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H. B. 2477

(By Delegates Ireland, Overington, Butler, Ambler, Howell,
Faircloth, D. Evans, Border, Foster, Cadle ad Blair)

[Introduced January 28, 2015; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §3-1-34 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17B-2-1 of said code, all relating to voting procedures; requiring a voter to present an identifying document issued either by the State of West Virginia or the United States government that contains 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; permitting the casting of a provisional ballot by a person without adequate proof of identification provided he or she executes an affidavit; permitting the provisional ballot be counted providing certain conditions are met; exempting voters who vote in person at a precinct polling place that is located at a state licensed care facility where the voters are residents; permitting 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; and establishing criminal penalties.

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

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

4 **CHAPTER 3. ELECTIONS.**

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

6 **§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.**

7 (a)(1) Any person desiring to vote in an election shall, upon entering the election room,
8 clearly state his or her name and residence to one of the poll clerks who shall ~~thereupon~~ then
9 announce the same in a clear and distinct tone of voice. The person desiring to vote shall present to
10 one of the poll clerks an identifying document issued either by the State of West Virginia or by the
11 United States government which contains the name, address, and a photograph of the person desiring
12 to vote, which the poll clerk shall inspect and confirm that the name thereon conforms to the name
13 in the individual's voter registration record and that the image displayed is truly an image of the
14 person presenting the document. If that person is found to be duly registered as a voter at that
15 precinct, he or she shall sign his or her name in the designated location provided at the precinct. If
16 that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed
17 by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the
18 voter's mark shall be indicated immediately under the affixation. No ballot may be given to the
19 person until he or she signs his or her name on the designated location or his or her signature is
20 affixed thereon.

21 (2) Should the person desiring to vote be unable to furnish an identifying document which
22 contains the name, address, and a photograph of the person desiring to vote, or if the poll clerk

1 determines that the proof of identification presented by the voter does not qualify as proof of
2 identification under the criteria listed in subdivision (1) of this subsection, the person desiring to vote
3 shall be allowed to vote, but must cast a provisional ballot. An individual who appears at a polling
4 place without identification in the form described in this subsection, and who is otherwise qualified
5 to vote at that polling place, may cast a provisional ballot after:

6 (A) Executing an affidavit affirming his or her identity;

7 (B) Such provisional ballot shall be entitled to be counted, provided the election authority
8 verifies the identity of the individual by comparing that individual's signature to the current signature
9 on file with the election authority and determines that the individual was otherwise eligible to cast
10 a ballot at the polling place where the ballot was cast; and

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

12 “State of West Virginia

13 County of _____

14 I do solemnly swear (or affirm) that my name is _____; that I reside at
15 _____ ; and that I am the person listed in the precinct register under this name and
16 at this address.

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

19 _____

20 Signature of voter

21 Subscribed and affirmed before me this _____ day of _____, 20 _____.

22 _____

1 Signature of Election Official”.

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

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

21 (c) When the voter's signature is properly marked, the two poll clerks shall sign their names
22 in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted

1 by him or her without leaving the election room. If he or she returns the ballot spoiled to the clerks,
2 they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled
3 ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and
4 deliver to the voter another official ballot, signed by the clerks on the reverse side. The voter shall
5 thereupon retire alone to the booth or compartment prepared within the election room for voting
6 purposes and there prepare his or her ballot. In voting for candidates in general and special elections,
7 the voter shall comply with the rules and procedures prescribed in section five, article six of this
8 chapter.

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

16 (e) (1) No voter may receive any assistance in voting unless, by reason of blindness,
17 disability, advanced age or inability to read and write, that voter is unable to vote without assistance.
18 Any voter qualified to receive assistance in voting under ~~the provisions of~~ this section may:

19 (A) Declare his or her choice of candidates to an election commissioner of each political
20 party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for
21 voting in the manner hereinbefore provided and, on request, shall read to the voter the names of the
22 candidates selected on the ballot;

1 (B) Require the election commissioners to indicate to him or her the relative position of the
2 names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or
3 compartments to prepare his or her ballot in the manner hereinbefore provided;

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

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

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

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

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

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

20 (4) Any one or more of the election commissioners or poll clerks in the precinct may
21 challenge the ballot on the ground that the voter thereof received assistance in voting it when in his,
22 her or their opinion the person who received assistance in voting is not so illiterate, blind, disabled

1 or of such advanced age as to have been unable to vote without assistance. The election
2 commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the
3 challenge and reason therefor on the form and in the manner prescribed or authorized by article three
4 of this chapter.

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

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

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

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

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

17 (g) Following the election, the oaths or affirmations required by this section from those
18 assisting voters, together with the “list of assisted voters”, shall be returned by the election
19 commissioners to the clerk of the county commission along with the election supplies, records and
20 returns. The clerk of the county commission shall make the oaths, affirmations and list available for
21 public inspection and shall preserve them for a period of twenty-two months or until disposition is
22 authorized or directed by the Secretary of State or court of record: *Provided*, That the clerk may use

1 these records to update the voter registration records in accordance with subsection (d), section
2 eighteen, article two of this chapter.

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

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

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

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

15 **§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local**
16 **government license; motorcycle driver license; identification cards.**

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

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

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

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

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

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

13 (2) A Class D license shall be issued to those persons eighteen years and older with one year
14 of driving experience who operate motor vehicles other than those types of vehicles which require
15 the operator to be licensed under ~~the provisions of~~ chapter seventeen-e of this code and federal law
16 and rule and whose primary function or employment is the transportation of persons or property for
17 compensation or wages and have paid the required fee. For the purpose of regulating the operation
18 of motor vehicles, wherever the term "chauffeur's license" is used in this code, it shall be construed
19 to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code
20 or federal law or rule: *Provided*, That anyone not required to be licensed under ~~the provisions of~~
21 chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle registered
22 or required to be registered as a Class A motor vehicle, as that term is defined in section one, article

1 ten, chapter seventeen-a of this code, with a gross vehicle weight rating of less than eight thousand
2 one pounds, is not required to obtain a Class D license.

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

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

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

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

22 (e) No person, except those hereinafter expressly exempted, may drive any motorcycle upon

1 a street or highway in this state or upon any subdivision street used by the public generally unless
2 the person has a valid motorcycle license, a valid license which has been endorsed under section
3 seven-b of this article for motorcycle operation or a valid motorcycle instruction permit.

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

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

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

9 (C) Has paid the required fee of \$2.50 per year: *Provided*, That ~~the fee is not required~~ no fees
10 or charges, including renewal fees, are required if the applicant: ~~is sixty-five years or older or is~~
11 ~~legally blind; and~~

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

13 (ii) Is legally blind; or

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

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

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

22 (A) Every identification card issued to a person who has attained his or her twenty-first

1 birthday expires on the licensee's birthday in those years in which the licensee's age is evenly
2 divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may
3 be issued for less than three years or for more than seven years and expires on the licensee's birthday
4 in those years in which the licensee's age is evenly divisible by five.

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

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

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

12 (g) Any person violating ~~the provisions of this section~~ is guilty of a misdemeanor and, upon
13 conviction, shall be fined not more than \$500; and upon a second or subsequent conviction, shall be
14 fined not more than \$500 or confined in jail not more than six months, or both fined and 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 contains 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 provided he or she executes an affidavit. The bill permits the provisional ballot be counted providing certain conditions are met. 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.