

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2607**

BY DELEGATES MALLOW, CONLEY, FORSHT, HORST,

MILLER, PRITT, HOLSTEIN AND LONGANACRE

[Introduced February 19, 2021; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §3-1-34 of the Code of West Virginia, 1931, as amended, relating  
 2 to requiring that in elections for candidates for public office, all registered voters shall  
 3 produce a valid identifying document containing a photograph in order to vote.

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

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

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

1 (a) A person desiring to vote in an election shall, upon entering the election room, clearly  
 2 state his or her name and residence to one of the poll clerks who shall thereupon announce the  
 3 same in a clear and distinct tone of voice. For elections occurring on or after January 1, 2018, the  
 4 person desiring to vote shall present to one of the poll clerks a valid identifying document meeting  
 5 the requirements of subdivisions (1) or (2) of this subsection, and the poll clerk shall inspect and  
 6 confirm that the name on the valid identifying document conforms to the name in the individual's  
 7 voter registration record and that, if the valid identifying document contains a photograph, the  
 8 image displayed is truly an image of the person presenting the document. If that person is found  
 9 to be duly registered as a voter at that precinct, he or she shall sign his or her name in the  
 10 designated location provided at the precinct. If that person is physically or otherwise unable to  
 11 sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of  
 12 the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately  
 13 under the affixation. No ballot may be given to the person until he or she signs his or her name  
 14 on the designated location or his or her signature is affixed thereon.

15 (1) A document shall be ~~deemed~~ considered to be a valid identifying document if it:

16 (A) Has been issued either by the State of West Virginia, or one of its subsidiaries, or by  
 17 the United States Government; and

18 (B) Contains the name of the person desiring to vote.

19 (2) Notwithstanding the provisions of subdivision (1) of this subsection, the following

20 documents, if they contain the voter's name, shall be considered valid identifying documents, and  
21 a person desiring to vote may produce any of the following:

22 (A) A valid West Virginia driver's license or valid West Virginia identification card issued  
23 by the West Virginia Division of Motor Vehicles;

24 (B) A valid driver's license issued by a state other than the State of West Virginia;

25 (C) A valid United States passport or passport card;

26 (D) A valid employee identification card with a photograph of the eligible voter issued by  
27 any branch, department, agency, or entity of the United States Government or of the State of  
28 West Virginia, or by any county, municipality, board, authority, or other political subdivision of  
29 West Virginia;

30 (E) A valid student identification card with a photograph of the eligible voter issued by an  
31 institution of higher education in West Virginia, or a valid high school identification card issued by  
32 a West Virginia high school;

33 (F) A valid military identification card issued by the United States with a photograph of the  
34 person desiring to vote;

35 (G) A valid concealed carry (pistol/revolver) permit issued by the sheriff of the county with  
36 a photograph of the person desiring to vote;

37 (H) A valid Medicare card or Social Security card;

38 (I) A valid birth certificate;

39 (J) A valid voter registration card issued by a county clerk in the State of West Virginia;

40 (K) A valid hunting or fishing license issued by the State of West Virginia;

41 (L) A valid identification card issued to the voter by the West Virginia Supplemental  
42 Nutrition Assistance (SNAP) program;

43 (M) A valid identification card issued to the voter by the West Virginia Temporary  
44 Assistance for Needy Families (TANF) program;

45 (N) A valid identification card issued to the voter by West Virginia Medicaid;

46 (O) A valid bank card or valid debit card;

47 (P) A valid utility bill issued within six months of the date of the election;

48 (Q) A valid bank statement issued within six months of the date of the election; or

49 (R) A valid health insurance card issued to the voter.

50 (3) In lieu of providing a valid identifying document, as required by this section, a registered  
51 voter may be accompanied at the polling place by an adult known to the registered voter for at  
52 least six months. That adult may sign an affidavit on a form provided to clerks and poll workers  
53 by the Secretary of State, which states under oath or affirmation that the adult has known the  
54 registered voter for at least six months, and that in fact the registered voter is the same person  
55 who is present for the purpose of voting. For the affidavit to be considered valid, the adult shall  
56 present a valid identifying document with his or her name, address, and photograph.

57 (4) A poll worker may allow a voter, whom the poll worker has known for at least six  
58 months, to vote without presenting a valid identifying document.

59 (5) If the person desiring to vote is unable to furnish a valid identifying document, or if the  
60 poll clerk determines that the proof of identification presented by the voter does not qualify as a  
61 valid identifying document, the person desiring to vote shall be permitted to cast a provisional  
62 ballot after executing an affidavit affirming his or her identity pursuant to paragraph (B) of this  
63 subdivision.

64 (A) The provisional ballot is entitled to be counted once the election authority verifies the  
65 identity of the individual by comparing that individual's signature to the current signature on file  
66 with the election authority and determines that the individual was otherwise eligible to cast a ballot  
67 at the polling place where the ballot was cast.

68 (B) The affidavit to be used for voting shall be substantially in the following form:

69 "State of West Virginia

70 County of.....

71 I do solemnly swear (or affirm) that my name is .....; that I

72 reside at.....; and that I am the person listed in the precinct register under this name  
73 and at this address.

74 I understand that knowingly providing false information is a violation of law and subjects  
75 me to possible criminal prosecution.

76 .....

77 Signature of voter

78 Subscribed and affirmed before me this..... day of ....., 20....

79 .....

80 Name of Election Official

81 .....

82 Signature of Election Official”.

83 (6) A voter who votes in person at a precinct polling place that is located in a building  
84 which is part of a state licensed care facility where the voter is a resident is not required to provide  
85 proof of identification as a condition before voting in an election.

86 (7) The person entering voter information into the centralized voter registration database  
87 shall cause the records to indicate when a voter has not presented a valid identifying document  
88 and has executed a voter identity affidavit.

89 (8) If a voter participating in the Address Confidentiality Program established by §48-28A-  
90 103 of this code, executes a voter identity affidavit, the program participant's residential or mailing  
91 address is subject to the confidentiality provisions of §48-28A-108 of this code and shall be used  
92 only for those statutory and administrative purposes authorized by this section.

93 (9) Prior to the primary and general elections to be held in calendar year 2018, the  
94 Secretary of State shall educate voters about the requirement to present a valid identifying  
95 document and develop a program to help ensure that all eligible voters are able to obtain a valid  
96 identifying document.

97 (b) The clerk of the county commission is authorized, upon verification that the precinct at

98 which a handicapped person is registered to vote is not handicap accessible, to transfer that  
99 person's registration to the nearest polling place in the county which is handicap accessible. A  
100 request by a handicapped person for a transfer of registration must be received by the county  
101 clerk no later than 30 days prior to the date of the election. A handicapped person who has not  
102 made a request for a transfer of registration at least 30 days prior to the date of the election may  
103 vote a provisional ballot at a handicap accessible polling place in the county of his or her  
104 registration. If during the canvass the county commission determines that the person had been  
105 registered in a precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall  
106 be counted. The handicapped person may vote in the precinct to which the registration was  
107 transferred only as long as the disability exists or the precinct from which the handicapped person  
108 was transferred remains inaccessible to the handicapped. To ensure confidentiality of the  
109 transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked  
110 envelope and an outer envelope designated "provisional ballot/handicapped voter". After  
111 validation of the ballot at the canvass, the outer envelope shall be destroyed, and the handicapped  
112 voter's ballot shall be placed with other approved provisional ballots prior to removal of the ballot  
113 from the unmarked envelope.

114 (c) When the voter's signature is properly marked and the voter has presented a valid  
115 identifying document, the two poll clerks shall sign their names in the places indicated on the back  
116 of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the  
117 election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the  
118 ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with  
119 other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another  
120 official ballot, signed by the clerks on the reverse side. The voter shall thereupon retire alone to  
121 the booth or compartment prepared within the election room for voting purposes and there  
122 prepare his or her ballot. In voting for candidates in general and special elections, the voter shall  
123 comply with the rules and procedures prescribed in §3-6-5 of this code.

124           (d) ~~It is the duty of a~~ A poll clerk, shall in the presence of the other poll clerk, ~~to~~ indicate  
125 by a check mark, or by other means, inserted in the appropriate place on the registration record  
126 of each voter the fact that the voter voted in the election. In primary elections the clerk shall also  
127 insert on the registration record of each voter a distinguishing initial or initials of the political party  
128 for whose candidates the voter voted. If a person is challenged at the polls, the challenge shall  
129 be indicated by the poll clerks on the registration record, together with the name of the challenger.  
130 The subsequent removal of the challenge shall be recorded on the registration record by the clerk  
131 of the county commission.

132           (e) (1) No voter may receive any assistance in voting unless, by reason of blindness,  
133 disability, advanced age or inability to read and write, that voter is unable to vote without  
134 assistance. Any voter so qualified to receive assistance in voting may:

135           (A) Declare his or her choice of candidates to an Election Commissioner of each political  
136 party who, in the presence of the voter and in the presence of each other, shall prepare the ballot  
137 for voting in the manner provided in this section and, on request, shall read to the voter the names  
138 of the candidates selected on the ballot;

139           (B) Require the Election Commissioners to indicate to him or her the relative position of  
140 the names of the candidates on the ballot, the voter shall then retire to one of the booths or  
141 compartments to prepare his or her ballot in the manner provided in this section;

142           (C) Be assisted by any person of the voter's choice, other than the voter's present or  
143 former employer or agent of that employer, the officer or agent of a labor union of which the voter  
144 is a past or present member or a candidate on the ballot or an official write-in candidate; or

145           (D) If he or she is handicapped, vote from an automobile outside the polling place or  
146 precinct by the absentee balloting method provided in §3-3-5(e) of this code in the presence of  
147 an Election Commissioner of each political party if all of the following conditions are met:

148           (i) The polling place is not handicap accessible; and

149           (ii) No voters are voting or waiting to vote inside the polling place.

150 (2) The voted ballot shall then be returned to the precinct officials and secured in a sealed  
151 envelope to be returned to the clerk of the county commission with all other election materials.  
152 The ballot shall then be tabulated using the appropriate method provided in §3-1-8 of this code  
153 as it relates to the specific voting system in use.

154 (3) A voter who requests assistance in voting but who is believed not to be qualified for  
155 assistance under the provisions of this section shall nevertheless be permitted to vote a  
156 provisional ballot with the assistance of any person herein authorized to render assistance.

157 (4) One or more of the Election Commissioners or poll clerks in the precinct may challenge  
158 the ballot on the ground that the voter received assistance in voting it when in his, her or their  
159 opinion the person who received assistance in voting is not so illiterate, blind, disabled or of such  
160 advanced age as to have been unable to vote without assistance. The Election Commissioner or  
161 poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and the  
162 reason for such challenge on the form and in the manner prescribed or authorized by §3-3-1 *et*  
163 *seq.* of this code.

164 (5) An Election Commissioner or other person who assists a voter in voting:

165 (A) May not in any manner request or seek to persuade or induce the voter to vote a  
166 particular ticket or for a particular candidate or for or against any public question and must not  
167 keep or make any memorandum or entry of anything occurring within the voting booth or  
168 compartment and must not, directly or indirectly, reveal to any person the name of a candidate  
169 voted for by the voter, which ticket he or she had voted or how he or she had voted on any public  
170 question or anything occurring within the voting booth, compartment, or voting machine booth  
171 except when required by law to give testimony as to the matter in a judicial proceeding; and

172 (B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed  
173 by the Secretary of State stating that he or she will not override the actual preference of the voter  
174 being assisted, attempt to influence the voter's choice, or mislead the voter into voting for  
175 someone other than the candidate of voter's choice. The person assisting the voter shall also

176 swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation.  
177 No person providing assistance to a voter is required to sign an oath or affirmation where the  
178 reason for requesting assistance is the voter's inability to vote without assistance because of  
179 blindness as defined in §5-15-3 of this code and the inability to vote without assistance because  
180 of blindness is certified in writing by a physician of the voter's choice and is on file in the office of  
181 the clerk of the county commission.

182 (6) In accordance with instructions issued by the Secretary of State, the clerk of the county  
183 commission shall provide a form entitled "list of assisted voters", on a form as prescribed by the  
184 Secretary of State. The commissioners shall enter the name of each voter receiving assistance  
185 in voting the ballot, together with the poll slip number of that voter and the signature of the person  
186 or the commissioner from each party who assisted the voter. If no voter has been assisted in  
187 voting, the commissioners shall make and subscribe to an oath of that fact on the list.

188 (f) After preparing the ballot, the voter shall fold the ballot so that the face is not exposed  
189 and the names of the poll clerks on it are seen. The voter shall announce his or her name and  
190 present his or her ballot to one of the commissioners who shall hand the same to another  
191 commissioner, of a different political party, who shall deposit it in the ballot box if the ballot is the  
192 official one and properly signed. The commissioner of election may inspect every ballot before it  
193 is deposited in the ballot box to ascertain whether it is single; but without unfolding or unrolling it  
194 so as to disclose its content. When the voter has voted, he or she shall retire immediately from  
195 the election room and beyond the 60-foot limit and not return except by permission of the  
196 commissioners.

197 (g) Following the election, the oaths or affirmations required by this section from those  
198 assisting voters, together with the "list of assisted voters", shall be returned by the Election  
199 Commissioners to the clerk of the county commission along with the election supplies, records  
200 and returns. The clerk of the county commission shall make the oaths, affirmations, and list  
201 available for public inspection and preserve them for a period of 22 months or until disposition is

202 authorized or directed by the Secretary of State or court of record. The clerk may use these  
203 records to update the voter registration records in accordance with §3-2-18(d) of this code.

204 (h) Any person making an oath or affirmation required under the provisions of this section  
205 who knowingly swears falsely or any person who counsels, advises, aids or abets another in the  
206 commission of false swearing under this section, is guilty of a misdemeanor and, upon conviction  
207 thereof, shall be fined not more than \$1,000 or confined in jail for a period of not more than one  
208 year, or both fined and confined.

209 (i) Any Election Commissioner or poll clerk who authorizes or provides unchallenged  
210 assistance to a voter when the voter is known to the Election Commissioner or poll clerk not to  
211 require assistance in voting, is guilty of a felony and, upon conviction thereof, shall be fined not  
212 more than \$5,000 or imprisoned in a state correctional facility for a period of not less than one  
213 year nor more than five years, or both fined and imprisoned.

214 (j) Notwithstanding the provisions of subsection (a) of this section, in elections for  
215 candidates for public office, all registered voters shall produce a valid identifying document  
216 containing a photograph in order to vote.

NOTE: The purpose of this bill is to require that in elections for candidates for public office, all registered voters shall produce a valid identifying document containing a photograph in order to vote.

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