

**H. B. 2798**

(By Delegates Miller and E. Nelson, Sobonya, Border and Folk)

[Introduced February 18, 2015; referred to the

Committee on the Judiciary then Finance.]

A BILL to amend and reenact §3-1-34 of the Code of West Virginia, 1931, as amended, relating to voting procedures; and requiring a voter to present an identifying document which contains the name, address and a photograph of that person; and providing that if a voter is unable to produce that document he or she may cast a provisional ballot.

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

That §3-1-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.****§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.**

(a) ~~Any~~ A person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall ~~thereupon~~ announce the same in a clear and distinct tone of voice. The person desiring to vote shall present to one of the poll clerks an identifying document which contains the name, address and a photograph of the person

1 desiring to vote which the poll clerk shall inspect and confirm is truly an image of the person  
2 presenting the document. If that person is found to be duly registered as a voter at that precinct, he  
3 or she shall sign his or her name in the designated location provided at the precinct. If that person  
4 is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of  
5 the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark  
6 shall be indicated immediately under the affixation. No ballot may be given to the person until he  
7 or she signs his or her name on the designated location or his or her signature is affixed thereon. If  
8 the person desiring to vote is unable to furnish an identifying document which contains the name,  
9 address and a photograph, he or she shall be allowed to vote but must cast a provisional ballot.

10 (b) The clerk of the county commission is authorized, upon verification that the precinct at  
11 which a handicapped person is registered to vote is not handicap accessible, to transfer that person's  
12 registration to the nearest polling place in the county which is handicap accessible. A request by a  
13 handicapped person for a transfer of registration must be received by the county clerk no later than  
14 thirty days prior to the date of the election. ~~Any~~ A handicapped person who has not made a request  
15 for a transfer of registration at least thirty days prior to the date of the election may vote a provisional  
16 ballot at a handicap accessible polling place in the county of his or her registration. If, during the  
17 canvass, the county commission determines that the person had been registered in a precinct that is  
18 not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped  
19 person may vote in the precinct to which the registration was transferred only as long as the disability  
20 exists or the precinct from which the handicapped person was transferred remains inaccessible to the  
21 handicapped. To ensure confidentiality of the transferred ballot, the county clerk processing the  
22 ballot shall provide the voter with an unmarked envelope and an outer envelope designated

1 "provisional ballot/handicapped voter". After validation of the ballot at the canvass, the outer  
2 envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved  
3 provisional ballots prior to removal of the ballot from the unmarked envelope.

4 (c) When the voter's signature is properly marked, the two poll clerks shall sign their names  
5 in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted  
6 by him or her without leaving the election room. If he or she returns the ballot spoiled to the clerks,  
7 they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled  
8 ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and  
9 deliver to the voter another official ballot, signed by the clerks on the reverse side. The voter shall  
10 thereupon retire alone to the booth or compartment prepared within the election room for voting  
11 purposes and there prepare his or her ballot. In voting for candidates in general and special elections,  
12 the voter shall comply with the rules and procedures prescribed in section five, article six of this  
13 chapter.

14 (d) It is the duty of a poll clerk in the presence of the other poll clerk to indicate, by a check  
15 mark or by other means inserted in the appropriate place on the registration record of each voter, the  
16 fact that the voter voted in the election. In primary elections the clerk shall also insert thereon a  
17 distinguishing initial or initials of the political party for whose candidates the voter voted. If a  
18 person is challenged at the polls, the challenge shall be indicated by the poll clerks on the registration  
19 record together with the name of the challenger. The subsequent removal of the challenge shall be  
20 recorded on the registration record by the clerk of the county commission.

21 (e) (1) No voter may receive any assistance in voting unless, by reason of blindness,  
22 disability, advanced age or inability to read and write, that voter is unable to vote without assistance.

1 ~~Any~~ A voter qualified to receive assistance in voting under the provisions of this section may:

2       (A) Declare his or her choice of candidates to an Election Commissioner of each political  
3 party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for  
4 voting in the manner hereinbefore provided and, on request, shall read to the voter the names of the  
5 candidates selected on the ballot;

6       (B) Require the Election Commissioners to indicate to him or her the relative position of the  
7 names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or  
8 compartments to prepare his or her ballot in the manner hereinbefore provided;

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

12       (D) If he or she is handicapped, vote from an automobile outside the polling place or precinct  
13 by the absentee balloting method provided in subsection (e), section five, article three of this chapter  
14 in the presence of an Election Commissioner of each political party if all of the following conditions  
15 are met:

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

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

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

22       (3) ~~Any~~ A voter who requests assistance in voting but who is believed not to be qualified for

1 assistance under the provisions of this section shall ~~nevertheless~~ be permitted to vote a provisional  
2 ballot with the assistance of any person herein authorized to render assistance.

3 (4) Any one or more of the Election Commissioners or poll clerks in the precinct may  
4 challenge the ballot on the ground that the voter ~~thereof~~ received assistance in voting it when in his,  
5 her or their opinion the person who received assistance in voting is not so illiterate, blind, disabled  
6 or of such advanced age as to have been unable to vote without assistance. The Election  
7 Commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the  
8 challenge and reason therefor on the form and in the manner prescribed or authorized by article three  
9 of this chapter.

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

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

18 (B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed  
19 by the Secretary of State stating that he or she will not override the actual preference of the voter  
20 being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone  
21 other than the candidate of voter's choice. The person assisting the voter shall also swear or affirm  
22 that he or she believes that the voter is voting free of intimidation or manipulation. ~~Provided, That~~

1 No person providing assistance to a voter is required to sign an oath or affirmation where the reason  
2 for requesting assistance is the voter's inability to vote without assistance because of blindness as  
3 defined in section three, article fifteen, chapter five of this code and the inability to vote without  
4 assistance because of blindness is certified in writing by a physician of the voter's choice and is on  
5 file in the office of the clerk of the county commission.

6 (6) In accordance with instructions issued by the Secretary of State, the clerk of the county  
7 commission shall provide a form entitled "list of assisted voters", the form of which list shall  
8 likewise be prescribed by the Secretary of State. The commissioners shall enter the name of each  
9 voter receiving assistance in voting the ballot, together with the poll slip number of that voter and  
10 the signature of the person or the commissioner from each party who assisted the voter. If no voter  
11 has been assisted in voting, the commissioners shall ~~likewise~~ make and subscribe to an oath of that  
12 fact on the list.

13 (f) After preparing the ballot, the voter shall fold the ballot so that the face is not exposed and  
14 ~~so that~~ the names of the poll clerks thereon are seen. The voter shall announce his or her name and  
15 present his or her ballot to one of the commissioners who shall hand the same to another  
16 commissioner, of a different political party, who shall deposit it in the ballot box if the ballot is the  
17 official one and properly signed. The commissioner of election may inspect every ballot before it  
18 is deposited in the ballot box to ascertain whether it is single, but without unfolding or unrolling it  
19 so as to disclose its content. When the voter has voted, he or she shall retire immediately from the  
20 election room and beyond the sixty-foot limit thereof and may not return except by permission of  
21 the commissioners.

22 (g) Following the election, the oaths or affirmations required by this section from those

1 assisting voters, together with the "list of assisted voters", shall be returned by the Election  
2 Commissioners to the clerk of the county commission along with the election supplies, records and  
3 returns. The clerk of the county commission shall make the oaths, affirmations and list available for  
4 public inspection and shall preserve them for a period of twenty-two months or until disposition is  
5 authorized or directed by the Secretary of State or court of record. ~~Provided, That~~ The clerk may use  
6 these records to update the voter registration records in accordance with subsection (d), section  
7 eighteen, article two of this chapter.

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

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

NOTE: The purpose of this bill is to require voters to provide a photo ID when voting. The bill provides that if a voter is unable to produce that document he or she may cast a provisional ballot.

Strike-throughs indicate language that would be stricken from the present law, and

underscoring indicates new language that would be added.