

**Senate Bill No. 340**

(By Senators Trump, Carmichael, Blair and Takubo)

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[Introduced January 27, 2015; referred to the Committee on the Judiciary; and then to the  
Committee on Finance.]

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**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  
person desiring to vote to present documentation identifying the voter to one of the poll  
clerks; providing for casting of provisional ballot by a person without adequate proof of  
identification; and providing for issuance of identification cards at no charge.

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

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

**CHAPTER 3. ELECTIONS.**

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

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

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

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



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

15 (c) When the voter's signature is properly marked, the two poll clerks shall sign their names  
16 in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted  
17 by him or her without leaving the election room. If he or she returns the ballot spoiled to the clerks,  
18 they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled  
19 ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and  
20 deliver to the voter another official ballot, signed by the clerks on the reverse side. The voter shall  
21 ~~thereupon~~ retire alone to the booth or compartment prepared within the election room for voting

1 purposes and there prepare his or her ballot. In voting for candidates in general and special elections,  
2 the voter shall comply with the rules and procedures prescribed in section five, article six of this  
3 chapter.

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

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

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

20 (B) Require the election commissioners to indicate to him or her the relative position of the  
21 names of the candidates on the ballot, ~~whereupon the voter shall~~ then retire to one of the booths or

1 compartments to prepare his or her ballot in the manner ~~hereinbefore~~ provided in this section;

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

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

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

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

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

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

18 (4) ~~Any~~ One or more of the election commissioners or poll clerks in the precinct may  
19 challenge the ballot on the ground that the voter ~~thereof~~ received assistance in voting it when in his,  
20 her or their opinion the person who received assistance in voting is not so illiterate, blind, disabled  
21 or of such advanced age as to have been unable to vote without assistance. The election

1 commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the  
2 challenge and ~~reason therefor~~ the reason on the form and in the manner prescribed or authorized by  
3 article three of this chapter.

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

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

1 file in the office of the clerk of the county commission.

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

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

18 (g) Following the election, the oaths or affirmations required by this section from those  
19 assisting voters, together with the "list of assisted voters", shall be returned by the election  
20 commissioners to the clerk of the county commission along with the election supplies, records and  
21 returns. The clerk of the county commission shall make the oaths, affirmations and list available for



1 public inspection and shall preserve them for a period of twenty-two months or until disposition is  
 2 authorized or directed by the Secretary of State or court of record. ~~Provided, That~~ The clerk may use  
 3 these records to update the voter registration records in accordance with subsection (d), section  
 4 eighteen, article two of this chapter.

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

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

## 15 **CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.**

### 16 **ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

#### 17 **§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local** 18 **government license; motorcycle driver license; identification cards.**

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

1 class of vehicle being driven.

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

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

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

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

16 (2) A Class D license shall be issued to ~~those~~ persons eighteen years and older with one year  
17 of driving experience who operate motor vehicles other than those types of vehicles which require  
18 the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law  
19 and rule and whose primary function or employment is the transportation of persons or property for  
20 compensation or wages and have paid the required fee. For the purpose of regulating the operation  
21 of motor vehicles, wherever the term "chauffeur's license" is used in this code, it ~~shall be construed~~

1 ~~to mean~~ means the Class A, B, C or D license described in this section or chapter seventeen-e of this  
2 code or federal law or rule. ~~Provided, That anyone~~ A person not required to be licensed under the  
3 provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor  
4 vehicle registered or required to be registered as a Class A motor vehicle, as that term is defined in  
5 section one, article ten, chapter seventeen-a of this code, with a gross vehicle weight rating of less  
6 than eight thousand one pounds, is not required to obtain a Class D license.

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

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

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

19 (d) All licenses issued under this section may contain information designating the licensee  
20 as a diabetic, organ donor, as deaf or hard-of-hearing, ~~or~~ as having any other handicap or disability  
21 or that the licensee is an honorably discharged veteran of any branch of the Armed Forces of the

1 United States, according to criteria established by the division, if the licensee requests this  
 2 information on the license. An honorably discharged veteran may be issued a replacement license  
 3 without charge if the request is made before the expiration date of the current license and the only  
 4 purpose for receiving the replacement license is to get the veterans designation placed on the license.

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

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

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

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

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

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

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

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

21 (D) Presents a birth certificate or other proof of age and identity acceptable to the division

1 with a completed application on a form furnished by the division.

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

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

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

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

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

18 (g) ~~Any~~ A person violating the provisions of this section is guilty of a misdemeanor and,  
19 upon conviction, shall be fined not more than \$500. ~~and~~ Upon a second or subsequent conviction,  
20 shall be fined not more than \$500 or confined in jail not more than six months, or both fined and  
21 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.