

H. B. 4387

(By Delegates Nelson, C. Miller, Sobonya, Lane,
Duke, Gearheart, Anderson, Storch, Pasdon,
Carmichael and Armstead)

[Introduced February 1, 2012; 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; presentation of
documentation identifying the voter to one of the poll clerks;
providing for the casting of a provisional ballot by a person
without adequate proof of identification; providing for the
issuance of identification cards; and, requiring the state to
provide the same free of charge to any qualified voter.

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

1 **to voters; voting records; penalties.**

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

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

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

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

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

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

17 "State of West Virginia

18 County of;

19 I do solemnly swear (or affirm) that my name is
 20; that I reside at
 21; and that I am the person listed in
 22 the precinct register under this name and at this address.

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

1
 2

Signature of voter

3 Subscribed and affirmed before me this day of

4, 20....

5
 6

Signature of Election Official".

7 (2) A voter who votes in person at a precinct polling place

8 that is located at a state licensed care facility where the voter

9 is a resident is not required to provide proof of identification as

10 a condition before voting in an election.

11 (b) The clerk of the county commission is authorized, upon

12 verification that the precinct at which a handicapped person is

13 registered to vote is not handicap accessible, to transfer that

14 person's registration to the nearest polling place in the county

15 which is handicap accessible. A request by a handicapped person

16 for a transfer of registration must be received by the county clerk

17 no later than thirty days prior to the date of the election. Any

18 handicapped person who has not made a request for a transfer of

19 registration at least thirty days prior to the date of the election

20 may vote a provisional ballot at a handicap accessible polling

21 place in the county of his or her registration. If during the

22 canvass the county commission determines that the person had been

23 registered in a precinct that is not handicap accessible, the voted

24 ballot, if otherwise valid, shall be counted. The handicapped

1 person may vote in the precinct to which the registration was
2 transferred only as long as the disability exists or the precinct
3 from which the handicapped person was transferred remains
4 inaccessible to the handicapped. To ensure confidentiality of the
5 transferred ballot, the county clerk processing the ballot shall
6 provide the voter with an unmarked envelope and an outer envelope
7 designated "provisional ballot/handicapped voter". After
8 validation of the ballot at the canvass, the outer envelope shall
9 be destroyed and the handicapped voter's ballot shall be placed
10 with other approved provisional ballots prior to removal of the
11 ballot from the unmarked envelope.

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

1 with the rules and procedures prescribed in section five, article
2 six of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

18 (A) May not in any manner request or seek to persuade or
19 induce the voter to vote any particular ticket or for any
20 particular candidate or for or against any public question and must
21 not keep or make any memorandum or entry of anything occurring
22 within the voting booth or compartment and must not, directly or
23 indirectly, reveal to any person the name of any candidate voted
24 for by the voter or which ticket he or she had voted or how he or

1 she had voted on any public question or anything occurring within
2 the voting booth or compartment or voting machine booth except when
3 required pursuant to law to give testimony as to the matter in a
4 judicial proceeding; and

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

20 (6) In accordance with instructions issued by the Secretary of
21 State, the clerk of the county commission shall provide a form
22 entitled "list of assisted voters", the form of which list shall
23 likewise be prescribed by the Secretary of State. The
24 commissioners shall enter the name of each voter receiving

1 assistance in voting the ballot, together with the poll slip number
2 of that voter and the signature of the person or the commissioner
3 from each party who assisted the voter. If no voter has been
4 assisted in voting, the commissioners shall likewise make and
5 subscribe to an oath of that fact on the list.

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

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

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

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

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

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

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

23 **§17B-2-1. Drivers must be licensed; types of licenses; licensees**

1 **need not obtain local government license; motorcycle**
2 **driver license; identification cards.**

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

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

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

22 (c) Driver's licenses issued by the division shall be
23 classified in the following manner:

24 (1) A Class A, B or C license shall be issued to those persons

1 eighteen years of age or older with two years of driving experience
2 who have qualified for the commercial driver's license established
3 by chapter seventeen-e of this code and the federal Motor Carrier
4 Safety and Improvement Act of 1999 and subsequent rules, and have
5 paid the required fee.

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

24 (3) A Class E license shall be issued to those persons who

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

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

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

18 (d) All licenses issued under this section may contain
19 information designating the licensee as a diabetic, organ donor, as
20 deaf or hard-of-hearing or as having any other handicap or
21 disability, according to criteria established by the division, if
22 the licensee requests this information on the license.

23 (e) No person, except those hereinafter expressly exempted,
24 may drive any motorcycle upon a street or highway in this state or

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

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

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

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

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

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

17 (ii) Is legally blind; or

18 (iii) Will be at least eighteen (18) 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.

24 (2) The identification card shall contain the same information

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

7 (A) Every identification card issued to a person who has
8 attained his or her twenty-first birthday shall expire on the
9 licensee's birthday in those years in which the licensee's age is
10 evenly divisible by five. Except as provided in paragraph (B) of
11 this subdivision, no identification card may be issued for less
12 than 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 shall expire thirty days
17 after 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
24 refused, canceled, suspended or revoked under the provisions of

1 this code.

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

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

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