

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 459

By Senators Rucker and Smith

[Introduced January 24, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-1-3 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §3-1-34 and §3-2-2 of said code; all relating to residency requirements
 3 for people entitled to vote and people eligible to register to vote; requiring that a person be
 4 a legal resident of the state, county, or municipality in which he or she offers to vote;
 5 requiring that a person be a legal resident of the state or county in which he or she applies
 6 to register to vote; defining the term "legal resident"; and requiring a state or federal photo
 7 identification in order to vote.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-3. Persons entitled to vote.

1 (a) Citizens of the State of West Virginia shall be entitled to vote at all elections held within
 2 the precincts of the counties and municipalities in which they respectively reside. But no person
 3 who has not been registered as a voter as required by law, or who is a minor, or who has been
 4 declared mentally incompetent by a court of competent jurisdiction, or who is under conviction of
 5 treason, felony or bribery in an election, or who is not a ~~bona fide~~ legal resident of the state, county,
 6 or municipality in which he or she offers to vote, shall be permitted to vote at such election while
 7 such disability continues, unless otherwise specifically provided by federal or state code. Subject
 8 to the qualifications otherwise prescribed in this section, however, a minor shall be permitted to
 9 vote only in a primary election if he or she will have reached the age of 18 years on the date of the
 10 general election next to be held after such primary election.

11 (b) For the purpose of this section, "legal resident" means a person who is domiciled in the
 12 state, county, or municipality in which he or she offers to vote, which includes both physical
 13 residency (or presence) in the state, county, or municipality and an intent to remain in the state,
 14 county, or municipality. Facts that may demonstrate the domicile of a person in the state, county, or
 15 municipality include, but are not limited to, the physical character of the person's residence(s); the
 16 person's time spent in the state, county, or municipality; the person's reasons for residency in the

17 state, county, or municipality; whether the person intends on returning permanently to another
 18 residence outside of the state, county, or municipality in the future; whether the person obtains a
 19 license to operate a vehicle in the state; whether the person registers a vehicle(s) or other property
 20 in the state or county; the address listed on the person's vehicle registration card; the address
 21 listed on the person's driver's license; the address where the person receives state or federal
 22 benefits; and whether the person pays property or income taxes in the state, county, or
 23 municipality.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-2. Eligibility to register to vote.

1 (a) Any person who possesses the constitutional qualifications for voting may register to
 2 vote. To be qualified, a person ~~must~~ shall be a citizen of the United States and a legal resident of
 3 the State of West Virginia and of the county where he or she is applying to register, shall be at least
 4 18 years of age, except that a person who is at least 17 years of age and who will be 18 years of
 5 age by the time of the next ensuing general election may also be permitted to register, and shall
 6 not be otherwise legally disqualified: *Provided*, That a registered voter who has not reached 18
 7 years of age may vote both partisan and nonpartisan ballots in a federal, state, county, municipal,
 8 or special primary election if he or she will be 18 years of age by the time of the corresponding
 9 general election.

10 (b) Any person who has been convicted of a felony, treason, or bribery in an election, under
 11 either state or federal law, is disqualified and is not eligible to register or to continue to be
 12 registered to vote while serving his or her sentence, including any period of incarceration,
 13 probation or parole related thereto. Any person who has been declared mentally incompetent by a
 14 court of competent jurisdiction is disqualified and shall not be eligible to register or to continue to
 15 be registered to vote for as long as that disability continues.

16 (c) For the purpose of this section, "legal resident" means a person who is domiciled in the
 17 state or county in which he or she is applying to register to vote, which includes both physical

18 residency (or presence) in the state or county and an intent to remain in the state or county. Facts
19 that may demonstrate the domicile of a person in the state or county include, but are not limited to,
20 the physical character of the person's residence(s); the person's time spent in the state or county;
21 the person's reasons for residency in the state or county; whether the person intends on returning
22 permanently to another residence outside of the state or county in the future; whether the person
23 obtains a license to operate a vehicle in the state; whether the person registers a vehicle(s) or
24 other property in the state or county; the address listed on the person's vehicle registration card;
25 the address listed on the person's driver's license; the address where the person receives state or
26 federal benefits; and whether the person pays property or income taxes in the state or county.

§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 to
9 be duly registered as a voter at that precinct, he or she shall sign his or her name in the designated
10 location provided at the precinct. If that person is physically or otherwise unable to sign his or her
11 name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the
12 name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation.
13 No ballot may be given to the person until he or she signs his or her name on the designated
14 location or his or her signature is affixed thereon.

15 (1) A document shall be deemed 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 the
17 United States Government; and

18 (B) Contains the name and photograph 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 and photograph, shall be considered valid identifying
21 documents, and 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 by
23 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 West
28 Virginia, or by any county, municipality, board, authority, or other political subdivision of West
29 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 with a
32 photograph issued by 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 a
36 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 by
53 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 who
55 is present for the purpose of voting. For the affidavit to be considered valid, the adult shall present
56 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 which
84 is part of a state licensed care facility where the voter is a resident is not required to provide proof
85 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 section
90 one hundred three, article twenty-eight-a, chapter forty-eight of this code, executes a voter identity
91 affidavit, the program participant's residential or mailing address is subject to the confidentiality
92 provisions of section one hundred eight, article twenty-eight-a, chapter forty-eight of this code and

93 shall be used only for those statutory and administrative purposes authorized by this section.

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

98 (b) The clerk of the county commission is authorized, upon verification that the precinct at
99 which a handicapped person is registered to vote is not handicap accessible, to transfer that
100 person's registration to the nearest polling place in the county which is handicap accessible. A
101 request by a handicapped person for a transfer of registration must be received by the county clerk
102 no later than thirty days prior to the date of the election. A handicapped person who has not made
103 a request for a transfer of registration at least thirty days prior to the date of the election may vote a
104 provisional ballot at a handicap accessible polling place in the county of his or her registration. If
105 during the canvass the county commission determines that the person had been registered in a
106 precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The
107 handicapped person may vote in the precinct to which the registration was transferred only as long
108 as the disability exists or the precinct from which the handicapped person was transferred remains
109 inaccessible to the handicapped. To ensure confidentiality of the transferred ballot, the county
110 clerk processing the ballot shall provide the voter with an unmarked envelope and an outer
111 envelope designated "provisional ballot/handicapped voter". After validation of the ballot at the
112 canvass, the outer envelope shall be destroyed and the handicapped voter's ballot shall be placed
113 with other approved provisional ballots prior to removal of the ballot 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 the
121 booth or compartment prepared within the election room for voting purposes and there prepare his
122 or her ballot. In voting for candidates in general and special elections, the voter shall comply with
123 the rules and procedures prescribed in section five, article six of this chapter.

124 (d) It is the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check
125 mark, or by other means, inserted in the appropriate place on the registration record of each voter
126 the fact that the voter voted in the election. In primary elections the clerk shall also insert on the
127 registration record of each voter a distinguishing initial or initials of the political party for whose
128 candidates the voter voted. If a person is challenged at the polls, the challenge shall be indicated
129 by the poll clerks on the registration record, together with the name of the challenger. The
130 subsequent removal of the challenge shall be recorded on the registration record by the clerk of
131 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 the
140 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 former
143 employer or agent of that employer, the officer or agent of a labor union of which the voter is a past
144 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 subsection (e), section five, article three of
147 this chapter in the presence of an Election Commissioner of each political party if all of the
148 following conditions are met:

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

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

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

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

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

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

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

171 question or anything occurring within the voting booth, compartment, or voting machine booth
172 except when required by law to give testimony as to the matter in a judicial proceeding; and

173 (B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed
174 by the Secretary of State stating that he or she will not override the actual preference of the voter
175 being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone
176 other than the candidate of voter's choice. The person assisting the voter shall also swear or affirm
177 that he or she believes that the voter is voting free of intimidation or manipulation. No person
178 providing assistance to a voter is required to sign an oath or affirmation where the reason for
179 requesting assistance is the voter's inability to vote without assistance because of blindness as
180 defined in section three, article fifteen, chapter five of this code and the inability to vote without
181 assistance because of blindness is certified in writing by a physician of the voter's choice and is on
182 file in the office of the clerk of the county commission.

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

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

197 commissioners.

198 (g) Following the election, the oaths or affirmations required by this section from those
199 assisting voters, together with the "list of assisted voters", shall be returned by the Election
200 Commissioners to the clerk of the county commission along with the election supplies, records and
201 returns. The clerk of the county commission shall make the oaths, affirmations and list available
202 for public inspection and preserve them for a period of twenty-two months or until disposition is
203 authorized or directed by the Secretary of State or court of record. The clerk may use these
204 records to update the voter registration records in accordance with subsection (d), section
205 eighteen, article two of this chapter.

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

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

NOTE: The purpose of this bill is to clarify residency requirements and require photo identification to vote in person.

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