall be
15 securely attached to the voter's ballot and deposited together with the ballot in a separate box or
16 envelope marked "provisional ballots".

17 (c) At the time that an individual casts a provisional ballot, the poll clerk shall give the
18 individual written information stating that an individual who casts a provisional ballot will be able
19 to ascertain under the free access system established in this section whether the vote was

20 counted and, if the vote was not counted, the reason that the vote was not counted.

21 (d) Before an individual casts a provisional ballot, the poll clerk shall provide the individual
22 written instructions, supplied by the board of ballot commissioners, stating that if the voter is
23 casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election:
24 *Provided*, That if the voter is found to be in the incorrect precinct, then the poll worker shall attempt
25 to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter
26 the information if ascertainable.

27 (e) Provisional ballots may not be counted by the election officials. The county
28 commission shall, on its own motion, at the time of canvassing of the election returns, sit in
29 session to determine the validity of any challenges according to the provisions of this chapter. If
30 the county commission determines that the challenges are unfounded, each provisional ballot of
31 each challenged voter, if otherwise valid, shall be counted and tallied together with the regular
32 ballots cast in the election. The county commission, as the board of canvassers, shall protect the
33 privacy of each provisional ballot cast. The county commission shall disregard technical errors,
34 omissions or oversights if it can reasonably be ascertained that the challenged voter was entitled
35 to vote.

36 (1) "Technical errors, omissions or oversights" include, but are not limited to,
37 administrative clerical mistakes in the voter's registration record or poll book, typographical errors,
38 other administrative errors, inaccuracies resulting from technology malfunction, or any other
39 errors, omissions or oversights due to no fault of the voter which cause the voter to cast a
40 provisional or challenged ballot.

41 (2) The clerk of the county commission shall make all reasonable efforts between the close
42 of the polls on election day and the start of canvass to investigate the cause of any technical
43 errors, omissions or oversights which require a voter to cast a provisional or challenged ballot,
44 and shall present all tangible nonconfidential evidence to the Board of Canvassers at canvass to
45 aid in their duty to reasonably ascertain whether the provisional or challenged ballot shall be

46 counted. The Board of Canvassers shall have the authority to subpoena witnesses, public records
47 and other tangible documents to be considered at canvass: *Provided*, That a lack of tangible
48 evidence shall not be the sole purpose for not counting the provisional or challenged ballot, and
49 proffer or testimony by the clerk of the county commission, recorder or town clerk, shall be
50 considered by the Board of Canvassers.

51 (3) Notwithstanding the provisions of this section, the Board of Canvassers shall take all
52 reasonable and necessary precautions to protect voters' constitutional rights to vote in an election.

53 (f) Any person duly appointed as an Election Commissioner or clerk under the provisions
54 of section 28 of this article who serves in that capacity in a precinct other than the precinct in
55 which the person is legally entitled to vote may cast a provisional ballot in the precinct in which
56 the person is serving as a commissioner or clerk. The ballot is not invalid for the sole reason of
57 having been cast in a precinct other than the precinct in which the person is legally entitled to
58 vote. The county commission shall record the provisional ballot on the voter's permanent
59 registration record: *Provided*, That the county commission may count only the votes for the offices
60 that the voter was legally authorized to vote for in his or her own precinct.

61 (g) The Secretary of State shall establish a free access system, which may include a toll-
62 free telephone number or an Internet website, that may be accessed by any individual who casts
63 a provisional ballot to discover whether his or her vote was counted and, if not, the reason that
64 the vote was not counted.

NOTE: The purpose of this bill is to require the Board of Canvassers to reasonably ascertain whether a provisional or challenged ballot must be counted at the canvass of any election.

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