

Senate Bill No. 613

(By Senators: Palumbo, Beach, Browning, Klempa, Snyder,
Tucker, Williams, Wills, Facemyer and Nohe)

[Originating in the Committee on the Judiciary;
reported February 28, 2011.]

A BILL to repeal §3-3-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §3-1-9, §3-1-21, §3-1-31, §3-1-34, §3-1-35 and §3-1-50 of said code; to amend and reenact §3-3-1, §3-3-2, §3-3-2b, §3-3-3, §3-3-4, §3-3-5, §3-3-5a, §3-3-5b and §3-3-6 of said code; to amend and reenact §3-5-7, §3-5-13a, §3-5-21, §3-5-23 and §3-5-24 of said code; to amend and reenact §3-6-4a of said code; to amend and reenact §3-8-1a and §3-8-5a of said code; to amend and reenact §3-9-6 of said code; to amend and reenact §8-5-14 of said code; and to amend and reenact §59-3-3 of said code, all relating to the state election code; eliminating obsolete and outdated language; clarifying that candidates must be a member of political party

for sixty days prior to filing; clarifying the authority for persons to lawfully assist voters; bringing state law into compliance with federal requirements; clarifying persons eligible to receive absentee ballots; providing that independent and unaffiliated voters may receive party ballots if party allows participation in the primary; requiring all health-related information provided in connection with absentee voting is protected under the Health Insurance Portability and Accountability Act of 1996; waiving certain witness requirements if ballot provided electronically; clarifying current municipal election polling hours of operation; authorizing absentee ballot applications may be completed by handwriting or typing; clarifying procedures for federal postcard registration and absentee ballot requests; providing for federal write-in absentee ballots; revising ballot requirements relating to independent voters; providing that county clerk will submit ballot information to the Secretary of State after random drawing for ballot position; providing that offices filled by voters of more than one county must file certificate of announcement with the Secretary of State; providing certificates of announcement of every office to be submitted no later than

the forty-ninth day before the election; providing definitions; clarifying persons who may be present during election; and clarifying penalties.

Be it enacted by the Legislature of West Virginia:

That §3-3-3a of the Code of West Virginia, 1931, as amended, be repealed; that §3-1-9, §3-1-21, §3-1-31, §3-1-34, §3-1-35 and §3-1-50 of said code be amended and reenacted; that §3-3-1, §3-3-2, §3-3-2b, §3-3-3, §3-3-4, §3-3-5, §3-3-5a, §3-3-5b and §3-3-6 of said code be amended and reenacted; that §3-5-7, §3-5-13a, §3-5-21, §3-5-23 and §3-5-24 of said code be amended and reenacted; that §3-6-4a of said code be amended and reenacted; that §3-8-1a and §3-8-5a of said code be amended and reenacted; that §3-9-6 of said code be amended and reenacted; that §8-5-14 of said code be amended and reenacted; and that §59-3-3 of said code be amend and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-9. Political party committees; how composed; organization.

- 1 (a) Every fourth year at the primary election, the voters of
- 2 each political party in each state senatorial district shall
- 3 elect four members consisting of two male members and two
- 4 female members of the state executive committee of the

5 party. In state senatorial districts containing two or more
6 counties, not more than two elected committee members
7 shall be residents of the same county: *Provided*, That at each
8 election the votes shall be tallied from highest to lowest
9 without regard to gender or county of residence. The two
10 candidates with the highest votes shall be elected first and
11 the other candidates shall be qualified based on vote tallies,
12 gender and county of residence. Upon completion of the
13 canvass, the clerk of the county commission from each
14 county shall send the results of the election of members of
15 each state executive committee and certificates of announce-
16 ment, if any, to the Secretary of State. Upon certification of
17 the election results, the Secretary of State shall make known
18 to each state executive committee the members elected to
19 such committee and the vacancies, if any. The committee,
20 when convened and organized as herein provided, shall
21 appoint three additional members of the committee from the
22 state at large which shall constitute the entire voting
23 membership of the state executive committee. ~~*Provided*,~~
24 ~~*however*,~~ ~~That if~~ If it chooses to do so, the committee may, by
25 motion or resolution and in accordance with party rules, ~~may~~
26 expand the voting membership of the committee. When

27 senatorial districts are realigned following a decennial
28 census, members of the state executive committee previously
29 elected or appointed ~~shall~~ continue in office until the
30 expiration of their terms. Appointments made to fill vacan-
31 cies on the committee until the next election of executive
32 committee members shall be selected from the previously
33 established districts. At the first election of executive
34 committee members following the realignment of senatorial
35 districts, members shall be elected from the newly estab-
36 lished districts.

37 (b) At the primary election, the voters of each political
38 party in each county shall elect one male and one female
39 member of the party's executive committee of the congressio-
40 nal district, of the state senatorial district and of the delegate
41 district in which the county is situated if the county is
42 situated in a multicounty state senatorial or delegate district.
43 Upon completion of the canvass, the clerk of the county
44 commission from each county shall send the results of the
45 election of members of each congressional district, state
46 senatorial district and delegate district executive committee
47 of each party to the Secretary of State. Upon certification of
48 the election results, the Secretary of State shall make known

49 to each state executive committee the members elected to
50 each congressional district, state senatorial district and
51 delegate district executive committee and the vacancies, if
52 any. Upon receipt, the state executive committee shall make
53 known any vacancies to the applicable county executive
54 committee for the purpose of filling said vacancies as
55 provided in subsection (f) of this section. When districts are
56 realigned following a decennial census, members of an
57 executive committee previously elected in a county to
58 represent that county in a congressional or multicounty
59 senatorial or delegate district executive committee ~~shall~~
60 continue to represent that county in the appropriate newly
61 constituted multicounty district until the expiration of their
62 terms. ~~Provided, That the~~ The county executive committee of
63 the political party shall determine which previously elected
64 members will represent the county if the number of
65 multicounty state senatorial or delegate districts in the
66 county is decreased and shall appoint members to complete
67 the remainder of the term if the number of districts is
68 increased.

69 (c) At the same time the voters of the county in each
70 magisterial district or executive committee district, as the

71 case may be, shall elect one male and one female member of
72 the party's county executive committee except that in
73 counties having three executive committee districts, there
74 shall be elected two male and two female members of the
75 party's executive committee from each magisterial or
76 executive committee district. Upon completion of the
77 canvass, the clerk of the county commission from each
78 county shall send the results of the election of members of
79 the county executive committee of each party along with the
80 certificates of announcement to the Secretary of State. Upon
81 certification of the election results, the Secretary of State
82 shall make known to each state executive committee the
83 members elected to the county committee and the vacancies,
84 if any. Upon receipt, the state executive committee shall
85 make known any vacancies to the applicable county execu-
86 tive committee for the purpose of filling said vacancies as
87 provided in subsection (f) of this section.

88 (d) For the purpose of complying with the provisions of this
89 section, the county commission shall create the executive
90 committee districts.⁹ for counties having a population of one
91 hundred thousand persons or more; thirty for counties
92 having a population of fifty thousand to one hundred

93 thousand; twenty for counties having a population of twenty
94 thousand to fifty thousand; and the districts in counties
95 having a population of less than twenty thousand persons
96 shall be coextensive with the magisterial districts.

97 (e) The executive committee districts shall be as nearly
98 equal in population as practicable and shall each be com-
99 posed of compact, contiguous territory. The county commis-
100 sions shall change the territorial boundaries of the districts
101 as required by the increase or decrease in the population of
102 the districts as determined by a decennial census. The
103 changes must be made within two years following the census.

104 (f) All members of executive committees, selected for each
105 political division as herein provided, shall reside within the
106 county or district from which chosen. The term of office of
107 all members of executive committees elected at the primary
108 election ~~in the year two thousand ten~~ will begin on the first
109 day of July, following the primary election and continue for
110 four years ~~thereafter~~, except as provided in subsection (g) of
111 this section. Vacancies in the state executive committee shall
112 be filled by the members of the committee for the unexpired
113 term. Vacancies in the party's executive committee of a
114 congressional district, state senatorial district, delegate

115 district or county shall be filled by the party's executive
116 committee of the county in which the vacancy exists for the
117 unexpired term.

118 (g) As soon as possible after the certification of the election
119 of the new executive committees, as herein provided, the
120 newly elected executive committee shall convene an organi-
121 zational meeting within their respective political divisions,
122 on the call of the chair of the corresponding outgoing
123 executive committee or by any member of the new executive
124 committee in the event there is no corresponding outgoing
125 executive committee. During the first meeting the new
126 executive committee shall select a chair, a treasurer and a
127 secretary and other officers as they may desire. Each of the
128 officers shall, for their respective committees, perform the
129 duties that usually appertain to his or her office. The organi-
130 zational meeting may be conducted prior to July 1, but must
131 occur after the certification of the election of the new
132 executive committees. If the organizational meeting is
133 conducted prior to July 1, the new committee shall serve out
134 the remainder of the outgoing committee's term and is
135 authorized to conduct official business. A current listing of
136 all executive committees' members shall be filed with the

137 Secretary of State by of July 31 of each year. Vacancies in
138 any executive committee shall be filled by the appropriate
139 executive committee as provided in subsection (f) of this
140 section no later than sixty days after the vacancy occurs. The
141 chair of each executive committee shall submit an updated
142 committee list to the Secretary of State within ten days of a
143 change occurring. Executive committee membership lists
144 shall include at least the member's name, full address,
145 employer, telephone number and term information. An
146 appointment to fill a vacancy does not take effect if the
147 executive committee does not submit the updated list to the
148 Secretary of State within the allotted time period. If the
149 executive committee fails to submit the updated list within
150 the allotted time period, it must make another appointment
151 pursuant to the provisions of this section and resubmit the
152 updated list in a timely manner. If a vacancy on an executive
153 committee is not filled within the sixty-day period pre-
154 scribed by this section, the chair of the appropriate executive
155 committee, as provided in subsection (f) of this section, shall
156 name someone to fill the vacancy. If the chair of a county
157 executive committee fails to fill a vacancy in a congressional
158 district, state senatorial district or delegate district executive

159 committee, and the failure to fill such vacancy prohibits said
160 committee from conducting official business, the chair of the
161 party's state executive committee shall fill such vacancy.

162 (h) Any meeting of any political party executive committee
163 shall be held only after public notice and notice to each
164 member is given according to party rules and shall be open
165 to all members affiliated with the party. Meetings shall be
166 conducted according to party rules, all official actions shall
167 be made by voice vote and minutes shall be maintained and
168 shall be open to inspection by members affiliated with the
169 party.

**§3-1-21. Printing of official and sample ballots; number; packag-
ing and delivery; correction of ballots.**

1 (a) The board of ballot commissioners for each county shall
2 provide the ballots and sample ballots necessary for conduct-
3 ing every election for public officers in which the voters of
4 the county participate.

5 (b) The persons required to provide the ballots necessary
6 for conducting all other elections are:

7 (1) The Secretary of State, for any statewide special
8 election ordered by the Legislature;

9 (2) The board of ballot commissioners, for any countywide
10 special election ordered by the county commission;

11 (3) The board of education, for any special levy or bond
12 election ordered by the board of education; or

13 (4) The municipal board of ballot commissioners, for any
14 election conducted for or within a municipality except an
15 election in which the matter affecting the municipality is
16 placed on the county ballot at a county election. Ballots
17 other than those printed by the proper authorities as speci-
18 fied in this section may not be cast, received or counted in
19 any election.

20 (c) When paper ballots are used, the total number of
21 regular official ballots printed shall equal one and one-
22 twentieth times the number of registered voters eligible to
23 vote that ballot. When paper ballots are used in conjunction
24 with or as part of an electronic voting system, the total
25 number of regular official ballots printed shall equal at a
26 minimum eighty percent of the number of registered voters
27 eligible to vote that ballot. The clerk of the county commis-
28 sion shall determine the number of absentee official ballots.

29 (d) The number of regular official ballots packaged for
30 each precinct shall equal at a minimum seventy-five percent

31 of the number of registered voters of the precinct. The
32 remaining regular official ballots shall be packaged and
33 delivered to the clerk of the county commission, who shall
34 retain them unopened until they are required for an emer-
35 gency. Each package of ballots shall be wrapped and sealed
36 in a manner which will immediately make apparent any
37 attempt to open, alter or tamper with the ballots. Each
38 package of ballots for a precinct shall be clearly labeled, in
39 a manner which cannot be altered, with the county name, the
40 precinct number and the number of ballots contained in each
41 package. If the packaging material conceals the face of the
42 ballot, a sample ballot identical to the official ballots
43 contained therein shall be securely attached to the outside of
44 the package or, in the case of ballot cards, the type of ballot
45 shall be included in the label.

46 (e) All absentee ballots necessary for conducting absentee
47 voting in all voting systems shall be delivered to the clerk of
48 the county commission of the appropriate county not later
49 than the ~~forty-second~~ forty-sixth day before the election. All
50 official ballots in paper ballot systems shall be delivered to
51 the clerk of the county commission of the appropriate county
52 not later than twenty-eight days before the election.

53 (f) Upon a finding of the Board of Ballot Commissioners
54 that an official ballot contains an error which, in the opinion
55 of the board, is of sufficient magnitude to confuse or mislead
56 the voters, the board shall cause the error to be corrected
57 either by the reprinting of the ballots or by the use of
58 stickers printed with the correction and of suitable size to be
59 placed over the error without covering any other portion of
60 the ballot.

§3-1-31. Days and hours of elections.

1 (a) General elections shall be held in the several election
2 precincts of the state on the Tuesday next after the first
3 Monday in November of each even year. Primary and special
4 elections shall be held on the days provided by law therefor.
5 (b) Other than as provided for municipal elections in
6 section fourteen, article five, chapter eight of this code, at
7 every primary, general or special election the polls shall be
8 opened in each precinct on the day of such election at six-
9 thirty o'clock in the forenoon and be closed at seven-thirty
10 o'clock in the evening.

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

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

15 (b) The clerk of the county commission is authorized, upon
16 verification that the precinct at which a handicapped person
17 is registered to vote is not handicap accessible, to transfer
18 that person's registration to the nearest polling place in the
19 county which is handicap accessible. A request by a handi-
20 capped person for a transfer of registration must be received
21 by the county clerk no later than thirty days prior to the date
22 of the election. Any handicapped person who has not made

23 a request for a transfer of registration at least thirty days
24 prior to the date of the election may vote a provisional ballot
25 at a handicap accessible polling place in the county of his or
26 her registration. If, during the canvass, the county commis-
27 sion determines that the person had been registered in a
28 precinct that is not handicap accessible, the voted ballot, if
29 otherwise valid, shall be counted. The handicapped person
30 may vote in the precinct to which the registration was
31 transferred only as long as the disability exists or the
32 precinct from which the handicapped person was transferred
33 remains inaccessible to the handicapped. To ensure confi-
34 dentiality of the transferred ballot, the county clerk process-
35 ing the ballot shall provide the voter with an unmarked
36 envelope and an outer envelope designated “provisional
37 ballot/handicapped voter”. After validation of the ballot at
38 the canvass, the outer envelope shall be destroyed and the
39 handicapped voter’s ballot shall be placed with other
40 approved provisional ballots prior to removal of the ballot
41 from the unmarked envelope.

42 (c) When the voter’s signature is properly marked, the two
43 poll clerks shall sign their names in the places indicated on
44 the back of the official ballot and deliver the ballot to the

45 voter to be voted by him or her without leaving the election
46 room. If he or she returns the ballot spoiled to the clerks,
47 they shall immediately mark the ballot “spoiled” and it shall
48 be preserved and placed in a spoiled ballot envelope together
49 with other spoiled ballots to be delivered to the board of
50 canvassers and deliver to the voter another official ballot,
51 signed by the clerks on the reverse side. The voter shall
52 thereupon retire alone to the booth or compartment prepared
53 within the election room for voting purposes and there
54 prepare his or her ballot. In voting for candidates in general
55 and special elections, the voter shall comply with the rules
56 and procedures prescribed in section five, article six of this
57 chapter.

58 (d) It is the duty of a poll clerk, in the presence of the other
59 poll clerk, to indicate by a check mark, or by other means,
60 inserted in the appropriate place on the registration record
61 of each voter the fact that the voter voted in the election. In
62 primary elections the clerk shall also insert thereon a
63 distinguishing initial or initials of the political party for
64 whose candidates the voter voted. If a person is challenged
65 at the polls, the challenge shall be indicated by the poll
66 clerks on the registration record, together with the name of

67 the challenger. The subsequent removal of the challenge
68 shall be recorded on the registration record by the clerk of
69 the county commission.

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

75 (A) Declare his or her choice of candidates to an election
76 commissioner of each political party who, in the presence of
77 the voter and in the presence of each other, shall prepare the
78 ballot for voting in the manner hereinbefore provided and,
79 on request, shall read to the voter the names of the candi-
80 dates selected on the ballot;

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

86 (C) Be assisted by any person of the voter's choice, other
87 than the voter's present or former employer or agent of that
88 employer, the officer or agent of a labor union of which the

89 voter is a past or present member or a candidate on the
90 ballot or an official write-in candidate; or

91 (D) If he or she is handicapped, vote from an automobile
92 outside the polling place or precinct by the absentee ballot-
93 ing method provided in subsection (e), section five, article
94 three of this chapter in the presence of an election commis-
95 sioner of each political party if all of the following conditions
96 are met:

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

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

100 (2) The voted ballot shall then be returned to the precinct
101 officials and secured in a sealed envelope to be returned to
102 the clerk of the county commission with all other election
103 materials. The ballot shall then be tabulated using the
104 appropriate method provided in section eight, article three
105 of this chapter as it relates to the specific voting system in
106 use.

107 (3) Any voter who requests assistance in voting but who is
108 believed not to be qualified for assistance under the provi-
109 sions of this section shall nevertheless be permitted to vote

110 a provisional ballot with the assistance of any person herein
111 authorized to render assistance.

112 (4) Any one or more of the election commissioners or poll
113 clerks in the precinct may challenge the ballot on the ground
114 that the voter thereof received assistance in voting it when
115 in his, her or their opinion the person who received assis-
116 tance in voting is not so illiterate, blind, disabled or of such
117 advanced age as to have been unable to vote without assis-
118 tance. The election commissioner or poll clerk or commis-
119 sioners or poll clerks making the challenge shall enter the
120 challenge and reason therefor on the form and in the manner
121 prescribed or authorized by article three of this chapter.

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

124 (A) May not in any manner request or seek to persuade or
125 induce the voter to vote any particular ticket or for any
126 particular candidate or for or against any public question
127 and must not keep or make any memorandum or entry of
128 anything occurring within the voting booth or compartment
129 and must not, directly or indirectly, reveal to any person the
130 name of any candidate voted for by the voter or which ticket
131 he or she had voted or how he or she had voted on any public

132 question or anything occurring within the voting booth or
133 compartment or voting machine booth except when required
134 pursuant to law to give testimony as to the matter in a
135 judicial proceeding; and

136 (B) Shall sign a written oath or affirmation before assisting
137 the voter on a form prescribed by the Secretary of State
138 stating that he or she will not override the actual preference
139 of the voter being assisted, attempt to influence the voter's
140 choice or mislead the voter into voting for someone other
141 than the candidate of voter's choice. The person assisting the
142 voter shall also swear or affirm that he or she believes that
143 the voter is voting free of intimidation or manipulation.

144 ~~Provided, That no~~ No person providing assistance to a voter
145 is required to sign an oath or affirmation where the reason
146 for requesting assistance is the voter's inability to vote
147 without assistance because of blindness as defined in section
148 three, article fifteen, chapter five of this code and the
149 inability to vote without assistance because of blindness is
150 certified in writing by a physician of the voter's choice and
151 is on file in the office of the clerk of the county commission.

152 (6) In accordance with instructions issued by the Secretary
153 of State, the clerk of the county commission shall provide a

154 form entitled "list of assisted voters", the form of which list
155 shall likewise be prescribed by the Secretary of State. The
156 commissioners shall enter the name of each voter receiving
157 assistance in voting the ballot together with the poll slip
158 number of that voter and the signature of the person or the
159 commissioner from each party who assisted the voter. If no
160 voter has been assisted in voting, the commissioners shall
161 likewise make and subscribe to an oath of that fact on the
162 list.

163 (f) After preparing the ballot, the voter shall fold the ballot
164 so that the face is not exposed and so that the names of the
165 poll clerks thereon are seen. The voter shall announce his or
166 her name and present his or her ballot to one of the commis-
167 sioners who shall hand the same to another commissioner, of
168 a different political party, who shall deposit it in the ballot
169 box if the ballot is the official one and properly signed. The
170 commissioner of election may inspect every ballot before it
171 is deposited in the ballot box to ascertain whether it is single
172 but without unfolding or unrolling it so as to disclose its
173 content. When the voter has voted, he or she shall retire
174 immediately from the election room and beyond the ~~sixty-~~
175 ~~foot~~ three hundred-foot limit thereof and may not return

176 except by permission of the commissioners or to lawfully
177 assist another voter pursuant to the provisions of subsection
178 (e) of this section.

179 (g) Following the election, the oaths or affirmations
180 required by this section from those assisting voters, together
181 with the “list of assisted voters”, shall be returned by the
182 election commissioners to the clerk of the county commission
183 along with the election supplies, records and returns. The
184 clerk of the county commission shall make the oaths,
185 affirmations and list available for public inspection and ~~shall~~
186 preserve them for a period of twenty-two months or until
187 disposition is authorized or directed by the Secretary of
188 State or court of record. ~~Provided, That the~~ The clerk may
189 use these records to update the voter registration records in
190 accordance with subsection (d), section eighteen, article two
191 of this chapter.

192 (h) Any person making an oath or affirmation required
193 under the provisions of this section who knowingly swears
194 falsely or any person who counsels, advises, aids or abets
195 another in the commission of false swearing under this
196 section is guilty of a misdemeanor and, upon conviction
197 thereof, shall be fined not more than \$1,000 or confined in

198 jail for a period of not more than one year, or both fined and
199 confined.

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

§3-1-35. Ballots to be furnished voters.

1 In general and special elections the ballots for all voters of
2 an election precinct shall be the same. In primary elections
3 the ballot of the voter's political party at that election in that
4 precinct shall be furnished to the voter together with
5 separate ballots, if any, on ~~any~~ nonpartisan candidates and
6 ~~any~~ public questions submitted to the voters generally at
7 such primary election. In the event the voter is lawfully
8 registered as "independent" or as an adherent of a political
9 party not appearing on any primary election ballot to be
10 voted in his precinct, he shall not, in a primary election, ~~be~~

11 ~~given or entitled to vote any a party ballot be given a party~~
12 ballot and is not entitled to vote a party ballot unless the
13 voter requests a ballot of a political party that has permitted
14 the voter to vote according to section thirty-one, article two,
15 of this chapter, and but shall be furnished any separate
16 ballots to be voted thereat on nonpartisan candidates and
17 public questions.

**§3-1-50. Establishment of state-based administrative complaint
procedures.**

1 The Secretary of State shall establish and maintain a state-
2 based administrative complaint procedure for complaints
3 received concerning election violations which shall meet the
4 following requirements:

5 (1) The procedures shall be uniform and nondiscrimina-
6 tory.

7 (2) Under the procedures, any person who believes that
8 there is a violation of any provision of ~~this chapter or Title~~
9 III of the Help America Vote Act of 2002, 42 United States
10 Code §§15481 and 15485, including a violation which has
11 occurred, is occurring or is about to occur, may file a com-
12 plaint.

13 (3) Any complaint filed under the procedures shall be in
14 writing, notarized and signed and sworn by the person filing
15 the complaint.

16 (4) The Secretary of State may consolidate complaints filed
17 under this section.

18 (5) At the request of the complainant, there shall be a
19 hearing on the record.

20 (6) Violations of any provision of this chapter shall be
21 punishable in accordance with the provisions of article nine
22 of this chapter.

23 (7) If, under the procedures, the Secretary of State deter-
24 mines that there is no violation, the Secretary of State shall
25 dismiss the complaint and publish the results of the proce-
26 dures.

27 (8) The Secretary of State shall make a final determination
28 with respect to a complaint prior to the expiration of the
29 ninety-day period which begins on the date the complaint is
30 filed unless the complainant consents to a longer period for
31 making a determination.

32 (9) If the Secretary of State fails to meet the deadline
33 applicable under subdivision (8) of this section, the com-
34 plaint shall be resolved within sixty days under alternative

35 dispute resolution procedures established for purposes of this
36 section. The record and other materials from any proceedings
37 conducted under the complaint procedures established under
38 this section shall be made available for use under the
39 alternative dispute resolution procedures.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

1 (a) All registered ~~and other qualified~~ voters of the county
2 may vote an absentee ballot during the period of early voting
3 in person.

4 (b) Registered voters ~~and other qualified~~ voters in the
5 county are authorized to vote an absentee ballot by mail in
6 the following circumstances:

7 (1) Any voter who is confined to a specific location and
8 prevented from voting in person throughout the period of
9 voting in person because of:

10 (A) Illness, injury or other medical reason;

11 (B) Physical disability or immobility due to extreme
12 advanced age; or

13 (C) Incarceration or home detention: *Provided*, That the
14 underlying conviction is not for a crime which is a felony or

15 a violation of section twelve, thirteen or sixteen, article nine
16 of this chapter involving bribery in an election;

17 (2) Any voter who is absent from the county throughout the
18 period and available hours for voting in person because of:

19 (A) Personal or business travel;

20 (B) Attendance at a college, university or other place of
21 education or training; or

22 (C) Employment which because of hours worked and
23 distance from the county seat make voting in person impossi-
24 ble;

25 (3) Any voter absent from the county ~~throughout the period~~
26 ~~and available hours for voting in person~~ and who is an
27 absent uniformed services voter or overseas voter, as defined
28 by 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas
29 Citizens Absentee Voting Act of 1986, including members of
30 the uniformed services on active duty, members of the
31 merchant marine, spouses and dependents of those members
32 on active duty and persons who reside outside the United
33 States and are qualified to vote in the last place in which the
34 person was domiciled before leaving the United States is
35 authorized to vote an absentee ballot by mail;

36 (4) Any voter who is required to dwell temporarily outside
37 the county and is absent from the county throughout the time
38 for voting in person because of:

39 (A) Serving as an elected or appointed federal or state
40 officer; or

41 (B) Serving in any other documented employment assign-
42 ment of specific duration of four years or less; and

43 (5) Any voter for whom the designated area for absentee
44 voting within the county courthouse or annex of the court-
45 house and the voter's assigned polling place are inaccessible
46 because of his or her physical disability.

47 (c) Registered voters ~~and other qualified voters~~ in the
48 county may, in the following circumstances, vote an emer-
49 gency absentee ballot, subject to the availability of the
50 services as provided in this article:

51 (1) Any voter who is confined or expects to be confined in
52 a hospital or other duly licensed health care facility within
53 the county of residence or other authorized area, as provided
54 in this article, on the day of the election;

55 (2) Any voter who resides in a nursing home within the
56 county of residence and would be otherwise unable to vote in
57 person, providing the county commission has authorized the

58 services if the voter has resided in the nursing home for a
59 period of less than thirty days; and

60 (3) Any voter who is working as a replacement poll worker
61 and is assigned to a precinct out of his or her voting district,
62 if the assignment was made after the period for voting an
63 absentee ballot in person has expired.

**§3-3-2. Authority to conduct absentee voting; absentee voting
application; form.**

1 (a) Absentee voting is to be supervised and conducted by
2 the proper official for the political division in which the
3 election is held, in conjunction with the ballot commissioners
4 appointed from each political party, as follows:

5 (1) For any election held throughout the county, within a
6 political subdivision or territory other than a municipality,
7 or within a municipality when the municipal election is
8 conducted in conjunction with a county election, the clerk of
9 the county commission; or

10 (2) The municipal recorder or other officer authorized by
11 charter or ordinance provisions to conduct absentee voting,
12 for any election held entirely within the municipality, or in
13 the case of annexation elections, within the area affected.
14 The terms “clerk” or “clerk of the county commission” or

15 “official designated to supervise and conduct absentee
16 voting” used elsewhere in this article means municipal
17 recorder or other officer in the case of municipal elections.

18 (b) A person authorized and desiring to vote a mail-in
19 absentee ballot in any primary, general or special election is
20 to make application in writing in the proper form to the
21 proper official as follows:

22 (1) The completed application is to be on a form prescribed
23 by the Secretary of State and is to contain the name, date of
24 ~~birth and political affiliation~~ of the voter, residence address
25 within the county, the address to which the ballot is to be
26 mailed, the authorized reason, if any, for which the absentee
27 ballot is requested and, if the reason is illness or hospitaliza-
28 tion, the name and telephone number of the attending
29 physician, the signature of the voter to a declaration made
30 under the penalties for false swearing as provided in section
31 three, article nine of this chapter that the statements and
32 declarations contained in the application are true, any
33 additional information which the voter is required to supply,
34 any affidavit which may be required ~~and an indication as to~~
35 ~~whether it is an application for voting in person or by mail~~
36 :Provided, That if the application for an absentee ballot is in

37 conjunction with a partisan primary election, the voter must
38 also provide his or her political affiliation or, in the case of
39 an independent or unaffiliated voter, the name of the party
40 in whose primary the voter chooses to participate; or

41 (2) For any person authorized to vote an absentee ballot
42 under the provisions of 42 U.S.C. §1973, *et seq.*, the Uni-
43 formed and Overseas Citizens Absentee Voting Act of 1986,
44 the completed application may be on the federal postcard
45 application for absentee ballot form issued under authority
46 of that act, submitted by mail or electronically; or on the
47 Federal Write-in Absentee Ballot; or

48 (3) For any person unable to obtain the official form for
49 absentee balloting at a reasonable time before the deadline
50 for an application for an absentee ballot by mail is to be
51 received by the proper official, the completed application
52 may be in a form set out by the voter, provided all informa-
53 tion required to meet the provisions of this article is set forth
54 and the application is signed by the voter requesting the
55 ballot.

§3-3-2b. Special absentee voting list.

1 (a) Any person who is registered and otherwise qualified to
2 vote and who is permanently and totally physically disabled

3 and who is unable to vote in person at the polls in an election
4 may apply to the official designated to supervise and conduct
5 absentee voting for placement on the special absentee voting
6 list.

7 (b) The application is to be on a form prescribed by the
8 Secretary of State which is to include the voter's name and
9 signature, residence address, a statement that the voter is
10 permanently and totally physically disabled and would be
11 unable to vote in person at the polls in any election, a
12 description of the nature of that disability, and a statement
13 signed by a physician to that effect.

14 (c) Upon receipt of a properly completed application, the
15 official designated to supervise and conduct absentee voting
16 shall enter the name on the special absentee voting list,
17 which is to be maintained in a secure and permanent record.
18 The person's name will remain active on the list until: (1) The
19 person requests in writing that his or her name be removed;
20 (2) the person removes his or her residence from the county,
21 is purged from the voter registration books or otherwise
22 becomes ineligible to vote; (3) a ballot mailed to the address
23 provided on the application is returned undeliverable by the
24 United States postal service; or (4) the death of the person.

25 (d) All health information released or provided in connec-
26 tion with an application for absentee voting shall be used
27 and stored in a manner which protects the voter's privacy
28 rights under the requirements of the Health Insurance
29 Portability and Accountability Act of 1996 (HIPAA), Public
30 Law 104-191.

31 ~~(d)~~ (e) The official designated to supervise and conduct
32 absentee voting shall mail an application for an absentee
33 ballot by mail to each person active on the special absentee
34 voting list not later than forty-six days before each election.

§3-3-3. Early voting in person.

1 (a) The voting period for early in-person voting is to be
2 conducted during regular business hours beginning on the
3 twentieth day before the election and continuing through the
4 third day before the election. For any election held on a
5 Tuesday, the early voting period for in-person voting is to be
6 available from 9:00 a.m. to 5:00 p.m. on the two Saturdays
7 prior to the election.

8 (b) Any person desiring to vote during the period of early
9 in-person voting shall, upon entering the election room,
10 clearly state his or her name and residence to the official or
11 representative designated to supervise and conduct ~~absentee~~

12 early-in-person voting. If that person is found to be duly
13 registered as a voter in the precinct of his or her residence,
14 he or she shall be required to sign his or her name in the
15 space marked “signature of voter” on the pollbook, or the
16 voter’s mark is duly witnessed. If the voter is unable to sign
17 his or her name due to illiteracy or physical disability, the
18 person assisting the voter and witnessing the mark of the
19 voter shall sign his or her name in the space provided. No
20 ballot may be given to the person until he or she signs his or
21 her name on the pollbook.

22 (c) When the voter’s signature or mark is properly on the
23 pollbook, two qualified representatives of the official
24 designated to supervise and conduct absentee voting shall
25 sign their names in the places indicated on the back of the
26 official ballot: Provided, That this requirement is waived if
27 the ballot is provided electronically.

28 (d) If the official designated to supervise and conduct
29 absentee voting determines that the voter is not properly
30 registered in the precinct where he or she resides, the clerk
31 or his or her representative shall challenge the voter’s
32 absentee ballot as provided in this article.

33 (e) The official designated to supervise and conduct
34 absentee voting shall provide each person voting an absentee
35 ballot in person the following items to be printed as pre-
36 scribed by the Secretary of State:

37 (1) In counties using paper ballots, one of each type of
38 official absentee ballot the voter is eligible to vote, prepared
39 according to law;

40 ~~(2) In counties using punch card systems, one of each type~~
41 ~~of official absentee ballot the voter is eligible to vote,~~
42 ~~prepared according to law, and a gray secrecy envelope;~~

43 ~~(3)~~ (2) In counties using optical scan systems, one of each
44 type of official absentee ballot the voter is eligible to vote,
45 prepared according to law, and a secrecy sleeve; or

46 ~~(4)~~ (3) For direct recording election systems, access to the
47 voting equipment in the voting booth.

48 (f) The voter shall enter the voting booth alone and there
49 mark the ballot: *Provided*, That the voter may have assis-
50 tance in voting according to the provisions of section four of
51 this article. After the voter has voted the ballot or ballots,
52 the absentee voter shall: Place the ballot or ballots in the
53 ~~gray~~ secrecy envelope and return the ballot or ballots to the
54 official designated to supervise and conduct the absentee

55 voting: *Provided, however,* That in direct recording election
56 systems, once the voter has cast his or her ballot, the voter
57 shall exit the polling place.

58 (g) Upon receipt of the voted ballot, representatives of the
59 official designated to supervise and conduct the absentee
60 voting shall:

61 (1) Remove the ballot stub;

62 (2) Place punch card ballots and paper ballots into one
63 envelope which shall not have any marks except the precinct
64 number and seal the envelope;

65 (3) Place ballots for all voting systems into a ballot box
66 that is secured by two locks with a key to one lock kept by
67 the president of the county commission and a key to the
68 other lock kept by the county clerk;

69 ~~(4) Due to the reenactment of this section by the Legisla-~~
70 ~~ture in the two thousand three regular session removing~~
71 ~~authorization for early in-person voting on the Monday prior~~
72 ~~to a Tuesday election, to assure notice to all persons that~~
73 ~~voted on the Monday before the Tuesday election day of the~~
74 ~~two thousand two general election are made aware of this~~
75 ~~change, the clerk of each county shall, for the primary~~
76 ~~election of the year two thousand four, include along with~~

77 ~~the sample ballots published in local newspapers as required~~
78 ~~by this chapter a notice to voters that Monday in-person~~
79 ~~voting will no longer be available.~~

**§3-3-4. Assistance to voter in voting an early-in-person ballot;
penalties.**

1 (a) Any registered voter who requires assistance to vote by
2 reason of blindness, disability, advanced age or inability to
3 read and write may be given assistance by a person of the
4 voter's choice: *Provided*, That the assistance may not be
5 given by the voter's present or former employer or agent of
6 that employer, by the officer or agent of a labor union of
7 which the voter is a past or present member or by a candi-
8 date on the ballot.

9 (b) ~~Any voter who requests assistance in voting an absent~~
10 ~~voter's ballot but who is determined by the official desig-~~
11 ~~nated to supervise and conduct absentee voting not to be~~
12 ~~qualified for assistance under the provisions of this section~~
13 ~~and section thirty-four, article one of this chapter may vote~~
14 ~~a challenged absent voter's ballot with the assistance of any~~
15 ~~person authorized to render assistance pursuant to this~~
16 ~~section. The official designated to supervise and conduct~~
17 ~~absentee voting shall in this case challenge the absent voter's~~

18 ~~ballot on the basis of~~ If in his or her determination ~~that~~ the
19 voter is not qualified for assistance, the official designated to
20 supervise and conduct early-in-person voting shall challenge
21 the voter's ballot.

22 (c) Any one or more of the election commissioners or poll
23 clerks in the precinct to which an absent voter's ballot has
24 been sent may challenge the ballot on the ground that the
25 voter received assistance in voting it when in his or their
26 opinion: (1) The person who received the assistance in voting
27 the absent voter's ballot did not require assistance; or (2) the
28 person who provided the assistance in voting did not make
29 an affidavit as required by this section. The election commis-
30 sioner or poll clerk or commissioners or poll clerks making
31 a challenge shall enter the challenge and reason for the
32 challenge on the form and in the manner prescribed or
33 authorized by this article.

34 (d) Before entering the voting booth or compartment, the
35 person who intends to provide a voter assistance in voting
36 shall make an affidavit, the form of which is to be prescribed
37 by the Secretary of State, that he or she will not in any
38 manner request or seek to persuade or induce the voter to
39 vote any particular ticket or for any particular candidate or

40 for or against any public question and that he or she will not
41 keep or make any memorandum, image or recording or entry
42 of anything occurring within the voting booth or compart-
43 ment and that he or she will not, directly or indirectly, reveal
44 to any person the name of any candidate voted for by the
45 voter or which ticket he or she had voted or how he or she
46 had voted on any public question or anything occurring
47 within the voting booth or compartment or voting machine
48 booth, except when required pursuant to law to give testi-
49 mony as to the matter in a judicial proceeding.

50 (e) In accordance with instructions issued by the Secretary
51 of State, the official designated to supervise and conduct
52 ~~absentee~~ early-in-person voting shall provide a form entitled
53 “List of Assisted Voters”; . The form of which is to be
54 prescribed by the Secretary of State; ~~which~~ The list is to be
55 divided into two parts: ; Part A is to be entitled “Unchal-
56 lenged Assisted Voters” and Part B is to be entitled “Chal-
57 lenged Assisted Voters”. Under Part A, the official desig-
58 nated to supervise and conduct early-in-person voting shall
59 enter the name of each voter receiving unchallenged assis-
60 tance in voting an absent voter’s ballot, the address of the
61 voter assisted, the nature of the disability which qualified

62 the voter for assistance in voting an ~~absent~~ early-in-person
63 voter's ballot, the name of the person providing the voter
64 with assistance in voting an ~~absent~~ early-in-person voter's
65 ballot, the fact that the person rendering the assistance in
66 voting made and subscribed to the oath required by this
67 section and the signature of the official designated to
68 supervise and conduct ~~absent~~ early-in-person voting certify-
69 ing to the fact that he or she had determined that the voter
70 who received assistance in voting an ~~absent~~ early-in-person
71 voter's ballot was qualified to receive the assistance under
72 the provisions of this section. Under Part B, the official
73 designated to supervise and conduct ~~absent~~ early-in-person
74 voting shall enter the name of each voter receiving chal-
75 lenged assistance in voting, the address of the voter receiving
76 challenged assistance, the reason for the challenge and the
77 name of the person providing the challenged voter with
78 assistance in voting. At the close of the period provided for
79 voting an ~~absent~~ early-in-person voter's ballot ~~by personal~~
80 ~~appearance~~, the official designated to supervise and conduct
81 ~~absent~~ early-in-person voting shall make and subscribe to an
82 oath on the list that the list is correct in all particulars; if no
83 voter has been assisted in voting an ~~absent~~ early-in-person

84 voter's ballot as provided in this section, the official desig-
85 nated to supervise and conduct ~~absent~~ early-in-person voting
86 shall make and subscribe to an oath of that fact on the list.
87 The "List of Assisted Voters" is to be available for public
88 inspection in the office of the official designated to supervise
89 and conduct ~~absent~~ early-in-person voting during regular
90 business hours throughout the period provided for voting an
91 ~~absent~~ early-in-person voter's ballot ~~by personal appearance~~
92 and, unless otherwise directed by the Secretary of State, the
93 official shall transmit the list, together with the affidavits,
94 applications and ~~absent~~ early-in-person voters' ballots, to
95 the precincts on election day.

96 (f) Following the election, the affidavits required by this
97 section from persons providing assistance in voting, together
98 with the "List of Assisted Voters", are to be returned by the
99 election commissioners to the clerk of the county commis-
100 sion, along with the election supplies, records and returns; ~~and~~
101 ~~who~~ The clerk shall make the oaths and list available for
102 public inspection and ~~who~~ shall preserve the oaths and list
103 for twenty-two months or, if under order of the court, until
104 their destruction or other disposition is authorized or
105 directed by the court.

106 (g) All health information released or provided in connec-
107 tion with early-in-person voting shall be used and stored in
108 a manner which protects the voter's privacy rights under the
109 requirements of the Health Insurance Portability and
110 Accountability Act of 1996 (HIPAA), Public Law 104-191.

111 ~~(g)~~ (h) Any person making an affidavit required under the
112 provisions of this section who knowingly swears falsely in
113 the affidavit or ~~any person~~ who counsels or advises, aids or
114 abets another in the commission of false swearing under this
115 section, or who renders assistance in voting an early-in-
116 person ballot when he or she is not qualified or permitted to
117 do so under this section is guilty of a misdemeanor and, upon
118 conviction thereof, shall be fined not more than \$1,000 or
119 confined in the county or regional jail for a period of not
120 more than one year, or both.

121 ~~(h) Any person who provides a voter assistance in voting an~~
122 ~~absent voter's ballot in the office of the official designated to~~
123 ~~supervise and conduct early-in-person voting who is not~~
124 ~~qualified or permitted by this section to provide assistance~~
125 ~~is guilty of a misdemeanor and, upon conviction thereof,~~
126 ~~shall be fined not more than \$1,000 or imprisoned in the~~

127 ~~county or regional jail for a period of not more than one year,~~
128 ~~or both.~~

129 (i) Any official designated to supervise and conduct early-
130 in-person voting, election commissioner or poll clerk who
131 authorizes or allows a voter to receive or to have received
132 unchallenged assistance in voting an absent voter's ballot
133 when the voter is known to the official designated to super-
134 vise and conduct early-in-person voting or election commis-
135 sioner or poll clerk not to be or have been authorized by the
136 provisions of this section to receive or to have received
137 assistance in voting is guilty of a misdemeanor and, upon
138 conviction thereof, shall be fined not more than \$1,000 or
139 imprisoned in the county or regional jail for a period of not
140 more than one year, or both.

141 (j) ~~The term "physical disability" as used in this section~~
142 ~~means blindness or a degree of blindness as will prevent the~~
143 ~~voter from seeing the names on the ballot or amputation of~~
144 ~~both hands or a disability of both hands that neither can be~~
145 ~~used to make cross marks on the absent voter's ballot.~~
146 "Physical Disability" or "Physically Disabled" means
147 blindness or a degree of blindness that prevents a person
148 from seeing any form, posting, document, ballot, or other

149 writing set forth in this chapter, whether presented on paper
 150 or electronically; or any physical condition, whether chronic
 151 or temporary, which results in substantial impairment of the
 152 voter's ability to preform any act required by this chapter.

§3-3-5. Voting an absentee ballot by mail or electronically; penalties.

1 (a) Upon ~~oral or written~~ request, the official designated to
 2 supervise and conduct absentee voting shall provide to any
 3 voter of the county, in person, by mail, or electronically the
 4 appropriate application for voting absentee by mail as
 5 provided in this article. ~~The voter shall complete and sign the~~
 6 ~~application~~ The completed application shall be signed by the
 7 voter in his or her own handwriting or, if the voter is unable
 8 to ~~complete~~ sign the application because of illiteracy or
 9 physical disability, the person assisting the voter and
 10 witnessing the mark of the voter shall sign his or her name
 11 in the space provided.

12 (b) Completed applications for voting an absentee ballot by
 13 mail are to be accepted when received by the official desig-
 14 nated to supervise and conduct absentee voting in person, by
 15 mail, or electronically within the following times:

16 (1) For persons eligible to vote an absentee ballot under the
17 provisions of subdivision (3), subsection (b), section one of
18 this article, relating to absent uniformed services and
19 overseas voters, not earlier than January 1 of an election year
20 or eighty-four days preceding the election, whichever is
21 earlier, and not later than the sixth day preceding the
22 election, which application is to, upon the voter's request, be
23 accepted as an application for the ballots for all elections in
24 the calendar year; and

25 (2) For all other persons eligible to vote an absentee ballot
26 by mail, not earlier than eighty-four days preceding the
27 election and not later than the sixth day preceding the
28 election.

29 (c) Upon acceptance of a completed application, the official
30 designated to supervise and conduct absentee voting shall
31 determine whether the following requirements have been
32 met:

33 (1) The application has been completed as required by law;

34 (2) The applicant is duly registered to vote in the precinct
35 of his or her residence and, in a primary election, is qualified
36 to vote the ballot of the political party requested;

37 (3) The applicant is authorized for the reasons given in the
38 application to vote an absentee ballot by mail;

39 (4) The address to which the ballot is to be mailed is an
40 address outside the county if the voter is applying to vote by
41 mail under the provisions of paragraph (A) or (B), subdivi-
42 sion (2), subsection (b), section one of this article; or subdivi-
43 sion (3) or (4) of said subsection;

44 (5) The applicant is not making his or her first vote after
45 having registered by postcard registration or, if the applicant
46 is making his or her first vote after having registered by
47 postcard registration, the applicant is exempt from these
48 requirements if they are physically disabled, a uniformed or
49 oversees voter, as defined by U.S.C. §1973, et seq. or at-
50 tended school out of state; and

51 (6) No regular and repeated pattern of applications for an
52 absentee ballot by mail for the reason of being out of the
53 county during the entire period of voting in person exists to
54 suggest that the applicant is no longer a resident of the
55 county.

56 (d) If the official designated to supervise and conduct
57 absentee voting determines that the required conditions have
58 been met, two representatives that are registered to vote with

59 different political party affiliations shall sign their names in
60 the places indicated on the back of the official ballot. If the
61 official designated to supervise and conduct absentee voting
62 determines the required conditions have not been met, or has
63 evidence that any of the information contained in the
64 application is not true, the official shall give notice to the
65 voter that the voter's absentee ballot will be challenged as
66 provided in this article and shall enter that challenge.

67 (e) (1) Within one day after the official designated to
68 supervise and conduct absentee voting has both the com-
69 pleted application and the ballot, the official shall ~~mail~~
70 provide to the voter at the address given on the application,
71 by mail or electronically, as appropriate the following items
72 as required and as prescribed by the Secretary of State:

73 (A) One of each type of official absentee ballot the voter is
74 eligible to vote, prepared according to law;

75 (B) One envelope, unsealed, which may have no marks
76 except the designation "Absent Voter's Ballot Envelope No.
77 1" and printed instructions to the voter;

78 (C) One postage paid envelope, unsealed, designated
79 "Absent Voter's Ballot Envelope No. 2";

80 (D) Instructions for voting absentee by mail;

81 ~~(E) For electronic systems, a device for marking by elec-~~
82 ~~tronically sensible pen or ink, as may be appropriate;~~

83 ~~(F)~~ (E) Notice that a list of write-in candidates is available
84 upon request; and

85 ~~(G)~~ (F) Any other supplies information or material required
86 for voting in the particular voting system.

87 (2) If the voter is an absent uniformed services voter or
88 overseas voter, as defined by 42 U.S.C. §1973, *et seq.*, the
89 official designated to supervise and conduct absentee voting
90 shall transmit the ballot to the voter via mail, or electroni-
91 cally as requested by the voter. If the voter does not desig-
92 nate a preference for transmittal, the clerk may select either
93 method of transmittal for the ballot. If the ballot is transmit-
94 ted electronically pursuant to this subdivision, the official
95 designated to supervise and conduct absentee voting shall
96 also transmit electronically:

97 (A) A waiver of privacy form, to be promulgated by the
98 Secretary of State;

99 (B) Instructions for voting absentee utilizing a federally
100 approved system for voting by mail or electronically;

101 (C) Notice that a list of write-in candidates is available
102 upon request; and

103 (D) Statement of the voter affirming the voter's current
104 name and address and whether or not he or she received
105 assistance in voting.

106 (f) The voter shall mark the ballot alone: *Provided*, That
107 the voter may have assistance in voting according to the
108 provisions of section six of this article.

109 (1) After the voter has voted the ballot or ballots to be
110 returned by mail, the voter shall:

111 (A) Place the ballot or ballots in envelope no. 1 and seal
112 that envelope;

113 (B) Place the sealed envelope no. 1 in envelope no. 2 and
114 seal that envelope;

115 (C) Complete and sign the forms on envelope no. 2; and

116 (D) Return that envelope to the official designated to
117 supervise and conduct absentee voting.

118 (2) If the ballot was transmitted electronically as provided
119 in subdivision (2), subsection (e) of this section, the voter
120 shall return the ballot in the same manner the ballot was
121 received, or the voter may return the ballot by United States
122 mail, along with a signed privacy waiver form.

123 (g) Except as provided in subsection (h) of this section,
124 absentee ballots returned by United States mail or other

125 express shipping service are to be accepted if:

126 (1) The ballot is received by the official designated to
127 supervise and conduct absentee voting no later than the day
128 after the election; or

129 (2) The ballot bears a postmark of the United States Postal
130 Service dated no later than election day and the ballot is
131 received by the official designated to supervise and conduct
132 absentee voting no later than the hour at which the board of
133 canvassers convenes to begin the canvass.

134 (h) Absentee ballots received through the United States
135 mail from persons eligible to vote an absentee ballot under
136 the provisions of subdivision (3), subsection (b), section one
137 of this article, relating to uniform services and overseas
138 voters, are to be accepted if the ballot is received by the
139 official designated to supervise and conduct absentee voting
140 no later than the hour at which the board of canvassers
141 convenes to begin the canvass.

142 (i) Voted ballots submitted electronically pursuant to
143 subdivision (2), subsection (f) of this section are to be
144 accepted if the ballot is received by the official designated to
145 supervise and conduct absentee voting no later than the close
146 of polls on election day: *Provided*, That the Secretary of

147 State's office shall enter into an agreement with the Federal
148 Voting Assistance Program of the United States Department
149 of Defense to transmit the ballots to the county clerks at a
150 time when two individuals of opposite political parties are
151 available to process the received ballots.

152 (j) Ballots received after the proper time which cannot be
153 accepted are to be placed unopened in an envelope marked
154 for the purpose and kept secure for twenty-two months
155 following the election, after which time they are to be
156 destroyed without being opened.

157 (k) Absentee ballots which are hand delivered are to be
158 accepted if they are received by the official designated to
159 supervise and conduct absentee voting no later than the day
160 preceding the election: *Provided*, That no person may hand
161 deliver more than two absentee ballots in any election and
162 any person hand delivering an absentee ballot is required to
163 certify that he or she has not examined or altered the ballot.
164 Any person who makes a false certification violates the
165 provisions of article nine of this chapter and is subject to
166 those provisions.

167 (l) Upon receipt of the sealed envelope, the official desig-
168 nated to supervise and conduct absentee voting shall:

169 (1) Enter onto the envelope any other required information;

170 (2) Enter the challenge, if any, to the ballot;

171 (3) Enter the required information into the permanent
172 record of persons applying for and voting an absentee ballot
173 in person; and

174 (4) Place the sealed envelope into a ballot box that is
175 secured by two locks with a key to one lock kept by the
176 president of the county commission and a key to the other
177 lock kept by the county clerk.

178 (m) Upon receipt of a ballot submitted electronically
179 pursuant to subdivision (2), subsection (f) of this section, the
180 official designated to supervise and conduct absentee voting
181 shall place the ballot in an envelope marked "Absentee by
182 Electronic Means" with the completed waiver: *Provided*,
183 That no ballots are to be processed without the presence of
184 two individuals of opposite political parties.

185 (n) All ballots received electronically prior to the close of
186 the polls on election day are to be tabulated in the manner
187 prescribed for tabulating absentee ballots submitted by mail
188 to the extent that those procedures are appropriate for the
189 applicable voting system. The clerk of the county commission

190 shall keep a record of absentee ballots sent and received
191 electronically.

§3-3-5a. Processing federal postcard applications.

1 When a federal postcard registration and absentee ballot
2 request (FPCA), as defined in subdivision (2), subsection (b),
3 section two of this article, is received by the official desig-
4 nated to supervise and conduct absentee voting, the official
5 shall examine the application and take the following steps:

6 (1) The official shall first enter the name of the applicant
7 in the permanent absentee voter's record for each election for
8 which a ballot is requested, make a photocopy of the applica-
9 tion for each election for which a ballot is requested and
10 place the separate copies in secure files to be maintained for
11 use in the various elections. Unless otherwise specified by
12 the voter, the application shall serve for any federal, state or
13 local election held during the calendar year. Voters must
14 indicate a political party preference on the FPCA. If not
15 affiliated with a political party as defined in section eight,
16 article one of this chapter, the voter must specifically request
17 the ballot of a political party in order to receive a primary
18 election ballot, provided the political party has elected to

19 allow unaffiliated voters to participate in its primary
20 election.

21 (2) The official designated to supervise and conduct
22 absentee voting shall determine if the applicant is registered
23 to vote at the residence address listed in the voting residence
24 section of the application. If the applicant is not registered,
25 or not registered at the address given, the official shall
26 deliver the original FPCA to the clerk of the county commis-
27 sion for processing, and the clerk of the county commission
28 shall process the application as an application for registra-
29 tion ~~and, if the application is received after the close of voter~~
30 ~~registration for the next succeeding election, the official~~
31 ~~shall challenge the absentee ballot for that election.~~ up to
32 and including the final day to accept an application for an
33 absentee ballot prior to any election.

34 (3) Except as provided in subdivision (2) of this section, the
35 federal application for an absentee ballot received from a
36 person qualified to use the application as provided in section
37 two of this article is to be processed as all other applications
38 and the ballot or ballots for each election for which ballots
39 are requested by the applicant is to be mailed to the voter on

40 the first day on which both the application and the ballot are
41 available.

**§3-3-5b. Procedures for voting a federal write-in absentee ballot
by qualified persons.**

1 (a) Notwithstanding any other provisions of this chapter,
2 a person qualified to vote an absentee ballot in accordance
3 with subdivision (3), subsection ~~(d)~~ (b), section one of this
4 article may apply not earlier than January 1, of an election
5 year for a ~~special~~ federal write-in absentee ballot for a
6 primary or general election, ~~in conjunction with the applica-~~
7 ~~tion for a regular absentee ballot or ballots. If the applica-~~
8 ~~tion is received after the forty-ninth day preceding the~~
9 ~~election, the~~ The official designated to supervise and conduct
10 absentee voting shall honor ~~only~~ the application for local,
11 state and federal offices in general, special and primary
12 elections.

13 (b) The application for a ~~special~~ federal write-in absentee
14 ballot may be made on the federal ~~postcard application form~~
15 write-in absentee ballot at the time the federal write-in
16 absentee ballot is submitted.

17 (c) In order to qualify for a ~~special~~ federal write-in absen-
18 tee ballot, the voter must state that he or she is unable to

19 vote by regular absentee ballot, or in person due to require-
20 ments of military service or due to living in isolated areas or
21 extremely remote areas of the world, or due to other circum-
22 stances making writ-in absentee voting impracticable or
23 impossible. The federal writ-in absentee ballot may be used
24 as a failsafe voting mechanism in the case of a qualified voter
25 who has not timely received a previously requested absentee
26 ballot. This statement may be made on the federal postcard
27 application or on a form ~~prepared~~ approved by the Secretary
28 of State and ~~supplied and returned~~ submitted with the
29 ~~special federal~~ federal write-in absentee ballot.

30 (d) Upon ~~receipt of the application~~ request of a qualified
31 voter within the time required, the official designated to
32 supervise and conduct absentee voting shall ~~issue~~ provide the
33 ~~special federal~~ federal write-in absentee ballot which is to be the
34 same ballot issued under the provisions of 42 U.S.C. §1973,
35 et seq., the Uniformed and Overseas Citizens Absentee
36 Voting Act of 1986. The ballot is to permit the elector to vote
37 in a primary election by indicating his or her political party
38 affiliation and the names of the specific candidates for each
39 office, and in a general election by writing in a party prefer-
40 ence for each office, the names of specific candidates for each

41 office, or the name of the person whom the voter prefers for
42 each office.

43 (e) When a ~~special~~ federal write-in absentee ballot is
44 received by the official designated to supervise and conduct
45 absentee voting from a voter: (1) Who mailed the write-in
46 ballot from any location within the ~~United States~~ county of
47 residence; ~~(2) who did not apply for a regular absentee ballot;~~
48 ~~(3) who did not apply for a regular absentee ballot by mail;~~
49 ~~or (4) whose application for a regular absentee ballot by mail~~
50 ~~was received less than thirty days before the election, or~~
51 (2) who is not a qualified voter as defined in accordance with
52 subdivision(3), subsection (b), section one of this article, the
53 write-in ballot may not be counted.

54 (f) Any write-in absentee ballot must be received by the
55 official designated to supervise and conduct absentee voting
56 ~~prior to the close of the polls on election day or it may not be~~
57 ~~counted as provided in subsection (g), section five of this~~
58 article.

**§3-3-6. Assistance to voter in voting an absent voter's ballot by
mail.**

1 (a) No voter shall receive any assistance in voting an
2 absent voter's ballot by mail unless he or she shall make a

3 declaration at the time he or she makes application for an
4 absent voter's ballot that because of blindness, disability,
5 advanced age or inability to read or write he or she requires
6 assistance in voting an absent voter's ballot.

7 (b) Upon receipt of an absent voter's ballot by mail, the
8 voter who requires assistance in voting such ballot and who
9 has indicated he or she requires such assistance and the
10 reasons therefor on the application may select any eligible
11 person, as defined in section three, article three of this
12 chapter, to assist him or her in voting.

13 (c) The person providing assistance in voting an absent
14 voter's ballot by mail shall make an affidavit on a form as
15 may be prescribed by the Secretary of State, that he will not
16 in any manner request, or seek to persuade, or induce the
17 voter to vote any particular ticket or for any particular
18 candidate or for or against any public question, and that he
19 will not keep or make any memorandum or entry of anything
20 occurring within the voting booth or compartment, and that
21 he will not, directly or indirectly, reveal to any person the
22 name of any candidate voted for by the voter, or which ticket
23 he had voted, or how he had voted on any public question, or
24 anything occurring within the voting booth or compartment

25 or voting machine booth, except when required pursuant to
26 law to give testimony as to such matter in a judicial proceed-
27 ing.

28 (d) The term “assistance in voting” as used in this section
29 shall mean assistance in physically marking the official
30 absent voter’s ballot for a voter, or reading or directing the
31 voter’s attention to any part of the official absent voter’s
32 ballot.

**ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCE-
DURES.**

**§3-5-7. Filing announcements of candidacies; requirements;
withdrawal of candidates when section applicable.**

1 (a) Any person who is eligible and seeks to hold an office
2 or political party position to be filled by election in any
3 primary or general election held under the provisions of this
4 chapter shall file a certificate of announcement declaring his
5 or her candidacy for the nomination or election to the office.

6 (b) The certificate of announcement shall be filed as
7 follows:

8 (1) Candidates for the House of Delegates, ~~or~~ the State
9 Senate, circuit court judge, family court judge, state execu-
10 tive committee and any other office or political position to be

11 filled by the voters of more than one county shall file a
12 certificate of announcement with the Secretary of State.

13 (2) Candidates for an office or political position to be filled
14 by the voters of a single county or a subdivision of a county,
15 except for candidates for the House of Delegates or State
16 Senate, shall file a certificate of announcement with the
17 clerk of the county commission.

18 (3) Candidates for an office to be filled by the voters of a
19 municipality shall file a certificate of announcement with the
20 recorder or city clerk.

21 (c) The certificate of announcement shall be filed with the
22 proper officer not earlier than the second Monday in January
23 next preceding the primary election day and not later than
24 the last Saturday in January next preceding the primary
25 election day and must be received before midnight, eastern
26 standard time, of that day or, if mailed, shall be postmarked
27 by the United States Postal Service before that hour.

28 (d) The certificate of announcement shall be on a form
29 prescribed by the Secretary of State on which the candidate
30 shall make a sworn statement before a notary public or other
31 officer authorized to administer oaths, containing the
32 following information:

33 (1) The date of the election in which the candidate seeks to
34 appear on the ballot;

35 (2) The name of the office sought; the district, if any, and
36 the division, if any;

37 (3) The legal name of the candidate and the exact name the
38 candidate desires to appear on the ballot, subject to limita-
39 tions prescribed in section thirteen, article five of this
40 chapter;

41 (4) The county of residence and a statement that the
42 candidate is a legally qualified voter of that county and the
43 magisterial district of residence for candidates elected from
44 magisterial districts or under magisterial district limitations;

45 (5) The specific address designating the location at which
46 the candidate resides at the time of filing, including number
47 and street or rural route and box number and city, state and
48 zip code;

49 (6) For partisan elections, the name of the candidate's
50 political party and a statement that the candidate: (A) Is a
51 member of and affiliated with that political party as evi-
52 denced by the candidate's current registration as a voter
53 affiliated with that party; and (B) has not ~~been registered as~~
54 ~~a voter affiliated with any other political party~~ changed their

55 voter's registration affiliation for a period of sixty days
56 before the date of filing the announcement;

57 (7) For candidates for delegate to national convention, the
58 name of the presidential candidate to be listed on the ballot
59 as the preference of the candidate on the first convention
60 ballot or a statement that the candidate prefers to remain
61 "uncommitted";

62 (8) A statement that the person filing the certificate of
63 announcement is a candidate for the office in good faith;

64 (9) The words "subscribed and sworn to before me this
65 _____ day of _____, 20____" and a space for the
66 signature of the officer giving the oath.

67 (e) The Secretary of State or the Board of Ballot Commis-
68 sioners, as the case may be, may refuse to certify the candi-
69 dacy or may remove the certification of the candidacy upon
70 receipt of a certified copy of the voter's registration record of
71 the candidate showing that the candidate was registered as
72 a voter in a party other than the one named in the certificate
73 of announcement during the sixty days immediately preced-
74 ing the filing of the certificate. ~~Provided, That unless~~ Unless
75 a signed formal complaint of violation of this section and the
76 certified copy of the voter's registration record of the

77 candidate are filed with the officer receiving that candidate's
78 certificate of announcement no later than ten days following
79 the close of the filing period, the candidate may not be
80 refused certification for this reason: Provided, That chal-
81 lenges to a candidate's eligibility are not precluded if a
82 formal complaint has not been received prior to the close of
83 the filing period.

84 (f) The certificate of announcement shall be subscribed and
85 sworn to by the candidate before some officer qualified to
86 administer oaths, who shall certify the same. Any person
87 who knowingly provides false information on the certificate
88 is guilty of false swearing and shall be punished in accor-
89 dance with section three, article nine of this chapter.

90 (g) Any candidate for delegate to a national convention
91 may change his or her statement of presidential preference
92 by notifying the Secretary of State by letter received by the
93 Secretary of State no later than the third Tuesday following
94 the close of candidate filing. When the rules of the political
95 party allow each presidential candidate to approve or reject
96 candidates for delegate to convention who may appear on the
97 ballot as committed to that presidential candidate, the
98 presidential candidate or the candidate's committee on his or

99 her behalf may file a list of approved or rejected candidates
100 for delegate and the Secretary of State shall list as “uncom-
101 mitted” any candidate for delegate who is disapproved by
102 the presidential candidate.

103 (h) A person may not be a candidate for more than one
104 office or office division at any election ~~Provided, That~~ except
105 that a candidate for an office may also be a candidate for
106 President of the United States, for membership on political
107 party executive committees or for delegate to a political
108 party national convention.

109 (i) A candidate who files a certificate of announcement for
110 more than one office or division and does not withdraw, as
111 provided by section eleven, article five of this chapter, from
112 all but one office prior to the close of the filing period may
113 not be certified by the Secretary of State or placed on the
114 ballot for any office by the Board of Ballot Commissioners.

115 ~~(j) The provisions of this section enacted during the regular~~
116 ~~session of the Legislature in the year 1991 shall apply to the~~
117 ~~primary election held in the year 1992 and every primary~~
118 ~~election held thereafter. The provisions of this section~~
119 ~~enacted during the regular session of the Legislature in the~~

120 ~~year 2009 shall apply to the primary election held in the year~~
121 ~~2010 and every primary election held thereafter.~~

**§3-5-13a. Order of offices and candidates on the ballot; uniform
drawing date.**

1 (a) The order of offices for state and county elections on all
2 ballots within the state shall be as prescribed herein. When
3 the office does not appear on the ballot in an election, ~~then~~
4 it shall be omitted from the sequence. When an unexpired
5 term for an office appears on the ballot along with a full
6 term, the unexpired term shall appear immediately below the
7 full term.

8 NATIONAL TICKET: President (and Vice President in the
9 general election), United States Senator, member of the
10 United States House of Representatives

11 STATE TICKET: Governor, Secretary of State, Auditor,
12 Treasurer, Commissioner of Agriculture, Attorney General,
13 Justice of the Supreme Court of Appeals, State Senator,
14 member of the House of Delegates, circuit court judge in
15 multicounty districts, family court judge in multicounty
16 districts, any other multicounty office and State Executive
17 Committee.

18 COUNTY TICKET: circuit court judge in single-county
19 districts, family court judge in single-county districts, clerk
20 of the circuit court, county commissioner, clerk of the county
21 commission, prosecuting attorney, sheriff, assessor, magis-
22 trate, surveyor, Congressional District Executive Committee,
23 Senatorial District Executive Committee in multicounty
24 districts, Delegate District Executive Committee in
25 multicounty districts and Soil Conservation District Direc-
26 tor.

27 NATIONAL CONVENTION: Delegate to the National
28 Convention — at-large; Delegate to the National Convention
29 — congressional district

30 DISTRICT TICKET: Board of Education; County Executive
31 Committee.

32 (b) Except for office divisions in which no more than one
33 person has filed a certificate of announcement, the arrange-
34 ment of names for all offices shall be determined by lot
35 according to the following provisions:

36 (1) On the fourth Tuesday following the close of the
37 candidate filing, beginning at nine o'clock a. m., a drawing
38 by lot shall be conducted in the office of the clerk of the
39 county commission in each county. Notice of the drawing

40 shall be given on the form for the certificate of announce-
41 ment and no further notice ~~shall be~~ is required. The clerk of
42 the county commission shall superintend and conduct the
43 drawing. ~~and~~ The method of conducting the drawing shall be
44 prescribed by the Secretary of State.

45 (2) Except as provided herein, the position of each candi-
46 date within each office division ~~shall be~~ is determined by the
47 position drawn for that candidate individually. ~~Provided,~~
48 ~~That if~~ If fewer candidates file for an office division than the
49 total number to be nominated or elected, the vacant positions
50 shall appear following the names of all candidates for the
51 office.

52 (3) Candidates for Delegate to National Convention who
53 have filed a commitment to a candidate for president shall be
54 listed alphabetically within the group of candidates commit-
55 ted to the same candidate for president and uncommitted
56 candidates shall be listed alphabetically in an uncommitted
57 category. The position of each group of committed candi-
58 dates and uncommitted candidates shall be determined by lot
59 by drawing the names of the presidential candidates and for
60 an uncommitted category.

61 (4) A candidate or the candidate's representative may
62 attend the drawings.

63 (c) By the close of business on the day of the random
64 drawing explained in this section, the clerk of the county
65 commission shall submit all relevant ballot information to
66 the Secretary of State in a manner prescribed by the Secre-
67 tary of State.

**§3-5-21. Party conventions to nominate presidential electors;
candidates; organization; duties.**

1 Candidates for presidential electors shall be nominated by
2 the delegated representatives of the political party assembled
3 in a state convention to be held during the months of June,
4 July or August next preceding any general election at which
5 presidential electors are to be elected. The State Executive
6 Committee of the political party, by resolution, shall desig-
7 nate the place and fix the date of the convention, shall
8 prescribe the number of delegates thereto and shall appor-
9 tion the delegates among the several counties of the state in
10 proportion to the vote cast in the state for the party's
11 candidate for Governor at the last preceding general election
12 at which a Governor was elected. The State Executive

13 Committee shall also ascertain and designate all offices for
14 which candidates are to be nominated at the convention.

15 At least sixty days prior to the date fixed for holding any
16 state convention, the chairman of the party's state executive
17 committee shall cause to be delivered to the party's county
18 executive committee in each county of the state a copy of the
19 resolutions fixing the time and place for holding the state
20 convention and prescribing the number of delegates from
21 each county to the convention. Within ten days after receipt
22 of the copy of the resolutions, the party executive committee
23 of each county shall meet and, by resolution, shall apportion
24 the delegates to the state convention among the several
25 magisterial districts of the county on a basis of the vote
26 received in the county by the candidate of the party for
27 Governor at the last preceding general election at which a
28 Governor was elected. ~~but~~ In such apportionment of county
29 delegates each magisterial district shall be entitled to at least
30 one delegate to the state convention. The party's county
31 executive committee shall call a meeting of the members of
32 the political party in mass convention in the county, which
33 meeting shall be held at least thirty days prior to the date
34 fixed for the state convention and at which meeting the

35 members of the political party in each magisterial district
36 shall elect the number of delegates to which the district is
37 entitled in the state convention.

38 The meeting place in the county shall be as central and
39 convenient as can reasonably be selected and all recognized
40 members of the political party ~~shall be~~ are entitled to
41 participate in any mass convention and in the selection of
42 delegates. Notice of the time and place of holding the county
43 mass convention and of the person who shall act as tempo-
44 rary chairman thereof shall be given by publication as a
45 Class II-O legal advertisement in compliance with the
46 provisions of article three, chapter fifty-nine of this code and
47 the publication area for the publication shall be the county.
48 The first publication shall be made not more than fifteen
49 days and the second publication shall be made not less than
50 five days prior to the date fixed for holding the convention.
51 The notice published shall specify the number of delegates
52 which each magisterial district in the county is entitled to
53 elect to the state convention.

54 Upon assembling, the mass convention of the county shall
55 choose a chairman and a secretary, who, within five days
56 after the holding of the convention, shall certify ~~to the~~

57 ~~chairman of the state executive committee of the political~~
58 ~~party and the chairman of the county committee of the~~
59 ~~political party~~, the names and addresses of the parties
60 selected as delegates to the state convention to the chairman
61 of the state executive committee of the political party and
62 the chairman of the county committee of the political party.

63 If, after the election, a vacancy exists for a delegate from
64 any magisterial district, the party's county executive com-
65 mittee, within ten days after the mass convention, shall
66 appoint a member of the political party in the magisterial
67 district to fill the vacancy and shall certify the appointment
68 to the chairman of the state executive committee of the
69 political party.

70 All contests over the selection of delegates to conventions
71 shall be heard and determined by the party executive
72 committee of the county from which the delegates are chosen
73 and the county executive committee shall, upon written
74 petition of any contest, meet for a hearing and make a
75 determination within ten days after the holding of a county
76 mass convention. The circuit court of the county and the
77 Supreme Court of Appeals of the state shall have concurrent
78 original jurisdiction to review, by mandamus or other proper

79 proceeding, the decision of a county executive committee in
80 any contest.

81 The delegates chosen and certified by and from the several
82 magisterial districts in the state and, in the event of any
83 contest, those prevailing in the contest, shall make up the
84 state convention. The number present of those entitled to
85 participate in any convention shall cast the entire vote to
86 which the county is entitled in the convention and it shall
87 require a majority vote to nominate any candidate for office.

88 All nominations made at state conventions shall be
89 certified within fifteen days thereafter by the chairman and
90 the secretary of the convention to the Secretary of State who
91 shall certify them to the clerk of the ~~circuit court~~ county
92 commission of each county concerned, ~~and the~~ The names of
93 the persons so nominated shall be printed upon the regular
94 ballot to be voted at the ensuing general election, except that
95 the names of the presidential elector candidates shall not be
96 printed thereon.

97 The delegates to any state convention may formulate and
98 promulgate the party platform or declaration of party
99 principles as to them shall seem advisable.

§3-5-23. Certificate nominations; requirements and control; penalties.

1 (a) Groups of citizens having no party organization may
2 nominate candidates who ~~are~~ were not already candidates in
3 the last preceding primary election for public office as
4 defined in section two, article one of this chapter otherwise
5 than by conventions or primary elections. In that case, the
6 candidate or candidates, jointly or severally, shall file a
7 nomination certificate in accordance with the provisions of
8 this section and the provisions of section twenty-four of this
9 article.

10 (b) The person or persons soliciting or canvassing signa-
11 tures of duly qualified voters on the certificate or certificates
12 may solicit or canvass duly registered voters residing within
13 the county, district or other political division represented by
14 the office sought but must first obtain from the clerk of the
15 county commission credentials which must be exhibited to
16 each voter canvassed or solicited. ~~which~~ The credentials may
17 be in the following form or effect:

18 State of West Virginia, County of, ss:
19 This certifies that the holder of this credential is hereby
20 authorized to solicit and canvass duly registered voters

21 residing in (here place the county, district or
 22 other political division represented by the office sought) to
 23 sign a certificate purporting to nominate
 24 (here place name of candidate heading list on certificate) for
 25 the office of and others, at the general
 26 election to be held on, 20.....

27 Given under my hand and the seal of my office this
 28 day of, 20.....
 29

30 Clerk, county commission of County.

31 The clerk of each county commission, upon proper applica-
 32 tion made as herein provided, shall issue such credentials
 33 and shall keep a record thereof.

34 (c) The certificate shall be personally signed by duly
 35 registered voters, in their own proper handwriting or by
 36 their marks duly witnessed, who must be residents within
 37 the county, district or other political division represented by
 38 the office sought wherein the canvass or solicitation is made
 39 by the person or persons duly authorized. The signatures
 40 need not all be on one certificate. The number of signatures
 41 shall be equal to not less than one percent of the entire vote
 42 cast at the last preceding general election for the office in the

43 state, district, county or other political division for which the
44 nomination is to be made. In offices elected on a staggered
45 term schedule, the number of signatures shall be equal to not
46 less than one percent of the entire vote cast at the last
47 preceding general election for the office term expiring. In no
48 event shall the number of signatures be less than twenty-
49 five. The number of signatures shall be equal to not less than
50 one percent of the entire vote cast at the last preceding
51 general election for any statewide, congressional or presi-
52 dential candidate but in no event shall the number be less
53 than twenty-five. Where two or more nominations may be
54 made for the same office, the total of the votes cast at the last
55 preceding general election for the candidates receiving the
56 highest number of votes on each ticket for the office ~~shall~~
57 ~~constitute~~ constitutes the entire vote. A signature on a
58 certificate may not be counted unless it be that of a duly
59 registered voter of the county, district or other political
60 division represented by the office sought wherein the
61 certificate was presented.

62 (d) The certificates shall state the name and residence of
63 each of the candidates; that he or she is legally qualified to
64 hold the office; that the subscribers are legally qualified and

65 duly registered as voters and desire to have the candidates
66 placed on the ballot; and may designate, by not more than
67 five words, a brief name of the party which the candidates
68 represent and may adopt a device or emblem to be printed on
69 the official ballot. All candidates nominated by the signing
70 of the certificates shall have their names placed on the
71 official ballot as candidates as if otherwise nominated under
72 the provisions of this chapter.

73 The Secretary of State shall prescribe the form and content
74 of the nomination certificates to be used for soliciting
75 signatures.

76 Offices to be filled by the voters of more than one county
77 shall use separate petition forms for the signatures of
78 qualified voters for each county.

79 Notwithstanding any other provision of this code to the
80 contrary, a duly registered voter may sign the certificate
81 provided in this section and may vote for candidates of his or
82 her choosing in the corresponding primary election.

83 (e) The Secretary of State, or the clerk of the county
84 commission, as the case may be, may investigate the validity
85 of the certificates and the signatures thereon. If, upon
86 investigation, there is doubt as to the legitimacy and the

87 validity of certificate, the Secretary of State may ask the
88 Attorney General of the state or the clerk of the county
89 commission may ask the prosecuting attorney of the county
90 to institute a quo warranto proceeding against the nominee
91 by certificate to determine his or her right to the nomination
92 to public office, ~~and upon~~ Upon request, ~~being made~~, the
93 Attorney General or prosecuting attorney shall institute the
94 quo warranto proceeding. The clerk of the county commis-
95 sion shall, at the request of the Secretary of State or the
96 clerk of the circuit court, compare the information from any
97 certificate to the county voter registration records. ~~in order~~
98 ~~to assist in determining the validity of any certificates.~~

99 (f) In addition to penalties prescribed elsewhere for
100 violation of this chapter, ~~any~~ a person violating the provi-
101 sions of this section is guilty of a misdemeanor and, upon
102 conviction, shall be fined not more than \$1,000, or confined
103 in jail not more than one year, or both fined and imprisoned:
104 *Provided*, That a criminal penalty may not be imposed upon
105 anyone who signs a nomination certificate and votes in the
106 primary election held after the date the certificate was
107 signed.

§3-5-24. Filing of nomination certificates; time.

1 (a) All certificates nominating candidates for the House of
2 Delegates, State Senate, State Executive Committee or
3 circuit court judge and any other office or political position
4 to be filled by the voters of more than one county shall file a
5 certificate of announcement with the Secretary of State
6 office under the preceding section shall be filed, in the case
7 of a candidate to be voted for by the voters of the entire state
8 or by any subdivision of the state other than a single county,
9 with the Secretary of State, and in the case of all candidates
10 for county and magisterial district offices, including all
11 offices to be filled by the voters of a single county, with the
12 clerk of the county commission, not later than August 1
13 preceding the general election.

14 (b) Each candidate shall pay the filing fee required by
15 section eight of this article at the time of the filing of the
16 nomination certificate. If any nomination certificate is not
17 timely filed or if the filing fee is not timely paid, the certifi-
18 cate may not be received by the Secretary of State, or by the
19 clerk of the county commission, as the case may be.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-4a. Filing requirements for write-in candidates.

1 Any eligible person who seeks to be elected by write-in
2 votes to an office, except delegate to national convention,
3 which is to be filled in a primary, general or special election
4 held under the provisions of this chapter, shall file a write-in
5 candidate's certificate of announcement as provided in this
6 section. No certificate of announcement may be accepted and
7 no person may be certified as a write-in candidate for a
8 political party nomination for any office or for election as
9 delegate to national convention.

10 (a) The write-in candidate's certificate of announcement
11 shall be in a form prescribed by the Secretary of State on
12 which the candidate shall make a sworn statement before a
13 notary public or other officer authorized to give oaths
14 containing the following information:

15 (1) The name of the office sought and the district and
16 division, if any;

17 (2) The legal name of the candidate and the first and last
18 name by which the candidate may be identified in seeking
19 the office;

20 (3) The specific address designating the location at which
21 the candidate resides at the time of filing, including number

22 and street or rural route and box number and city, state and
23 zip code;

24 (4) A statement that the person filing the certificate of
25 announcement is a candidate for the office in good faith; and

26 (5) The words “subscribed and sworn to before me this
27 _____ day of _____, ____” and a space for the
28 signature of the officer giving the oath.

29 (b) The certificate of announcement shall be filed with the
30 filing officer for the political division of the office as pre-
31 scribed in section seven, article five of this chapter.

32 (c) The certificate of announcement shall be filed with and
33 received by the proper filing officer as follows:

34 (1) Except as provided in subdivisions (2) and (3) of this
35 subsection, the certificate of announcement for any office
36 shall be received no later than the close of business on the
37 ~~forty-second~~ forty-ninth day before the election at which the
38 office is to be filled;

39 (2) When a vacancy occurs in the nomination of candidates
40 for an office on the ballot resulting from the death of the
41 nominee or from the disqualification or removal of a nominee
42 from the ballot by a court of competent jurisdiction not
43 earlier than the twenty-first day nor later than the fifth day

44 before the general election, the certificate shall be received
45 no later than the close of business on the fifth day before the
46 election or the close of business on the day following the
47 occurrence of the vacancy, whichever is later;

48 (3) When a vacancy occurs in an elective office which
49 would not otherwise appear on the ballot in the election but
50 which creates an unexpired term of one or more years which,
51 according to the provisions of this chapter, is to be filled by
52 election in the next ensuing election and the vacancy occurs
53 no earlier than the twenty-first day and no later than the
54 fifth day before the general election, the certificate shall be
55 received no later than the close of business on the fifth day
56 before the election or the close of business on the day
57 following the occurrence of the vacancy, whichever is later.

58 (d) Any eligible person who files a completed write-in
59 candidate's certificate of announcement with the proper
60 filing officer within the required time shall be certified by
61 that filing officer as an official write-in candidate:

62 (1) The Secretary of State shall, immediately following the
63 filing deadline, post the names of all official write-in
64 candidates for offices on the ballot in more than one county
65 and certify the name of each official write-in candidate to

66 the clerks of the county commissions of the appropriate
67 counties.

68 (2) The clerk of the county commission shall, immediately
69 following the filing deadline, post the names of all official
70 write-in candidates for offices on the ballot in one county
71 and certify and deliver to the election officials of the appro-
72 priate precincts the names of all official write-in candidates
73 and the office sought by each for statewide, district and
74 county offices on the ballot in the precinct for which valid
75 write-in votes will be counted. ~~and the~~ The names of the
76 write-in candidates shall be posted at the office where
77 absentee voting is conducted and at the precincts in accor-
78 dance with section twenty, article one of this chapter.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

1 As used in this article, the following terms have the
2 following definitions:

3 (1) “Ballot issue” means a constitutional amendment,
4 special levy, bond issue, local option referendum, municipal
5 charter or revision, an increase or decrease of corporate
6 limits or any other question that is placed before the voters
7 for a binding decision.

8 (2) "Broadcast, cable or satellite communication" means a
9 communication that is publicly distributed by a television
10 station, radio station, cable television system or satellite
11 system.

12 (3) "Candidate" means an individual who:

13 (A) Has filed a certificate of announcement under section
14 seven, article five of this chapter or a municipal charter;

15 (B) Has filed a declaration of candidacy under section
16 twenty-three, article five of this chapter;

17 (C) Has been named to fill a vacancy on a ballot; or

18 (D) Has declared a write-in candidacy or otherwise
19 publicly declared his or her intention to seek nomination or
20 election for any state, district, county or municipal office or
21 party office to be filled at any primary, general or special
22 election.

23 (4) "Candidate's committee" means a political committee
24 established with the approval of or in cooperation with a
25 candidate or a prospective candidate to explore the possibili-
26 ties of seeking a particular office or to support or aid his or
27 her nomination or election to an office in an election cycle.

28 If a candidate directs or influences the activities of more
29 than one active committee in a current campaign, those

30 committees shall be considered one committee for the
31 purpose of contribution limits.

32 (5) “Clearly identified” means that the name, nickname,
33 photograph, drawing or other depiction of the candidate
34 appears or the identity of the candidate is otherwise appar-
35 ent through an unambiguous reference, such as “the Gover-
36 nor,” “your Senator” or “the incumbent” or through an
37 unambiguous reference to his or her status as a candidate,
38 such as “the Democratic candidate for Governor” or “the
39 Republican candidate for Supreme Court of Appeals”.

40 (6) “Charitable Organization” means a person who is or
41 holds itself out to be a benevolent, educational, philan-
42 thropic, humane, patriotic, religious or eleemosynary
43 organization, or any person who solicits or obtains contribu-
44 tions solicited from the public for charitable purposes, or any
45 person who in any manner employs any appeal for contribu-
46 tions which may be reasonably interpreted to suggest that
47 any part of such contributions will be used for charitable
48 purposes. A chapter, branch, area, office or similar affiliates
49 or any person soliciting contributions within the state for a
50 charitable organization which has its principal place of

51 business outside the state is a charitable organization for the
52 purposes of this article.

53 ~~(6)~~(7) “Contribution” means a gift, subscription, loan,
54 assessment, payment for services, dues, advance, donation,
55 pledge, contract, agreement, forbearance or promise of
56 money or other tangible thing of value, whether conditional
57 or legally enforceable, or a transfer of money or other
58 tangible thing of value to a person, made for the purpose of
59 influencing the nomination, election or defeat of a candidate.

60 An offer or tender of a contribution is not a contribution if
61 expressly and unconditionally rejected or returned. A
62 contribution does not include volunteer personal services
63 provided without compensation: *Provided*, That a
64 nonmonetary contribution is to be considered at fair market
65 value for reporting requirements and contribution limita-
66 tions.

67 ~~(7)~~(8) “Corporate political action committee” means a
68 political action committee that is a separate segregated fund
69 of a corporation that may only accept contributions from its
70 restricted group as outlined by the rules of the State Election
71 Commission.

72 ~~(8)~~(9) “Direct costs of purchasing, producing or disseminat-
73 ing electioneering communications” means:

74 (A) Costs charged by a vendor, including, but not limited
75 to, studio rental time, compensation of staff and employees,
76 costs of video or audio recording media and talent, material
77 and printing costs and postage; or

78 (B) The cost of air time on broadcast, cable or satellite
79 radio and television stations, the costs of disseminating
80 printed materials, studio time, use of facilities and the
81 charges for a broker to purchase air time.

82 ~~(9)~~(10) “Disclosure date” means either of the following:

83 (A) The first date during any calendar year on which any
84 electioneering communication is disseminated after the
85 person paying for the communication has spent a total of
86 \$5,000 or more for the direct costs of purchasing, producing
87 or disseminating electioneering communications; or

88 (B) Any other date during that calendar year after any
89 previous disclosure date on which the person has made
90 additional expenditures totaling \$5,000 or more for the direct
91 costs of purchasing, producing or disseminating electioneer-
92 ing communications.

93 ~~(10)~~(11) “Election” means any primary, general or special
94 election conducted under the provisions of this code or under
95 the charter of any municipality at which the voters nominate
96 or elect candidates for public office. For purposes of this
97 article, each primary, general, special or local election
98 constitutes a separate election. This definition is not in-
99 tended to modify or abrogate the definition of the term
100 “nomination” as used in this article.

101 ~~(11)~~(12) (A) “Electioneering communication” means any
102 paid communication made by broadcast, cable or satellite
103 signal, or published in any newspaper, magazine or other
104 periodical that:

105 (i) Refers to a clearly identified candidate for Governor,
106 Secretary of State, Attorney General, Treasurer, Auditor,
107 Commissioner of Agriculture, Supreme Court of Appeals or
108 the Legislature;

109 (ii) Is publicly disseminated within:

110 (I) Thirty days before a primary election at which the
111 nomination for office sought by the candidate is to be
112 determined; or

113 (II) Sixty days before a general or special election at which
114 the office sought by the candidate is to be filled; and

115 (iii) Is targeted to the relevant electorate: *Provided*, That
116 for purposes of the general election of 2008 the amendments
117 to this article are effective October 1, 2008.

118 (B) "Electioneering communication" does not include:

119 (i) A news story, commentary or editorial disseminated
120 through the facilities of any broadcast, cable or satellite
121 television or radio station, newspaper, magazine or other
122 periodical publication not owned or controlled by a political
123 party, political committee or candidate: *Provided*, That a
124 news story disseminated through a medium owned or
125 controlled by a political party, political committee or
126 candidate is nevertheless exempt if the news is:

127 (I) A bona fide news account communicated in a publica-
128 tion of general circulation or through a licensed broadcasting
129 facility; and

130 (II) Is part of a general pattern of campaign-related news
131 that gives reasonably equal coverage to all opposing candi-
132 dates in the circulation, viewing or listening area;

133 (ii) Activity by a candidate committee, party executive
134 committee or caucus committee, or a political action commit-
135 tee that is required to be reported to the State Election
136 Commission or the Secretary of State as an expenditure

137 pursuant to section five of this article or the rules of the
138 State Election Commission or the Secretary of State promul-
139 gated pursuant to such provision: *Provided*, That independ-
140 ent expenditures by a party executive committee or caucus
141 committee or a political action committee required to be
142 reported pursuant to subsection (b), section two of this
143 article are not exempt from the reporting requirements of
144 this section;

145 (iii) A candidate debate or forum conducted pursuant to
146 rules adopted by the State Election Commission or the
147 Secretary of State or a communication promoting that
148 debate or forum made by or on behalf of its sponsor;

149 (iv) A communication paid for by any organization operat-
150 ing under Section 501(c)(3) of the Internal Revenue Code of
151 1986;

152 (v) A communication made while the Legislature is in
153 session which, incidental to promoting or opposing a specific
154 piece of legislation pending before the Legislature, urges the
155 audience to communicate with a member or members of the
156 Legislature concerning that piece of legislation;

157 (vi) A statement or depiction by a membership organiza-
158 tion, in existence prior to the date on which the individual

159 named or depicted became a candidate, made in a newsletter
160 or other communication distributed only to bona fide
161 members of that organization;

162 (vii) A communication made solely for the purpose of
163 attracting public attention to a product or service offered for
164 sale by a candidate or by a business owned or operated by a
165 candidate which does not mention an election, the office
166 sought by the candidate or his or her status as a candidate;
167 or

168 (viii) A communication, such as a voter's guide, which
169 refers to all of the candidates for one or more offices, which
170 contains no appearance of endorsement for or opposition to
171 the nomination or election of any candidate and which is
172 intended as nonpartisan public education focused on issues
173 and voting history.

174 ~~(12)~~(13) "Expressly advocating" means any communication
175 that:

176 (A) Uses phrases such as "vote for the Governor," "re-elect
177 your Senator," "support the Democratic nominee for Su-
178 preme Court," "cast your ballot for the Republican chal-
179 lenger for House of Delegates," "Smith for House," "Bob
180 Smith in '04," "vote Pro-Life" or "vote Pro-Choice" accom-

181 panied by a listing of clearly identified candidates described
182 as Pro-Life or Pro-Choice, “vote against Old Hickory,”
183 “defeat” accompanied by a picture of one or more candi-
184 dates, “reject the incumbent”;

185 (B) Communications of campaign slogans or individual
186 words, that can have no other reasonable meaning than to
187 urge the election or defeat of one or more clearly identified
188 candidates, such as posters, bumper stickers, advertisements,
189 etc., which say “Smith’s the One,” “Jones ‘06,” “Baker”, etc;
190 or

191 (C) Is susceptible of no reasonable interpretation other
192 than as an appeal to vote for or against a specific candidate.

193 ~~(13)~~(14) “Financial agent” means any individual acting for
194 and by himself or herself, or any two or more individuals
195 acting together or cooperating in a financial way to aid or
196 take part in the nomination or election of any candidate for
197 public office, or to aid or promote the success or defeat of
198 any political party at any election.

199 ~~(14)~~(15) “Fund-raising event” means an event such as a
200 dinner, reception, testimonial, cocktail party, auction or
201 similar affair through which contributions are solicited or

202 received by such means as the purchase of a ticket, payment
203 of an attendance fee or by the purchase of goods or services.

204 (17)(16) "In-kind contribution" means the donation of
205 goods, services, property or other thing of value other than
206 money. The basis for arriving at the dollar value of an in-
207 kind contribution is as follows:

208 (A) New items are valued at retail value;

209 (B) Used items are valued at fair market value; and

210 (C) Services rendered are valued at the actual cost of
211 service per hour.

212 For goods or services provided or rendered for an expendi-
213 ture less than the dollar value as determined by this section,
214 the difference between the calculated dollar value and the
215 actual cost shall be deemed an in-kind contribution. The
216 actual cost shall be reported as an expenditure of the
217 campaign committee as required under article eight of this
218 chapter. In-kind services do not include campaign-related
219 services voluntarily rendered for which no compensation is
220 asked or given.

221 (15)(17) "Independent expenditure" means an expenditure
222 by a person:

223 (A) Expressly advocating the election or defeat of a clearly
224 identified candidate; and

225 (B) That is not made in concert or cooperation with or at
226 the request or suggestion of such candidate, his or her
227 agents, the candidate's authorized political committee or a
228 political party committee or its agents.

229 Supporting or opposing the election of a clearly identified
230 candidate includes supporting or opposing the candidates of
231 a political party. An expenditure which does not meet the
232 criteria for an independent expenditure is considered a
233 contribution.

234 ~~(16)~~(18) "Membership organization" means a group that
235 grants bona fide rights and privileges, such as the right to
236 vote, to elect officers or directors and the ability to hold
237 office, to its members and which uses a majority of its
238 membership dues for purposes other than political purposes.

239 "Membership organization" does not include organizations
240 that grant membership upon receiving a contribution.

241 ~~(17)~~(19) "Name" means the full first name, middle name or
242 initial, if any, and full legal last name of an individual and
243 the full name of any association, corporation, committee or
244 other organization of individuals, making the identity of any

245 person who makes a contribution apparent by unambiguous
246 reference.

247 ~~(18)~~(20) “Person” means an individual, corporation,
248 partnership, committee, association and any other organiza-
249 tion or group of individuals.

250 ~~(19)~~(21) “Political action committee” means a committee
251 organized by one or more persons for the purpose of support-
252 ing or opposing the nomination or election of one or more
253 candidates. The following are types of political action
254 committees:

255 (A) A corporate political action committee, as that term is
256 defined by subdivision (8) of this section;

257 (B) A membership organization, as that term is defined by
258 subdivision(18) of this section;

259 (C) An unaffiliated political action committee, as that term
260 is defined by subdivision (29) of this section.

261 ~~(20)~~(22) “Political committee” means any candidate
262 committee, political action committee or political party
263 committee.

264 ~~(21)~~(23) “Political party” means a political party as that
265 term is defined by section eight, article one of this chapter or
266 any committee established, financed, maintained or con-

267 trolled by the party, including any subsidiary, branch or
268 local unit thereof and including national or regional affili-
269 ates of the party.

270 ~~(22)~~(24) “Political party committee” means a committee
271 established by a political party or political party caucus for
272 the purposes of engaging in the influencing of the election,
273 nomination or defeat of a candidate in any election.

274 ~~(23)~~(25) “Political purposes” means supporting or opposing
275 the nomination, election or defeat of one or more candidates
276 or the passage or defeat of a ballot issue, supporting the
277 retirement of the debt of a candidate or political committee
278 or the administration or activities of an established political
279 party or an organization which has declared itself a political
280 party and determining the advisability of becoming a
281 candidate under the precandidacy financing provisions of
282 this chapter.

283 ~~(24)~~(26) “Targeted to the relevant electorate” means a
284 communication which refers to a clearly identified candidate
285 for statewide office or the Legislature and which can be
286 received by one hundred forty thousand or more individuals
287 in the state in the case of a candidacy for statewide office,

288 eight thousand two hundred twenty or more individuals in
289 the district in the case of a candidacy for the State Senate
290 and two thousand four hundred ten or more individuals in
291 the district in the case of a candidacy for the House of
292 Delegates.

293 ~~(25)~~(27) “Two-year election cycle” means the twenty-four
294 month period that begins the day after a general election and
295 ends on the day of the subsequent general election.

296 ~~(26)~~(28) “Unaffiliated political action committee” means a
297 political action committee that is not affiliated with a
298 corporation or a membership organization.

§3-8-5a. Information required in financial statement.

1 (a) Each financial statement required by the provisions of
2 this article, other than a disclosure of electioneering commu-
3 nications pursuant to section two-b of this article, shall
4 contain only the following information:

5 (1) The name, residence and mailing address and telephone
6 number of each candidate, financial agent, treasurer or
7 person and the name, address and telephone number of each
8 association, organization or committee filing a financial
9 statement.

10 (2) The balance of cash and any other sum of money on
11 hand at the beginning and the end of the period covered by
12 the financial statement.

13 (3) The name of any person making a contribution and the
14 amount of the contribution. If the total contributions of any
15 one person in any one election cycle amount to more than
16 \$250, the residence and mailing address of the contributor
17 and, if the contributor is an individual, his or her major
18 business affiliation and occupation. ~~shall also be reported.~~ A
19 contribution totaling more than \$50 of currency of the
20 United States or currency of any foreign country by any one
21 contributor is prohibited and a violation of section five-d of
22 this article. The statement on which contributions are
23 required to be reported by this subdivision may not distin-
24 guish between contributions made by individuals and
25 contributions made by partnerships, firms, associations,
26 committees, organizations or groups.

27 (4) The total amount of contributions received during the
28 period covered by the financial statement.

29 (5) The name, residence and mailing address of any
30 individual or the name and mailing address of each lending
31 institution making a loan or of the spouse cosigning a loan,

32 as appropriate, the amount of any loan received, the date and
33 terms of the loan, including the interest and repayment
34 schedule and a copy of the loan agreement.

35 (6) The name, residence and mailing address of any
36 individual or the name and mailing address of each partner-
37 ship, firm, association, committee, organization or group
38 having previously made or cosigned a loan for which pay-
39 ment is made or a balance is outstanding at the end of the
40 period, together with the amount of repayment on the loan
41 made during the period and the balance at the end of the
42 period.

43 (7) The total outstanding balance of all loans at the end of
44 the period.

45 (8) The name, residence and mailing address of any person
46 to whom each expenditure was made or liability incurred,
47 including expenditures made on behalf of a candidate or
48 political committee that otherwise are not made directly by
49 the candidate or political committee, together with the
50 amount and purpose of each expenditure or liability incurred
51 and the date of each transaction.

52 (9) The total expenditure for the nomination, election or
53 defeat of a candidate or any person supporting, aiding or

54 opposing the nomination, election or defeat of ~~any~~ a candi-
55 date in whose behalf an expenditure was made or a contribu-
56 tion was given for the primary or other election.

57 (10) The total amount of expenditures made during the
58 period covered by the financial statement.

59 (b) Any unexpended balance at the time of making the
60 financial statements ~~herein provided for~~ shall be properly
61 accounted for in that financial statement and ~~shall~~ appear as
62 a beginning balance in the next financial statement.

63 (c) Each financial statement required by this section shall
64 contain a separate section setting forth the following
65 information for each fund-raising event held during the
66 period covered by the financial statement:

67 (1) The type of event, date held and address and name, if
68 any, of the place where the event was held.

69 (2) All of the information required by subdivision (3),
70 subsection (a) of this section.

71 (3) The total of all moneys received at the fund-raising
72 event.

73 (4) The expenditures incident to the fund-raising event.

74 (5) The net receipts of the fund-raising event.

75 (d) When any lump sum payment is made to ~~any~~ an
76 advertising agency or other disbursing person who does not
77 file a report of detailed accounts and verified financial
78 statements as required in this section, such lump sum
79 expenditures shall be accounted for in the same manner as
80 provided for herein.

81 (e) Any contribution or expenditure made by or on behalf
82 of a candidate for public office to ~~any other~~ another candi-
83 date or committee for a candidate for ~~any~~ a public office in
84 the same election shall be accounted for in accordance with
85 the provisions of this section.

86 (f) No person may make any contribution except from his,
87 her or its own funds unless such person discloses in writing
88 to the person required to report under this section the name,
89 residence, mailing address, major business affiliation and
90 occupation of the person ~~which~~ who furnished the funds to
91 the contributor. All such disclosures shall be included in the
92 statement required by this section.

93 (g) Any firm, association, committee or fund permitted by
94 section eight of this article to be a political committee shall
95 disclose on the financial statement its corporate or other
96 affiliation.

97 (h) No contribution may be made, directly or indirectly, in
98 a fictitious name, anonymously or by one person through an
99 agent, relative or other person so as to conceal the identity of
100 the source of the contribution or in any ~~other~~ manner so as
101 to effect concealment of the contributor's identity.

102 (i) No person may accept ~~any~~ a contribution for the
103 purpose of influencing the nomination, election or defeat of
104 a candidate or for the passage or defeat of ~~any~~ a ballot issue
105 unless the identity of the donor and the amount of the
106 contribution is known and reported.

107 (j) When ~~any~~ a person receives an anonymous contribution
108 which cannot be returned because the donor cannot be
109 identified, that contribution shall be donated to the General
110 Revenue Fund of the state. ~~Any~~ An anonymous contribution
111 shall be recorded as such on the candidate's financial
112 statement but may not be expended for election expenses. At
113 the time of filing, the financial statement shall include a
114 statement of distribution of anonymous contributions which
115 total amount shall equal the total of all anonymous contribu-
116 tions received during the period.

117 (k) Any membership organization which raises funds for
118 political purposes by payroll deduction, assessing them as

119 part of its membership dues or as a separate assessment, may
120 report the amount raised as follows:

121 (1) If the portion of dues or assessments designated for
122 political purposes equals ~~twenty-five dollars~~ \$25 or less per
123 member over the course of a calendar year, the total amount
124 raised for political purposes through membership dues or
125 assessments during the period is reported by showing the
126 amount required to be paid by each member and the number
127 of members.

128 (2) If the total payroll deduction for political purposes of
129 each participating member equals \$25 or less over the course
130 of a calendar or fiscal year, as specified by the organization,
131 the organization shall report the total amount received for
132 political purposes through payroll deductions during the
133 reporting period and, to the maximum extent possible, the
134 amount of each yearly payroll deduction contribution level
135 and the number of members contributing at each such
136 specified level. The membership organization shall maintain
137 records of the name and yearly payroll deduction amounts of
138 each participating member.

139 (3) If any member contributes to the membership organiza-
140 tion through individual voluntary contributions by means

141 other than payroll deduction, membership dues, or assess-
142 ments as provided in this subsection, the reporting require-
143 ments of subdivision (3), subsection (a) of this section shall
144 apply. Funds raised for political purposes must be segregated
145 from the funds for other purposes and listed in its report.

146 (l) Notwithstanding the provisions of section five of this
147 article or of the provisions of this section to the contrary, an
148 alternative reporting procedure may be followed by a
149 political party committee in filing financial reports for fund-
150 raising events if the total profit does not exceed \$5,000 per
151 year. A political party committee may report gross receipts
152 for the sale of food, beverages, services, novelty items, raffle
153 tickets or memorabilia except that any receipt of more than
154 \$50 from an individual or organization shall be reported as
155 a contribution. A political party committee using this
156 alternative method of reporting shall report:

- 157 ~~(i)~~(1) The name of the committee;
- 158 ~~(ii)~~(2) The type of fund-raising activity undertaken;
- 159 ~~(iii)~~(3) The location where the activity occurred;
- 160 ~~(iv)~~(4) The date of the fundraiser;
- 161 ~~(v)~~(5) The name of any individual who contributed more
162 than \$50 worth of items to be sold;

163 ~~(vi)~~(6) The name and amount received from any person or
 164 organization purchasing more than \$50 worth of food,
 165 beverages, services, novelty items, raffle tickets or memora-
 166 bilia;

167 ~~(vii)~~(7) The gross receipts of the fundraiser; and

168 ~~(viii)~~(8) The date, amount, purpose and name and address
 169 of each person or organization from whom items with a fair
 170 market value of more than \$50 were purchased for resale.

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-6. Unauthorized presence in election room; three hundred foot limit; penalties.

1 If any person, not herein authorized so to do, enters or
 2 attempts to enter the election room, except upon a lawful
 3 errand and for a proper purpose, or remains within three
 4 hundred feet of the outside entrance to the building housing
 5 the polling place, contrary to the provisions of this chapter,
 6 ~~he~~ the person shall be guilty of a misdemeanor and, on
 7 conviction thereof, shall be fined not less than \$50 nor more
 8 than \$500, or confined in the county jail for not more than
 9 thirty days.

10 Excepting those individuals provided for expressly in this
 11 or other sections of the code, only ~~full-time~~ employees of the

12 Secretary of State's office or ~~full-time~~ employees of the
13 respective county offices of the county clerk or the county
14 prosecutor, or persons under contract with the Secretary of
15 State to provide technical assistance to election officials or
16 international observers who have registered as such and
17 been approved by the Secretary of State may enter ~~or~~
18 ~~otherwise disturb~~ the polling place.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVI- SIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-14. Municipal executive committees; election expenses; applicability of state primary and general election laws; election days and hours; notice.

1 (a) Except as otherwise provided by charter provision or
2 ordinance or this code, municipal executive committees shall
3 exercise similar functions and be governed by the same laws
4 in regard to municipal primary elections and regular municipi-
5 pal elections as county executive committees in regard to
6 county-state primary and general elections, so far as the
7 same may be applicable.

8 **(b)** All expenses of conducting municipal primary elections
9 and regular municipal elections shall be paid by the munici-
10 pality.

11 **(c)** The provisions of chapter three of this code, referring
12 more particularly to primary elections and general elections,
13 shall, so far as the same can be applied and so far as not
14 otherwise provided by charter provision or ordinance, govern
15 the conduct of municipal primary elections and regular
16 municipal elections, as the case may be.

17 **(d)** No municipal primary election shall be held on the day
18 of the county-state primary election except as provided in
19 section five of this article nor less than twenty-five days
20 immediately preceding the regular municipal election unless
21 a shorter period of time is established by charter or ordi-
22 nance.

23 **(e)** A municipality may, by charter provision or ordinance,
24 set times for the polls to be open on election day which differ
25 from the times provided in section thirty-one, article one,
26 chapter three of this code so long as the municipal election
27 officials provide written notice of the different hours through
28 publication in a qualified newspaper in the manner set out

29 in section ten, article five, chapter three of this code, not less
30 than twenty-five days prior to the election day.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.

**§59-3-3. Rates for legal advertisements; computation; filing
affidavits with Secretary of State.**

1 (a) The rates which a publisher or proprietor of a qualified
2 newspaper in West Virginia may charge and receive for a
3 single or first publication of any legal advertisement set solid
4 depends on the bona fide circulation of the newspaper, as
5 follows:

6 (1) ~~Four cents~~ 7¢ per word if the qualified newspaper has
7 a bona fide circulation of less than one thousand, except as
8 provided in subdivision (1), subsection (a) of this section;

9 (2) ~~11 1/2 ¢~~ 14 1/2¢ per word if the qualified newspaper has
10 a bona fide circulation of one thousand to five thousand;

11 (3) ~~Nine cents~~ 12¢ per word if the qualified newspaper has
12 a bona fide circulation of more than five thousand but less
13 than ten thousand;

14 (4) ~~Ten cents~~ 13¢ per word if the qualified newspaper has

15 a bona fide circulation of more than ten thousand and less
16 than thirty thousand; or

17 (5) ~~Eleven cents~~ 14¢ per word if the qualified newspaper
18 has a bona fide circulation of thirty thousand or more.
19 ~~Provided, That on the first day of July in the year two~~
20 ~~thousand three and on the first day of July in the year two~~
21 ~~thousand four and on the first day of July in the year two~~
22 ~~thousand five the allowable rate per word in each of the~~
23 ~~classifications of qualified newspapers with reference to~~
24 ~~circulation as set forth in this subsection shall, for each~~
25 ~~classification, increase one cent per word over the prior~~
26 ~~year's rate.~~

27 (b) In computing the number of words in a legal advertise-
28 ment, not set solid, the basis is the size of type in which legal
29 advertising is set by the qualified newspaper making the
30 publication and ~~shall be~~ is computed at the legal rate as
31 though the matter were solid type, that is to say, on the basis
32 of eighty-four words to the single column inch in six point
33 type and fifty-four words to the single column inch in eight
34 point type and any other size type in proportion.

35 (c) In determining the cost of a legal advertisement which
36 is to appear more than once in the same qualified newspaper,

37 the cost for the first publication ~~shall be~~ is computed as
38 specified in subsections (a) and (b) of this section and the
39 cost of the second and each subsequent publication ~~shall be~~
40 is seventy-five percent of the cost of the first publication
41 computed as specified in subsections (a) and (b) of this
42 section.

43 ~~(d) The average bona fide circulation stated by each~~
44 ~~qualified newspaper in the statement filed by the newspaper~~
45 ~~with the United States post office department in October of~~
46 ~~each year shall control the rate of circulation classification~~
47 ~~of the qualified newspaper for the period commencing the~~
48 ~~first day of July of each year until the last day of June of the~~
49 ~~following year. On or before November~~ March 1 of each year,
50 the publisher or proprietor of each newspaper desiring to
51 publish any legal advertisement during the ensuing one year
52 time period commencing July 1, shall file with the Secretary
53 of State an affidavit stating the average bona fide circulation
54 of the newspaper as listed in the statement of Ownership,
55 Management, and Circulation filed by the newspaper with
56 the United States Postal Service in October of each year
57 ~~during the preceding twelve month time period ending the~~
58 ~~thirtieth day of September of each year and shall set forth~~

59 sufficient facts in the affidavit to show ~~whether~~ the newspa-
60 per is a qualified newspaper. The average bona fide circula-
61 tion stated in the affidavit ~~by each qualified newspaper shall~~
62 ~~control~~ controls the rate circulation classification for the
63 ensuing twelve-month period commencing July 1. Any
64 qualified newspaper ~~for which the required affidavit is not~~
65 ~~filed on or before the day of March of any calendar year shall~~
66 ~~be~~ which does not file the required affidavit on or before
67 March 1 of any calendar year is conclusively presumed to
68 have a bona fide circulation of less than one thousand for the
69 ensuing twelve-month period commencing July 1, ~~of such~~
70 ~~year a bona fide circulation of less than one thousand. At the~~
71 ~~time a publisher or proprietor of a qualified newspaper files~~
72 ~~an affidavit with the Secretary of State, as required by this~~
73 ~~subsection;~~ At the same time as filing the affidavit with the
74 Secretary of State, the publisher or proprietor shall also
75 notify the clerk of the county commission and the board of
76 education of the county in which the ~~qualified~~ newspaper is
77 published of the circulation classification ~~of the qualified~~
78 ~~newspaper and of the~~ and applicable rate for publishing
79 legal advertisements ~~in the qualified newspaper~~ during the
80 ensuing twelve-month period commencing July 1. If the

81 qualified newspaper is published in a municipality, the
82 publisher or proprietor shall at the same time ~~also~~ furnish
83 the same notification to the clerk or recorder of the munic-
84 pality.

85 (e) The rate charged for political advertising appearing in
86 a newspaper at any time or times during the time period
87 commencing thirty days prior to any primary or general
88 election and ending the day following the election may not
89 exceed one hundred five percent of the lowest commercial
90 rate charged by the newspaper in which the political adver-
91 tising appears.

92 (f) Nothing contained in this section prohibits qualified
93 newspapers from charging less than the specified rates for
94 any legal advertisement or from charging usual and custom-
95 ary rates for notarizing and producing additional copies of
96 the affidavits and statements required in section four of this
97 article.