

**H. B. 2365**

(By Delegate Lane)

[Introduced January 26, 2015; referred to the  
Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

10 A BILL to amend and reenact §3-1-34 of the Code of West Virginia, 1931, as amended; to amend  
11 and reenact §3-4A-10 of said code; to amend said code by adding thereto a new section,  
12 designated §5-1A-6; and to amend and reenact §17B-2-1 of said code, all relating to voting  
13 procedures; requiring a voter to present an identifying document issued either by the State  
14 of West Virginia or the United States Government that contains the name, address and a  
15 photograph of the person desiring to vote; requiring the poll clerk to inspect and confirm that  
16 the name on the document conforms to the name in the individual's voter registration record  
17 and that the image displayed is truly an image of the person presenting the document;  
18 permitting the casting of a provisional ballot by a person without adequate proof of  
19 identification if the voter executes an affidavit; permitting the provisional ballot to be  
20 counted if certain conditions are met; providing that certain funds be made available;  
21 requiring identification photos to be taken by certain spending units; accessing databases;  
22 exempting voters who vote in person at a precinct polling place that is located at a state

1 licensed care facility where the voters are residents; providing that county clerks are the  
 2 custodian of vote-recording devices, tabulating equipment and electronic poll books and  
 3 duties; providing requirements and specifications for electronic poll books; permitting the  
 4 Division of Motor Vehicles to issue, at no charge, identification cards to persons who will  
 5 be at least eighteen years of age at the next general, municipal or special election and intends  
 6 to use the identification card as a form of identification for voting; and providing criminal  
 7 penalties.

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

9 That §3-1-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted;  
 10 that §3-4A-10 of said code be amended and reenacted; that said code be amended by adding thereto  
 11 a new section, designated §5-1A-6; and that §17B-2-1 of said code be amended and reenacted, all  
 12 to read as follows:

### 13 **CHAPTER 3. ELECTIONS.**

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

15 **§3-1-34. Voting procedures generally; identification assistance to voters; voting records;**  
 16 **penalties.**

17 (a) Any person desiring to vote in an election shall, upon entering the election room, clearly  
 18 state his or her name and residence to one of the poll clerks who shall thereupon announce the same  
 19 in a clear and distinct tone of voice. The person desiring to vote shall present to one of the poll  
 20 clerks an identifying document issued either by the State of West Virginia or by the United States  
 21 government which contains the name, address and a photograph of the person desiring to vote, which  
 22 the poll clerk shall inspect and confirm that the name on the document conforms to the name in the

1 individual's voter registration record and that the image displayed is truly an image of the person  
2 presenting the document: *Provided*, That a Social Security Direct Express debit card is a valid form  
3 of identifying document for the purposes of this section. If that person is found to be duly registered  
4 as a voter at that precinct, he or she shall sign his or her name in the designated location provided  
5 at the precinct. If that person is physically or otherwise unable to sign his or her name, his or her  
6 mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll  
7 clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may  
8 be given to the person until he or she signs his or her name on the designated location or his or her  
9 signature is affixed thereon.

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

17 (2) The provisional ballot is entitled to be counted when the election authority verifies the  
18 identity of the individual by comparing that individual's signature to the current signature on file with  
19 the election authority and determines that the individual was otherwise eligible to cast a ballot at the  
20 polling place where the ballot was cast.

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

22 "State of West Virginia

1 County of .....

2 I do solemnly swear (or affirm) that my name is .....; that I reside  
3 at

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

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

8 Signature of voter

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

10 .....

11 Signature of Election Official".

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

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

1 not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped  
2 person may vote in the precinct to which the registration was transferred only as long as the disability  
3 exists or the precinct from which the handicapped person was transferred remains inaccessible to the  
4 handicapped. To ensure confidentiality of the transferred ballot, the county clerk processing the  
5 ballot shall provide the voter with an unmarked envelope and an outer envelope designated  
6 "provisional ballot/handicapped voter". After validation of the ballot at the canvass, the outer  
7 envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved  
8 provisional ballots prior to removal of the ballot from the unmarked envelope.

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

19 (d) It is the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check  
20 mark, or by other means, inserted in the appropriate place on the registration record of each voter the  
21 fact that the voter voted in the election. In primary elections the clerk shall also insert thereon a  
22 distinguishing initial or initials of the political party for whose candidates the voter voted. If a

1 person is challenged at the polls, the challenge shall be indicated by the poll clerks on the registration  
2 record, together with the name of the challenger. The subsequent removal of the challenge shall be  
3 recorded on the registration record by the clerk of the county commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

1           (B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed  
2 by the Secretary of State stating that he or she will not override the actual preference of the voter  
3 being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone  
4 other than the candidate of voter's choice. The person assisting the voter shall also swear or affirm  
5 that he or she believes that the voter is voting free of intimidation or manipulation: *Provided*, That  
6 no person providing assistance to a voter is required to sign an oath or affirmation where the reason  
7 for requesting assistance is the voter's inability to vote without assistance because of blindness as  
8 defined in section three, article fifteen, chapter five of this code and the inability to vote without  
9 assistance because of blindness is certified in writing by a physician of the voter's choice and is on  
10 file in the office of the clerk of the county commission.

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

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



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

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

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

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

1 **ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

2 **§3-4A-10. County clerk to be custodian of vote-recording devices, tabulating equipment and**  
 3 **electronic poll books; duties; requirements and specifications for electronic**  
 4 **poll books.**

5 (a) When an electronic voting system is acquired by any county commission, the vote-  
 6 recording devices, where applicable, and the tabulating equipment shall be immediately placed in  
 7 the custody of the county clerk and shall remain in his or her custody at all times except when in use  
 8 at an election or when in custody of a court or court officers during contest proceedings. The clerk  
 9 shall see that the vote-recording devices and the tabulating equipment are properly protected and  
 10 preserved from damage or unnecessary deterioration and shall not permit any unauthorized person  
 11 to tamper with them. The clerk shall also keep the vote-recording devices and tabulating equipment  
 12 in repair and prepare the same for voting.

13 (b) ~~When a~~ Each county commission ~~elects to~~ shall, at least ninety days prior to the primary  
 14 elections in May 2016, acquire and use electronic poll books in lieu of, or in addition to, printed poll  
 15 books and the clerk of the county commission shall immediately take custody of the electronic poll  
 16 books, which shall remain in his or her custody at all times except when in use at an election or when  
 17 in the custody of a court or court officers during contest proceedings. The clerk shall ensure that the  
 18 electronic poll books are properly protected and preserved from damage or unnecessary  
 19 deteriorations and the clerk shall not permit any unauthorized person to tamper with the electronic  
 20 poll books. The clerk shall also keep the electronic poll books in good repair and the clerk shall  
 21 prepare the electronic poll books for election day.

22 (c) The clerk of the county commission shall ensure that the electronic poll books acquired

1 shall be capable of accessing the databases of the Department of Motor Vehicles and other state  
 2 databases, including photographs of persons contained within these databases. Each electronic poll  
 3 book acquired must allow an election official at a polling place, at the time an individual seeks to  
 4 vote, to obtain information on the individual's eligibility to vote including, but not limited to,  
 5 whether the individual is registered to vote in an election for federal office, the polling place to  
 6 which the individual is assigned and whether the individual has already voted in the election.  
 7 Acquisition of these systems is to be provided for by using the Help America Vote Act (HAVA)  
 8 funds available for disbursement by the Office of the Secretary of State. If these funds are exhausted  
 9 and insufficient, then the funds contained in the Supreme Court Public Campaign Financing Pilot  
 10 Program as defined generally in article twelve of chapter three of this code shall be available for the  
 11 purpose.

12       **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**  
 13 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;**  
 14 **MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**  
 15 **ARTICLE 1A. ITEMIZATION OF PROPOSED APPROPRIATIONS IN BUDGET BILL**  
 16                               **SUBMITTED BY GOVERNOR TO LEGISLATURE.**

17 **§5-1A-6. Identification photos to be taken by spending units; databases.**

18       (a) Each spending unit which disburses any state funds to the public as part a program of  
 19 means-tested public benefits consisting of state assistance shall take a photograph of any person  
 20 receiving those benefits and shall store the photograph in an electronic database.

21       (b) Each spending unit covered by this section shall maintain a database of the photographs  
 22 and shall ensure that the database is accessible by an electronic pollbook as defined in section two

1 of article four-a of chapter three of this code.

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

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

4 **§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local**  
5 **government license; motorcycle driver license; identification cards.**

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

10 (2) Any person licensed to operate a motor vehicle pursuant to this code may exercise the  
11 privilege thereby granted in the manner provided in this code and, except as otherwise provided by  
12 law, is not required to obtain any other license to exercise the privilege by any county, municipality  
13 or local board or body having authority to adopt local police regulations.

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

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

20 (1) A Class A, B or C license shall be issued to those persons eighteen years of age or older  
21 with two years of driving experience who have qualified for the commercial driver's license  
22 established by chapter seventeen-e of this code and the federal Motor Carrier Safety and

1 Improvement Act of 1999 and subsequent rules, and have paid the required fee.

2           (2) A Class D license shall be issued to those persons eighteen years and older with one year  
3 of driving experience who operate motor vehicles other than those types of vehicles which require  
4 the operator to be licensed under ~~the provisions of~~ chapter seventeen-e of this code and federal law  
5 and rule and whose primary function or employment is the transportation of persons or property for  
6 compensation or wages and have paid the required fee. For the purpose of regulating the operation  
7 of motor vehicles, wherever the term “chauffeur's license” is used in this code, it shall be construed  
8 to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code  
9 or federal law or rule: *Provided*, That anyone not required to be licensed under ~~the provisions of~~  
10 chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle registered  
11 or required to be registered as a Class A motor vehicle, as that term is defined in section one, article  
12 ten, chapter seventeen-a of this code, with a gross vehicle weight rating of less than eight thousand  
13 one pounds, is not required to obtain a Class D license.

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

20           (4) A Class F license shall be issued to those persons who successfully complete the  
21 motorcycle examination procedure provided by this chapter and have paid the required fee, but who  
22 do not possess a Class A, B, C, D or E driver's license.

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

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

11 (e) No person, except those hereinafter expressly exempted, may drive any motorcycle upon  
 12 a street or highway in this state or upon any subdivision street used by the public generally unless  
 13 the person has a valid motorcycle license, a valid license which has been endorsed under section  
 14 seven-b of this article for motorcycle operation or a valid motorcycle instruction permit.

15 (f) (1) An identification card may be issued to any person who:

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

18 (B) Has reached the age of two years. The division may also issue an identification card to  
 19 a person under the age of two years for good cause shown;

20 (C) Has paid the required fee of \$2.50 per year: *Provided, That the fee is not required no*  
 21 fees or charges, including renewal fees, are required if the applicant:

22 (i) Is sixty-five years or older; or

1       (ii) Is legally blind; or

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

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

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

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

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

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

20       (3) The division may issue an identification card to an applicant whose privilege to operate  
21 a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

22       (g) Any person violating ~~the provisions of~~ this section is guilty of a misdemeanor and, upon

- 1 conviction, shall be fined not more than \$500.; and upon a second or subsequent conviction, shall
- 2 be fined not more than \$500. or confined in jail not more than six months, or both fined and
- 3 confined.

NOTE: The purpose of this bill is to require voters to present identifying documents, issued either by the State of West Virginia or the United States Government that contain the name, address and a photograph of the person desiring to vote, which the poll clerk must inspect and confirm that the name on the document conforms to the name in the individual's voter registration record and that the image displayed is truly an image of the person presenting the document. The bill exempts voters who vote in person at a precinct polling place that is located at a state licensed care facility where the voters are residents. The bill permits the casting of a provisional ballot by a person without adequate proof of identification if the voter executes an affidavit. The bill permits the provisional ballot to be counted if certain conditions are met, and provides certain funds shall be made available. The bill requires each county clerk to be custodian of vote-recording devices, tabulating equipment and electronic poll books; clarifies their duties; and sets requirements and specifications for electronic poll books. The bill requires identification photos to be taken by certain spending units; and compels them to maintain databases. The bill permits the Division of Motor Vehicles to issue, at no charge, identification cards to persons who will be at least eighteen years of age at the next general, municipal or special election and intends to use the identification card as a form of identification for voting. The bill also contains criminal penalties.

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

§5-1A-6 is new; therefore, it has been completely underscored.