

H. B. 4479

(By Delegates Ireland, Ambler, Arvon,
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[Introduced February 12, 2014; referred to the
Committee on the Judiciary then Finance.]

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

1 residents; permitting the Division of Motor Vehicles to issue,
 2 at no charge, identification cards to persons who will be at
 3 least eighteen years of age at the next general, municipal, or
 4 special election and intends to use the identification card as
 5 a form of identification for voting; and contains criminal
 6 penalties.

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

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

11 **CHAPTER 3. ELECTIONS.**

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

13 **§3-1-34. Voting procedures generally; assistance to voters; voting**
 14 **records; penalties.**

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

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

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

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

23 (B) Such provisional ballot shall be entitled to be counted,
24 provided the election authority verifies the identity of the

1 individual by comparing that individual's signature to the current
2 signature on file with the election authority and determines that
3 the individual was otherwise eligible to cast a ballot at the
4 polling place where the ballot was cast.

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

7 "State of West Virginia
8 County of _____

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

13 I understand that knowingly providing false information is a
14 violation of law and subjects me to possible criminal prosecution.
15 _____

16 Signature of voter

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

18 _____
19 Signature of Election Official".

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

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

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

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

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

1 subsequent removal of the challenge shall be recorded on the
2 registration record by the clerk of the county commission.

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

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

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

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

24 (D) If he or she is handicapped, vote from an automobile

1 outside the polling place or precinct by the absentee balloting
2 method provided in subsection (e), section five, article three of
3 this chapter in the presence of an election commissioner of each
4 political party if all of the following conditions are met:

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

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

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

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

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

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

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

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

18 (B) Shall sign a written oath or affirmation before assisting
19 the voter on a form prescribed by the Secretary of State stating
20 that he or she will not override the actual preference of the voter
21 being assisted, attempt to influence the voter's choice or mislead
22 the voter into voting for someone other than the candidate of
23 voter's choice. The person assisting the voter shall also swear or
24 affirm that he or she believes that the voter is voting free of

1 intimidation or manipulation: *Provided*, That no person providing
2 assistance to a voter is required to sign an oath or affirmation
3 where the reason for requesting assistance is the voter's inability
4 to vote without assistance because of blindness as defined in
5 section three, article fifteen, chapter five of this code and the
6 inability to vote without assistance because of blindness is
7 certified in writing by a physician of the voter's choice and is on
8 file in the office of the clerk of the county commission.

9 (6) In accordance with instructions issued by the Secretary of
10 State, the clerk of the county commission shall provide a form
11 entitled "list of assisted voters", the form of which list shall
12 likewise be prescribed by the Secretary of State. The commissioners
13 shall enter the name of each voter receiving assistance in voting
14 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
16 assisted the voter. If no voter has been assisted in voting, the
17 commissioners shall likewise make and subscribe to an oath of that
18 fact on the list.

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

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

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

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

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

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

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

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

12 **§17B-2-1. Drivers must be licensed; types of licenses; licensees**

13 **need not obtain local government license;**

14 **motorcycle driver license; identification cards.**

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

20 (2) Any person licensed to operate a motor vehicle pursuant to
21 this code may exercise the privilege thereby granted in the manner
22 provided in this code and, except as otherwise provided by law, is
23 not required to obtain any other license to exercise the privilege

1 by any county, municipality or local board or body having authority
2 to adopt local police regulations.

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

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

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

18 (2) A Class D license shall be issued to those persons
19 eighteen years and older with one year of driving experience who
20 operate motor vehicles other than those types of vehicles which
21 require the operator to be licensed under ~~the provisions of~~ chapter
22 seventeen-e of this code and federal law and rule and whose primary
23 function or employment is the transportation of persons or property
24 for compensation or wages and have paid the required fee. For the

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

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

21 (4) A Class F license shall be issued to those persons who
22 successfully complete the motorcycle examination procedure provided
23 by this chapter and have paid the required fee, but who do not
24 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
2 issued to a person using bioptic telescopic lenses who has
3 successfully completed an approved driver training program and
4 complied with all other requirements of article two-b of this
5 chapter.

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

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

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

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

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

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

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

12 (ii) Is legally blind; or

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

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

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

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

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

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

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

20 (g) Any person violating ~~the provisions of~~ this section is
21 guilty of a misdemeanor and, upon conviction, shall be fined not
22 more than \$500; and upon a second or subsequent conviction, shall
23 be fined not more than \$500 or confined in jail not more than six
24 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.