

H. B. 2092

(By Delegate Manchin)

[Introduced January 19, 2015; 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; to amend said code by adding thereto a new section, designated §3-1-51; and to amend and reenact §17B-2-1 of said code, all relating to voter photo identification; setting forth the types of acceptable photo identification; authorizing the execution of voter identity affidavits for qualified voters without photo identification; establishing a procedure for the execution of voter identity affidavit; recording voter identity affidavits; establishing procedures to verify the identity of voters executing voter identity affidavit; providing for the issuance of identification cards; requiring the state to provide the identification cards without charge to qualified voters; and providing rule-making authority.

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; that said code be amended by adding thereto a new section, designated §3-1-51; and that §17B-2-1 of said code be amended and reenacted, all to read as follows:

1 **CHAPTER 3. ELECTIONS.**

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

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

4 (a) Any person desiring to vote in an election shall, upon entering the election room, clearly
5 state his or her name and residence to one of the poll clerks who shall thereupon announce the same
6 in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that
7 precinct, he or she shall sign his or her name in the designated location provided at the precinct. If
8 that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed
9 by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the
10 voter's mark shall be indicated immediately under the affixation. No ballot may be given to the
11 person until he or she signs his or her name on the designated location or his or her signature is
12 affixed thereon.

13 (b) (1) One of the poll clerks shall request that the person desiring to vote present a valid
14 photo identification meeting the requirements of subdivision (2) of this subsection. If the person
15 desiring to vote does not have a valid photo identification, a poll clerk shall inform the voter that he
16 or she may execute a voter identity affidavit.

17 (2) A valid photo identification shall show the name of the individual to whom the
18 identification was issued, and the name shall substantially conform to the name in the individual's
19 voter registration record; it also shall show a photograph of the individual to whom the identification
20 was issued; and it shall also have an expiration date that has not been exceeded by a period of more
21 than five years from the current date. The following forms of identification bearing a photograph
22 of the voter shall satisfy the identification requirements of subdivision (1) of this subsection:

- 1 (A) A driver's license issued by the State of West Virginia or any other state.
- 2 (B) An identification card issued by the Division of Motor Vehicles pursuant to section one,
3 article two, chapter seventeen-b of this code or an identification card issued by any other state.
- 4 (C) A United States armed services identification card.
- 5 (D) A United States passport.
- 6 (E) Any other valid photo identification issued by federal, state, county, or municipal
7 government.
- 8 (F) A valid student identification card.
- 9 (G) A photo identification not authorized by paragraphs (A) through (F) of this subdivision
10 but determined to be legitimate by the election officials; *Provided*, That if any person authorized
11 to challenge a voter under section forty-one of this article objects to the use of such photo
12 identification, the voter shall be required to execute a voter identity affidavit as if no identification
13 was presented.
- 14 (3) If the person desiring to vote produces a photo identification that is an out-of state driver's
15 license or nondriver's identification card, the poll clerk shall record the state of issuance in
16 accordance with uniform procedures developed by the Secretary of State and the clerk of the county
17 commission or designee shall submit the information to the Secretary of State within thirty days of
18 the election.
- 19 (4) A person desiring to vote who does not have a valid photo identification, shall receive
20 an explanatory document prepared by the Secretary of State explaining the proof of identity
21 requirements. If the person desiring to vote executes a voter identity affidavit, the poll clerk shall
22 document the execution of the affidavit in accordance with uniform procedures developed by the

1 Secretary of State.

2 (A) The voter identity affidavit shall be in the following form:

3 "State of West Virginia

4 County of

5 I do solemnly swear (or affirm) that my name is; that I reside
6 at.....; and that I am the person listed in the precinct pollbook under this name and at
7 this address.

8 I understand that knowingly providing false information is a violation of law and subjects
9 me to a fine of up to \$1,000 and/or confinement in jail for up to one year.

10 Signature of voter

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

12

13 Name of Election Official

14

15 Signature of Election Official".

16 (B) If the person desiring to vote executes a voter identity affidavit, a poll clerk shall take a
17 photograph of the voter and immediately print and attach the photograph to, and thus make it a part
18 of, the affidavit form. The photograph shall be two inches by two inches, or larger, and be in color.
19 The poll clerk who took the photograph and the voter shall then sign the voter identity affidavit. The
20 poll clerk shall delete the photograph from the camera in the presence of the voter. If the poll clerk
21 is unable to take the voter's photograph due to equipment failure or other cause beyond the poll
22 clerk's reasonable control, the voter may execute a voter identity affidavit without a photograph.

1 (C) If the voter objects to the photograph requirement because of religious beliefs, he or she
2 may execute an affidavit of religious exemption that shall be in the following form:

3 "State of West Virginia
4 County of

5 I....., residing at, do hereby swear or affirm that because
6 of my religious beliefs, I object to having my photograph taken and that I do not possess a form of
7 identification that meets the requirements of the election laws of this state showing my photograph.

8 I understand that knowingly providing false information is a violation of law and subjects
9 me to a fine of up to \$1,000 and/or confinement in jail for up to one year.

10 I hereby swear or affirm, under the penalties for providing false information, that I am the
11 identical person whom I represent myself to be and that to the best of my knowledge and belief the
12 information above is true and correct.

13

14 Signature of voter

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

16

17 Name of Election Official

18

19 Signature of Election Official".

20 (D) The person entering voter information into the centralized voter registration database
21 shall cause the records to indicate when a voter has not presented a valid photo identification and
22 has executed a voter identity affidavit.

1 (E) If a voter participating in the Address Confidentiality Program established by section one
2 hundred three, article twenty-eight-a, chapter forty-eight of this code, executes a voter identity
3 affidavit, the program participant's residential or mailing address is subject to the confidentiality
4 provisions of section one hundred eight article twenty-eight-a, chapter forty-eight of this code and
5 shall be used only for those statutory and administrative purposes authorized by this section.

6 (5) The Secretary of State shall propose for promulgation in accordance with article three,
7 chapter twenty-nine-a of this code emergency and legislative rules necessary to effectuate the
8 purposes of this subsection.

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

1 outer envelope shall be destroyed and the handicapped voter's ballot shall be placed with other
2 approved provisional ballots prior to removal of the ballot from the unmarked envelope.

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

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

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

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

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

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

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

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

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

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

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

22 (3) Any voter who requests assistance in voting but who is believed not to be qualified for

1 assistance under the provisions of this section shall nevertheless be permitted to vote a provisional
2 ballot with the assistance of any person herein authorized to render assistance.

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

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

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

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

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

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

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

22 ~~(g)~~ (h) Following the election, the oaths or affirmations required by this section from those

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

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

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

18 **§3-1-51. Identity Verification of Voters Executing a Voter Identity Affidavit.**

19 (a) The clerk of the county commission shall cause a letter of identity verification to be
20 mailed by first class mail to each voter who executed a voter identity affidavit pursuant to section
21 thirty-four of this article. The letter shall be mailed within sixty days after the election. The clerk
22 shall mark the envelope with instructions to the United States Post Office not to forward the letter

1 and to provide address correction information. The letter shall notify the addressee that a person
 2 who did not present valid photo identification voted using his or her name and address and instruct
 3 the addressee to contact the clerk immediately if he or she did not vote. The letter shall also inform
 4 the addressee of the procedure for obtaining a nondriver's picture identification card for voting
 5 purposes.

6 (b) The clerk of the county commission shall cause letters mailed pursuant to subsection (a)
 7 that are returned as undeliverable by the United States Post Office to be referred to the Secretary of
 8 State. The clerk shall also prepare and forward to the Secretary of State a list of all persons who
 9 were mailed letters under subsection (a) of this section and who notified the clerk that they did not
 10 vote. Upon receipt of notice from a person who receives a letter of identity verification that the
 11 person did not vote, or upon receipt of a referral from the clerk, the Secretary of State shall cause an
 12 investigation to be made to determine whether fraudulent voting occurred.

13 (c) Within sixty days after a general election, the Secretary of State shall compile a report of
 14 the number of voters that did not present valid photo identification at each election occurring since
 15 the previous state general election, and forward the report to the Speaker of the House of Delegates,
 16 and the President of the Senate.

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

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

19 **§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local** 20 **government license; motorcycle driver license; identification cards.**

21 (a)(1) No person, except those hereinafter expressly exempted, may drive any motor vehicle
 22 upon a street or highway in this state or upon any subdivision street used by the public generally

1 unless the person has a valid driver's license issued pursuant to this code for the type or class of
2 vehicle being driven.

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

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

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

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

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

1 to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code
2 or federal law or rule: *Provided*, That anyone not required to be licensed under the provisions of
3 chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle registered
4 or required to be registered as a Class A motor vehicle, as that term is defined in section one, article
5 ten, chapter seventeen-a of this code, with a gross vehicle weight rating of less than eight thousand
6 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) license for
11 any person under the age of eighteen may also be endorsed with the appropriate graduated driver
12 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
22 United States according to criteria established by the division, if the licensee requests this

1 information on the license. An honorably discharged veteran may be issued a replacement license
 2 without charge if the request is made before the expiration date of the current license and the only
 3 purpose for receiving the replacement license is to get the veterans designation placed on the license.

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

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

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

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

13 (C) Has paid the required fee of two dollars and fifty cents per year: *Provided, That the fee*
 14 ~~is not required~~ no fees or charges, including renewal fees, are required if the applicant is

15 (i) Sixty-five years or older; ~~or~~

16 (ii) Is legally blind; or

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

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

21 (2) The identification card shall contain the same information as a driver's license except that
 22 the identification card shall be clearly marked as an identification card. The division may issue an

1 identification card with less information to persons under the age of sixteen. An identification card
2 may be renewed annually on application and payment of the fee required by this section.

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

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

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

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

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

NOTE: The purpose of this bill is to require voters to provide a photo identification when voting and provides a procedure for voters without photo identification. The bill also provides for complimentary photo identification cards to be issued to any voter who requests one. The bill

authorizes rule-making.

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