

1 **Senate Bill No. 13**

2 (By Senators M. Hall, Blair, Sypolt and Carmichael)

3 _____
4 [Introduced February 13, 2013; referred to the Committee on the
5 Judiciary; and then to the Committee on Finance.]

6 _____
7 **FISCAL**
8 **NOTE**

9
10 A BILL to amend and reenact §3-1-34 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §17B-2-1 of said
12 code, all relating to voting procedures; presentation of
13 documentation identifying the voter to one of the poll clerks;
14 providing for the casting of a provisional ballot by a person
15 without adequate proof of identification; providing for the
16 issuance of identification cards; and requiring the state to
17 provide the same free of charge to any qualified voter.

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

19 That §3-1-34 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted; and that §17B-2-1 of said code be amended
21 and reenacted, all to read as follows:

22 **CHAPTER 3. ELECTIONS.**

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

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

3 (a) ~~Any~~ A person desiring to vote in an election shall, upon
4 entering the election room, clearly state his or her name and
5 residence to one of the poll clerks who shall ~~thereupon~~ announce
6 the same in a clear and distinct tone of voice. The person
7 desiring to vote shall present to one of the poll clerks an
8 identifying document issued either by the State of West Virginia or
9 by the United States government which contains the name, address,
10 and a photograph of the person desiring to vote. The poll clerk
11 shall inspect and confirm that the name on the identifying document
12 conforms to the name in the individual's voter registration record
13 and that the image displayed is truly an image of the person
14 presenting the document. If ~~that~~ the person is found to be duly
15 registered as a voter at that precinct, he or she shall sign his or
16 her name in the designated location provided at the precinct. If
17 that person is physically or otherwise unable to sign his or her
18 name, his or her mark shall be affixed by one of the poll clerks in
19 the presence of the other and the name of the poll clerk affixing
20 the voter's mark shall be indicated immediately under the
21 affixation. No ballot may be given to the person until he or she
22 signs his or her name on the designated location or his or her
23 signature is affixed thereon.

1 (1) If the person desiring to vote is unable to furnish an
2 identifying document which contains the name, address and a
3 photograph of the person desiring to vote or if the poll clerk
4 determines that the proof of identification presented by the voter
5 does not qualify as proof of identification under the above listed
6 criteria, the person desiring to vote shall be allowed to vote but
7 must cast a provisional ballot. An individual who appears at a
8 polling place without identification in the form described in
9 subsection (a) of this section and who is otherwise qualified to
10 vote at that polling place, may cast a provisional ballot after
11 executing an affidavit affirming his or her identity.

12 (A) The provisional ballot is entitled to be counted provided
13 the election authority verifies the identity of the individual by
14 comparing that individual's signature to the current signature on
15 file with the election authority and determines that the individual
16 was otherwise eligible to cast a ballot at the polling place where
17 the ballot was cast.

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

20 "State of West Virginia

21 County of

22 I do solemnly swear (or affirm) that my name is
23; that I reside at

1; and that I am the person listed in
2 the precinct register under this name and at this address.

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

5

6 Signature of voter

7 Subscribed and affirmed before me this day of
8, 20....

9

10 Signature of Election Official".

11 (2) A voter who votes in person at a precinct polling place
12 that is located at a state licensed care facility where the voter
13 is a resident is not required to provide proof of identification as
14 a condition before voting in an election.

15 (b) The clerk of the county commission is authorized, upon
16 verification that the precinct at which a handicapped person is
17 registered to vote is not handicap accessible, to transfer that
18 person's registration to the nearest polling place in the county
19 which is handicap accessible. A request by a handicapped person
20 for a transfer of registration must be received by the county clerk
21 no later than thirty days prior to the date of the election. ~~Any~~
22 A handicapped person who has not made a request for a transfer of
23 registration at least thirty days prior to the date of the election

1 may vote a provisional ballot at a handicap accessible polling
2 place in the county of his or her registration. If during the
3 canvass the county commission determines that the person had been
4 registered in a precinct that is not handicap accessible, the voted
5 ballot, if otherwise valid, shall be counted. The handicapped
6 person may vote in the precinct to which the registration was
7 transferred only as long as the disability exists or the precinct
8 from which the handicapped person was transferred remains
9 inaccessible to the handicapped. To ensure confidentiality of the
10 transferred ballot, the county clerk processing the ballot shall
11 provide the voter with an unmarked envelope and an outer envelope
12 designated "provisional ballot/handicapped voter". After
13 validation of the ballot at the canvass, the outer envelope shall
14 be destroyed and the handicapped voter's ballot shall be placed
15 with other approved provisional ballots prior to removal of the
16 ballot from the unmarked envelope.

17 (c) When the voter's signature is properly marked, the two
18 poll clerks shall sign their names in the places indicated on the
19 back of the official ballot and deliver the ballot to the voter to
20 be voted by him or her without leaving the election room. If he or
21 she returns the ballot spoiled to the clerks, they shall
22 immediately mark the ballot "spoiled" and it shall be preserved and
23 placed in a spoiled ballot envelope together with other spoiled

1 ballots to be delivered to the board of canvassers and deliver to
2 the voter another official ballot, signed by the clerks on the
3 reverse side. The voter shall ~~thereupon~~ retire alone to the booth
4 or compartment prepared within the election room for voting
5 purposes and there prepare his or her ballot. In voting for
6 candidates in general and special elections, the voter shall comply
7 with the rules and procedures prescribed in section five, article
8 six of this chapter.

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

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

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

3 (A) Declare his or her choice of candidates to an election
4 commissioner of each political party who, in the presence of the
5 voter and in the presence of each other, shall prepare the ballot
6 for voting in the manner ~~hereinbefore~~ provided in this section and,
7 on request, shall read to the voter the names of the candidates
8 selected on the ballot;

9 (B) Require the election commissioners to indicate to him or
10 her the relative position of the names of the candidates on the
11 ballot ~~whereupon the voter shall~~ then retire to one of the booths
12 or compartments to prepare his or her ballot in the manner
13 ~~hereinbefore~~ provided in this section;

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

19 (D) If he or she is handicapped, vote from an automobile
20 outside the polling place or precinct by the absentee balloting
21 method provided in subsection (e), section five, article three of
22 this chapter in the presence of an election commissioner of each
23 political party if all of the following conditions are met:

1 (I) The polling place is not handicap accessible; and

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

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

10 (3) ~~Any~~ A voter who requests assistance in voting but who is
11 believed not to be qualified for assistance under the provisions of
12 this section shall nevertheless be permitted to vote a provisional
13 ballot with the assistance of any person ~~herein~~ authorized to
14 render assistance.

15 (4) ~~Any~~ One or more of the election commissioners or poll
16 clerks in the precinct may challenge the ballot on the ground that
17 the voter ~~thereof~~ received assistance in voting it when in his, her
18 or their opinion the person who received assistance in voting is
19 not so illiterate, blind, disabled or of such advanced age as to
20 have been unable to vote without assistance. The election
21 commissioner or poll clerk or commissioners or poll clerks making
22 the challenge shall enter the challenge and ~~reason therefor~~ the
23 reason on the form and in the manner prescribed or authorized by

1 article three of this chapter.

2 (5) An election commissioner or other person who assists a
3 voter in voting:

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

15 (B) Shall sign a written oath or affirmation before assisting
16 the voter on a form prescribed by the Secretary of State stating
17 that he or she will not override the actual preference of the voter
18 being assisted, attempt to influence the voter's choice or mislead
19 the voter into voting for someone other than the candidate of
20 voter's choice. The person assisting the voter shall also swear or
21 affirm that he or she believes that the voter is voting free of
22 intimidation or manipulation. ~~Provided, That~~ No person providing
23 assistance to a voter is required to sign an oath or affirmation

1 where the reason for requesting assistance is the voter's inability
2 to vote without assistance because of blindness as defined in
3 section three, article fifteen, chapter five of this code and the
4 inability to vote without assistance because of blindness is
5 certified in writing by a physician of the voter's choice and is on
6 file in the office of the clerk of the county commission.

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

17 (f) After preparing the ballot, the voter shall fold the
18 ballot so that the face is not exposed and ~~so that~~ the names of the
19 poll clerks ~~thereon~~ are seen. The voter shall announce his or her
20 name and present his or her ballot to one of the commissioners who
21 shall hand the same to another commissioner, of a different
22 political party, who shall deposit it in the ballot box if the
23 ballot is the official one and properly signed. The commissioner

1 of election may inspect every ballot before it is deposited in the
2 ballot box to ascertain whether it is single but without unfolding
3 or unrolling it so as to disclose its content. When the voter has
4 voted, he or she shall retire immediately from the election room
5 and beyond the sixty-foot limit ~~thereof and may~~ and not return
6 except by permission of the commissioners.

7 (g) Following the election, the oaths or affirmations required
8 by this section from those assisting voters, together with the
9 "list of assisted voters", shall be returned by the election
10 commissioners to the clerk of the county commission along with the
11 election supplies, records and returns. The clerk of the county
12 commission shall make the oaths, affirmations and list available
13 for public inspection and ~~shall~~ preserve them for a period of
14 twenty-two months or until disposition is authorized or directed by
15 the Secretary of State or court of record. ~~Provided, That~~ The
16 clerk may use these records to update the voter registration
17 records in accordance with subsection (d), section eighteen,
18 article two of this chapter.

19 (h) ~~Any~~ A person making an oath or affirmation required under
20 the provisions of this section who knowingly swears falsely or ~~any~~
21 a person who counsels, advises, aids or abets another in the
22 commission of false swearing under this section, is guilty of a
23 misdemeanor and, upon conviction thereof, shall be fined not more

1 than \$1,000 or confined in jail for a period of not more than one
2 year, or both fined and confined.

3 (I) ~~Any~~ An election commissioner or poll clerk who authorizes
4 or provides unchallenged assistance to a voter when the voter is
5 known to the election commissioner or poll clerk not to require
6 assistance in voting, is guilty of a felony and, upon conviction
7 thereof, shall be fined not more than \$5,000 or imprisoned in a
8 state correctional facility for a period of not less than one year
9 nor more than five years, or both fined and imprisoned.

10 **CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.**

11 **ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

12 **§17B-2-1. Drivers must be licensed; types of licenses; licensees**
13 **need not obtain local government license; motorcycle**
14 **driver license; identification cards.**

15 (a) (1) No person, except those hereinafter expressly exempted,
16 may drive ~~any~~ a motor vehicle upon a street or highway in this
17 state or upon ~~any~~ a subdivision street used by the public generally
18 unless the person has a valid driver's license issued pursuant to
19 this code for the type or class of vehicle being driven.

20 (2) ~~Any~~ A person licensed to operate a motor vehicle pursuant
21 to this code may exercise the privilege thereby granted in the
22 manner provided in this code and, except as otherwise provided by

1 law, is not required to obtain any other license to exercise the
2 privilege by ~~any~~ a county, municipality or local board or body
3 having authority to adopt local police regulations.

4 (b) The division, upon issuing a driver's license, shall
5 indicate on the license the type or general class or classes of
6 vehicles the licensee may operate in accordance with this code,
7 federal law or rule. Licenses shall be issued in different colors
8 for those drivers under age eighteen, those drivers age eighteen to
9 twenty-one and adult drivers. The commissioner is authorized to
10 select and assign colors to the licenses of the various age groups.

11 (c) The following drivers licenses classifications are hereby
12 established:

13 (1) A Class A, B or C license shall be issued to ~~those~~ persons
14 eighteen years of age or older with two years of driving experience
15 who have qualified for the commercial driver's license established
16 by chapter seventeen-e of this code and the federal Motor Carrier
17 Safety and Improvement Act of 1999 and subsequent rules and have
18 paid the required fee.

19 (2) A Class D license shall be issued to ~~those~~ persons
20 eighteen years and older with one year of driving experience who
21 operate motor vehicles other than those types of vehicles which
22 require the operator to be licensed under the provisions of chapter
23 seventeen-e of this code and federal law and rule and whose primary

1 function or employment is the transportation of persons or property
2 for compensation or wages and have paid the required fee. For the
3 purpose of regulating the operation of motor vehicles, wherever the
4 term "chauffeur's license" is used in this code, it ~~shall be~~
5 ~~construed to mean~~ means the Class A, B, C or D license described in
6 this section or chapter seventeen-e of this code or federal law or
7 rule. ~~Provided, That anyone~~ A person not required to be licensed
8 under the provisions of chapter seventeen-e of this code and
9 federal law or rule and who operates a motor vehicle registered or
10 required to be registered as a Class A motor vehicle, as that term
11 is defined in section one, article ten, chapter seventeen-a of this
12 code, with a gross vehicle weight rating of less than eight
13 thousand one pounds, is not required to obtain a Class D license.

14 (3) A Class E license shall be issued to ~~those~~ persons who
15 have qualified for a driver's license under the provisions of this
16 chapter and who are not required to obtain a Class A, B, C or D
17 license and who have paid the required fee. The Class E license
18 may be endorsed under the provisions of section seven-b of this
19 article for motorcycle operation. The Class E or ~~(G)~~ G license for
20 ~~any~~ a person under the age of eighteen may also be endorsed with
21 the appropriate graduated driver license level in accordance with
22 the provisions of section three-a of this article.

23 (4) A Class F license shall be issued to those persons who

1 successfully complete the motorcycle examination procedure provided
2 by this chapter and have paid the required fee but who do not
3 possess a Class A, B, C, D or E driver's license.

4 (5) A Class G driver's license or instruction permit shall be
5 issued to a person using bioptic telescopic lenses who has
6 successfully completed an approved driver training program and
7 complied with all other requirements of article two-b of this
8 chapter.

9 (d) All licenses issued under this section may contain
10 information designating the licensee as a diabetic, organ donor, as
11 deaf or hard-of-hearing, ~~or~~ as having any other handicap or
12 disability or that the licensee is an honorably discharged veteran
13 of any branch of the Armed Forces of the United States, according
14 to criteria established by the division, if the licensee requests
15 this information on the license. An honorably discharged veteran
16 may be issued a replacement license without charge if the request
17 is made before the expiration date of the current license and the
18 only purpose for receiving the replacement license is to get the
19 veterans designation placed on the license.

20 (e) No person, except those hereinafter expressly exempted,
21 may drive ~~any~~ a motorcycle ~~upon~~ on a street or highway in this
22 state or ~~upon any~~ on a subdivision street used by the public
23 generally unless the person has a valid motorcycle license, a valid

1 license which has been endorsed under section seven-b of this
2 article for motorcycle operation or a valid motorcycle instruction
3 permit.

4 (f) (1) An identification card may be issued to ~~any~~ a person
5 who:

6 (A) Is a resident of this state in accordance with the
7 provisions of section one-a, article three, chapter seventeen-a of
8 this code;

9 (B) Has reached the age of two years ~~The division may also~~
10 ~~issue an identification card to a person under the age of two~~
11 ~~years, for good cause shown, or, for good cause shown, under the age~~
12 of two.

13 (C) Has paid the required fee of \$2.50 per year ~~Provided,~~
14 ~~That the fee is not~~ except that no fees or charges, including
15 renewal fees, are required if the applicant:

16 (i) Is sixty-five years or older; ~~or~~

17 (ii) Is legally blind; ~~and~~ or

18 (iii) Will be at least eighteen years of age at the next
19 general, municipal or special election and intends to use this
20 identification card as a form of identification for voting; and

21 (D) Presents a birth certificate or other proof of age and
22 identity acceptable to the division with a completed application on
23 a form furnished by the division.

1 (2) The identification card shall contain the same information
2 as a driver's license except that the identification card shall be
3 clearly marked as an identification card. The division may issue
4 an identification card with less information to persons under the
5 age of sixteen. An identification card may be renewed annually on
6 application and payment of the fee required by this section.

7 (A) Every identification card issued to a person who has
8 attained his or her twenty-first birthday expires on the licensee's
9 birthday in those years in which the licensee's age is evenly
10 divisible by five. Except as provided in paragraph (B) of this
11 subdivision, no identification card may be issued for less than
12 three years or for more than seven years and expires on the
13 licensee's birthday in those years in which the licensee's age is
14 evenly divisible by five.

15 (B) Every identification card issued to a person who has not
16 attained his or her twenty-first birthday expires thirty days after
17 the licensee's twenty-first birthday.

18 (C) Every identification card issued to persons under the age
19 of sixteen shall be issued for a period of two years and ~~shall~~
20 expire on the last day of the month in which the applicant's
21 birthday occurs.

22 (3) The division may issue an identification card to an
23 applicant whose privilege to operate a motor vehicle has been

1 refused, canceled, suspended or revoked under the provisions of
2 this code.

3 (g) ~~Any~~ A person violating the provisions of this section is
4 guilty of a misdemeanor and, upon conviction, shall be fined not
5 more than \$500. ~~and~~ Upon a second or subsequent conviction, shall
6 be fined not more than \$500 or confined in jail not more than six
7 months, or both fined and confined.

NOTE: The purpose of this bill is to require voters to provide a photo identification when voting, to provide for provisional ballots to be cast by voters who do not possess the required photo identification and, additionally, to provide for complimentary photo identification cards to a voter upon request.

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