

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### Senate Bill 251

FISCAL  
NOTE

BY SENATORS BALDWIN AND JEFFRIES

[Introduced January 10, 2019; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-1-37 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §3-9-6 and §3-9-9 of said code, all relating to adjusting the distance  
 3 from a polling place that certain electioneering and election-related activity is prohibited;  
 4 making legislative findings and justifications for the changes; and ensuring consistency in  
 5 the law with respect to application of the distances within which certain conduct is  
 6 prohibited at polling places.

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

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

**§3-1-37. Restrictions on presence and conduct at polls.**

1 (a) Except as otherwise provided in this section, no person, other than the election officers  
 2 and voters going to the election room to vote and returning therefrom, may be or remain within  
 3 ~~one hundred~~ 250 feet of the outside entrance to the building housing the polling place while the  
 4 polls are open. This subsection does not apply to persons who reside or conduct business within  
 5 such distance of the entrance to the building housing the polling place, while in the discharge of  
 6 their legitimate business, or to persons whose business requires them to pass and repass within  
 7 ~~one hundred~~ 250 feet of such entrance.

8 (b) A person who is delivering a voter to a polling place by motor vehicle may drive such  
 9 vehicle to a convenient and accessible location to discharge the voter, notwithstanding that the  
 10 location is within ~~one hundred~~ 250 feet of the outside entrance to the building housing the polling  
 11 place. Upon discharging such voter from the vehicle, the person shall remove the vehicle from  
 12 within ~~one hundred~~ 250 feet of the entrance until such time as the voter is to be transported from  
 13 the polling place or another voter delivered: *Provided*, That vehicles delivering voters who require  
 14 assistance by reason of blindness, disability or advanced age may remain within ~~one hundred~~  
 15 250 feet of the entrance until such time as the voter is to be transported from the polling place.

16 (c) The election commissions shall limit the number of voters in the election room so as to  
 17 preserve order. No person may approach nearer than five feet to any booth or compartment while

18 the election is being held, except the voters to prepare their ballots, or the poll clerks when called  
19 on by a voter to assist in the preparation of his or her ballot, and no person, other than election  
20 officers and voters engaged in receiving, preparing and depositing their ballots, may be permitted  
21 to be within five feet of any ballot box, except by authority of the board of election commissioners,  
22 and then only for the purpose of keeping order and enforcing the law.

23 (d) Not more than one person may be permitted to occupy any booth or compartment at  
24 one time. No person may remain in or occupy a booth or compartment longer than may be  
25 necessary to prepare his or her ballot, and in no event longer than five minutes, except that any  
26 person who claims a disability pursuant to §3-1-34 of this code shall have additional time up to  
27 ten additional minutes to prepare his or her ballot. No voter, or person offering to vote, may hold  
28 any conversation or communication with any person other than the poll clerks or commissioners  
29 of election, while in the election room.

30 (e) The provisions of this section do not apply to persons rendering assistance to blind  
31 voters as provided in §3-1-34 of this code or to any child 14 years of age or younger who  
32 accompanies a parent, grandparent or legal guardian who is voting. Any dispute concerning the  
33 age of a child accompanying a parent, grandparent or legal guardian who is voting shall be  
34 determined by the election commissioners.

## **ARTICLE 9. OFFENSES AND PENALTIES.**

### **§3-9-6. Unauthorized presence in election room; ~~three feet~~ 250 foot limit; penalties.**

1 If any person, not herein authorized so to do, enters or attempts to enter the election room,  
2 except upon a lawful errand and for a proper purpose, or remains within ~~three hundred~~ 250 feet  
3 of the outside entrance to the building housing the polling place, contrary to the provisions of this  
4 chapter, ~~he~~ the person ~~shall be~~ is guilty of a misdemeanor and, on conviction thereof, shall be  
5 fined not less than \$50 nor more than \$500, or confined in jail for not more than 30 days.

6 Excepting those individuals provided for expressly in this or other sections of the code,  
7 only full-time employees of the Secretary of State's office or full-time employees of the respective

8 county offices of the county clerk or the county prosecutor may enter or otherwise disturb the  
9 polling place.

**§3-9-9. Electioneering defined; unlawful acts at polling places; exceptions; penalties.**

1 (a) As used in this section, "electioneering" means the displaying of signs or other  
2 campaign paraphernalia, the distribution of campaign literature, cards, or handbills, the soliciting  
3 of signatures to any petition, or the solicitation of votes for or against any bona fide candidate or  
4 ballot question in a manner which expressly advocates the election or defeat of the candidate or  
5 expressly advocates the passage or defeat of the ballot question. "Electioneering" does not  
6 include: (1) Exit polling, so long as persons conducting exit polling are not otherwise engaging in  
7 electioneering activities described above, or (2) bumper stickers or signs affixed to a person's  
8 vehicle which is parked within or passing through a distance of ~~one hundred~~ 250 feet of the  
9 entrance to a polling place while such person is voting or transporting any voter to the polls.

10 (b) No officer of election may disclose to any person the name of any candidate for whom  
11 a voter has voted. No officer of election may do any electioneering on election day.

12 (c) The Legislature finds that: (1) There is a compelling state interest to allow voters to  
13 enter and exit the polling place without being intimidated or unduly influenced, (2) the Supreme  
14 Court of Appeals has held a 100 foot radius buffer-zone to be constitutional, (3) the United States  
15 Court of Appeals for the Sixth Circuit held a 300 foot buffer-zone without sufficient exceptions  
16 unconstitutional, (4) in response to that decision, West Virginia reduced its buffer-zone from 300  
17 feet to 100 feet, despite the distinguishable exceptions in West Virginia code, (5) the 100 foot  
18 buffer in the 2018 general election resulted in chanting, screaming, and attempts at manipulating  
19 voters 100 feet from the polling locations, (6) 100 feet is simply too close to the polling location  
20 for people to be stationed in an attempt to intimidate or unduly influence voters, (7) 250 feet is a  
21 reasonable distance to protect voters from intimidation from groups of people taking direct political  
22 action particularly in light of the fact that a distance of 250 feet in a parking lot is enough for  
23 approximately 25 cars to park in typical spaces thereby generally excluding electioneering from

24 moderate sized parking facilities attached to polling locations, and (8) it is critical that West Virginia  
25 retain the absolute right to electioneering activities on one's personal property. Accordingly, the  
26 law must be updated pursuant to the changes made in this bill during the 2019 regular legislative  
27 session. No person may do any electioneering on election day within any polling place, or within  
28 ~~one hundred~~ 250 feet of the outside entrance to the building housing the polling place. No person  
29 may do any electioneering in the polling place or within ~~one hundred~~ 250 feet of the outside  
30 entrance of any polling place where early voting is conducted during the period in which early  
31 voting is offered during the hours while such early voting is actually taking place. Nothing in this  
32 subsection shall prohibit a citizen from doing any electioneering upon his or her own private  
33 property, regardless of distance from the polling place, so long as that electioneering conforms to  
34 other existing laws and ordinances.

35 (d) No person may apply for or receive any ballot in any polling place, other than that in  
36 which the person is entitled to vote, nor may any person examine a ballot which any voter has  
37 prepared for voting, or solicit the voter to show the same, nor ask, nor make any arrangement,  
38 directly or indirectly, with any voter, to vote an open ballot. No person, except a commissioner of  
39 election, may receive from any voter a ballot prepared by him or her for voting. No voter may  
40 receive a ballot from any person other than one of the poll clerks; nor may any person other than  
41 a poll clerk deliver a ballot to a commissioner of election to be voted by such commissioner. No  
42 voter may deliver any ballot to a commissioner of election to be voted, except the one he or she  
43 receives from the poll clerk. No voter may place any mark upon his or her ballot, or suffer or permit  
44 any other person to do so, by which it may be afterward identified as the ballot voted by him or  
45 her.

46 (e) Whoever violates any provision of this section ~~shall be~~ is guilty of a misdemeanor and,  
47 on conviction thereof, shall be fined not less than \$100 nor more than \$1,000, or confined in jail  
48 for not more than one year, or both fined and confined.

NOTE: The purpose of this bill is to protect voters from undue influence and intimidation by extending the prohibition on electioneering at polling places from 100 feet to 250 feet from the entrance.

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