

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 565**

BY SENATOR ROBERTS, TAKUBO, AND RUCKER

[Originating in the Committee on the Judiciary;

reported on March 19, 2021]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §3-1A-9; to amend and reenact §3-2-6, §3-2-11, §3-2-23, and §3-2-25 of said  
3 code; to amend and reenact §3-3-1, §3-3-3, §3-3-5, and §3-3-5c of said code; to amend  
4 and reenact §3-6-9 of said code; to amend and reenact §3-7-3, §3-7-6, and §3-7-7 of said  
5 code; to amend and reenact §3-8-2b of said code; and to amend said code by adding  
6 thereto a new section, designated §3-9-21, all relating to elections; prohibiting nonpublic  
7 funding sources for election administration and related expenses without prior written  
8 approval by the State Election Commission; clarifying the deadline for electronically  
9 submitted voter registration applications; requiring certain optional questions regarding  
10 updating or transferring voter registration or registering to vote to be presented by the  
11 Division of Motor Vehicles as part of application for motor vehicles driver's license or other  
12 official identification card; authorizing the Secretary of State to revise questions in  
13 legislative rules to conform to federal law; requiring the Division of Motor Vehicles to  
14 release certain information to the Secretary of State; requiring cancellation of voter  
15 registration upon receipt of certain official notices from a state or federal court; changing  
16 the time period for county clerks to initiate the confirmation notice mailing process in the  
17 systematic purging program for removal of ineligible voters from registration files to each  
18 odd-numbered year following a federal election; changing the time period of inactivity  
19 required for county clerks to initiate the confirmation notice mailing process in the  
20 systematic purging program for removal of ineligible voters from registration files from four  
21 years to two years; extending an electronic absentee ballot transmission option to certain  
22 voters eligible to vote an emergency absentee ballot and certain first responders; changing  
23 deadline for certain voters to become eligible to vote an emergency absentee ballot;  
24 changing the start and end date for early in-person voting; removing requirements

25           pertaining to punch card systems and gray envelopes; changing the deadline by which  
26           voters may submit their absentee-by-mail and emergency absentee ballot requests  
27           effective January 1, 2022; changing deadlines applicable to emergency absentee voting  
28           procedures which may be extended to certain voters by a county commission effective  
29           January 1, 2022; requiring boards of canvassers to transmit certain information  
30           electronically to the Secretary of State; making procedures for election contests before a  
31           special court applicable to contested elections of certain judges; changing jurisdiction of  
32           election contests for county, district, and municipal elections to the circuit courts; requiring  
33           a recount proceeding to be completed before filing certain election contests; providing  
34           certain procedural requirements for election contests before circuit courts; providing for  
35           appeals of a decision made by a circuit court in an election contest be made to the  
36           Supreme Court of Appeals; granting rulemaking authority to the Supreme Court of Appeals  
37           regarding election contests before circuit courts; requiring certain disclosures on certain  
38           political push-polls and prerecorded political telephone messages; providing for civil  
39           penalties for violations of requirements for disclosure of electioneering communications  
40           and disclaimers on telephone political messaging and polling; authorizing an action for  
41           equitable relief by a person injured by a violation of requirements for electioneering  
42           communications and disclaimers on telephone political messaging and polling; providing  
43           for award of costs and fees to prevailing plaintiffs in certain actions for equitable relief;  
44           defining the term “bona fide survey and opinion research”; prohibiting certain intentional  
45           actions obstructing or interfering with a voter during hours that polls are open for in-person  
46           voting in an election; and creating misdemeanor crime of certain intentional actions  
47           obstructing or interfering with a voter during hours that polls are open for in-person voting  
48           in an election and establishing penalties therefor.

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

**ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.**

**§3-1A-9. Nonpublic funding sources for election administration and related expenses.**

1        Notwithstanding any other provision of this code, the Secretary of State, county  
2        commissions, clerks of county commissions, municipal governing bodies, and all other public  
3        officials and bodies responsible for overseeing, administering, or regulating an election held within  
4        the State of West Virginia may not receive, accept, or expend gifts, donations, or funding from  
5        private individuals, corporations, partnerships, trusts, or any third party not provided through  
6        ordinary state or county appropriations without prior written approval by the State Election  
7        Commission.

**ARTICLE 2. REGISTRATION OF VOTERS.**

**§3-2-6. Time of registration application before an election.**

1        (a) Voter registration before an election closes on the 21st day before the election or on  
2        the first day thereafter which is not a Saturday, Sunday, or legal holiday.

3        (b) An application for voter registration, transfer of registration, change of name, or change  
4        of political party affiliation submitted by an eligible voter by the close of voter registration is  
5        effective for any subsequent primary, general, or special election if the following conditions are  
6        met:

7            (1) The application contains the information required by §3-2-5 (c) of this code. Incomplete  
8        applications for registration containing information which are submitted within the required time  
9        may be corrected within four business days after the close of registration if the applicant provides  
10       the required information; and

11           (2) The application is received by the appropriate clerk of the county commission no later  
12       than the hour of the close of registration or is otherwise submitted by the following deadlines:

13 (A) If mailed, the application shall be addressed to the appropriate clerk of the county  
14 commission and is postmarked by the postal service no later than the date of the close of  
15 registration. If the postmark is missing or illegible, the application is presumed to have been mailed  
16 no later than the close of registration if it is received by the appropriate clerk of the county  
17 commission no later than the third day following the close of registration;

18 (B) If accepted by a designated agency or motor vehicle licensing office, the application is  
19 received by that agency or office no later than the close of registration;

20 (C) If accepted through a registration outreach program, the application is received by the  
21 clerk, deputy clerk, or registrar no later than the close of registration;

22 (D) If accepted through an approved electronic voter registration system, the application  
23 is received by the clerk of the county commission or other entity designated by the Secretary of  
24 State ~~no later than the close of business~~ by 11:59 p.m. on the final day of registration; and

25 (3) The verification notice required by ~~the provisions of~~ §3-2-16 of this code mailed to the  
26 voter at the residence indicated on the application is not returned as undeliverable.

**§3-2-11. Registration in conjunction with driver licensing.**

1 (a) The Division of Motor Vehicles or other division or department that may be established  
2 by law to perform motor vehicle driver licensing services shall obtain as an integral and  
3 simultaneous part of every process of application for the issuance, renewal, or change of address  
4 of a motor vehicle driver's license, or official identification card pursuant to ~~the provisions of~~ §17B-  
5 2-1 *et seq.* of this code, when the division's regional offices are open for regular business, the  
6 following information from each qualified registrant:

7 (1) Full name, including first, middle, last, and any premarital names;

8 (2) Date of birth;

9 (3) Residence address and mailing address, if different;

10 (4) The applicant's electronic signature;

11 (5) Telephone number, if available;

- 12 (6) Email address, if available;  
13 (7) Political party membership, if any;  
14 (8) Driver's license number and last four digits of Social Security number;  
15 (9) A notation that the applicant has attested that he or she meets all voter eligibility  
16 requirements;

17 (10) United States citizenship status;

18 (11) Whether the applicant affirmatively ~~declined~~ agreed to become registered to vote  
19 during the transaction with the Division of Motor Vehicles, by presenting questions, in  
20 substantively the following form, under the heading "Optional Questions":

21 "[ ] Check this box if you are currently registered to vote in West Virginia and want to  
22 update your voter information."

23 "[ ] Check this box if you are currently registered to vote in another state and want to  
24 transfer your voter information."

25 "[ ] Check this box if you are currently not registered to vote in West Virginia and want to  
26 register to vote in West Virginia."

27 Provided, That the Secretary of State is authorized by legislative rule to revise the  
28 questions as may be necessary to conform to federal law;

29 (12) Date of application; and

30 (13) Any other information specified in rules adopted to implement this section.

31 (b) ~~Unless the applicant affirmatively declines to become registered to vote or update their~~  
32 ~~voter registration during the transaction with the Division of Motor Vehicles, If an applicant~~  
33 ~~answered any of the optional questions presented pursuant to subdivision (11), subsection (a) of~~  
34 ~~this section in the affirmative by checking the corresponding box, the Division of Motor Vehicles~~  
35 shall release all of the information obtained pursuant to subsection (a) of this section for such  
36 applicant to the Secretary of State, who shall forward the information to the county clerk for the  
37 relevant county to process the newly registered voter or updated information for the already-

38 registered voter pursuant to law. The Division of Motor Vehicles shall notify the applicant that by  
39 submitting his or her signature, the applicant grants written consent for the submission of the  
40 information obtained and required to be submitted to the Secretary of State pursuant to this  
41 section.

42 (c) By no later than January 1, 2020, the Division of Motor Vehicles shall create a regular  
43 process that allows the Secretary of State to fulfill his or her duties as provided by §3-2-3 of this  
44 code to confirm that persons who are noncitizens of the United States have not and cannot  
45 register to vote via the Online Voter Registration portal.

46 (d) Information regarding a person's failure to sign the voter registration application is  
47 confidential and may not be used for any purpose other than to determine voter registration.

48 (e) A qualified voter who submits the required information or update to his or her voter  
49 registration, pursuant to the provisions of subsection (a) of this section, in person at a driver  
50 licensing facility at the time of applying for, obtaining, renewing, or transferring his or her driver's  
51 license or official identification card and who presents identification and proof of age at that time  
52 is not required to make his or her first vote in person or to again present identification in order to  
53 make that registration valid.

54 (f) A qualified voter, who submits by mail or by delivery by a third party an application for  
55 registration on the form used in conjunction with driver licensing, is required to make his or her  
56 first vote in person and present identification as required for other mail registration in accordance  
57 with ~~the provisions of~~ §3-2-10(g) of this code. If the applicant has been previously registered in  
58 the jurisdiction and the application is for a change of address, change of name, change of political  
59 party affiliation, or other correction, the presentation of identification and first vote in person is not  
60 required.

61 (g) An application for voter registration submitted pursuant to ~~the provisions of~~ this section  
62 updates a previous voter registration by the applicant and authorizes the cancellation of  
63 registration in any other county or state in which the applicant was previously registered.

64 (h) A change of address from one residence to another within the same county which is  
65 submitted for driver licensing or nonoperator's identification purposes in accordance with  
66 applicable law serves as a notice of change of address for voter registration purposes if requested  
67 by the applicant after notice and written consent of the applicant.

68 (i) Completed applications for voter registration or change of address for voting purposes  
69 received by an office providing driver licensing services shall be forwarded to the Secretary of  
70 State within five days of receipt unless other means are available for a more expedited  
71 transmission. The Secretary of State shall remove and file any forms which have not been signed  
72 by the applicant and shall forward completed, signed applications to the clerk of the appropriate  
73 county commission within five days of receipt.

74 (j) Voter registration application forms containing voter information which are returned to  
75 a driver licensing office unsigned shall be collected by the Division of Motor Vehicles, submitted  
76 to the Secretary of State, and maintained by the Secretary of State's office according to the  
77 retention policy adopted by the Secretary of State.

78 (k) The Secretary of State shall establish procedures to protect the confidentiality of the  
79 information obtained from the Division of Motor Vehicles, including any information otherwise  
80 required to be confidential by other provisions of this code.

81 (l) A person registered to vote pursuant to this section may cancel his or her voter  
82 registration at any time by any method available to any other registered voter.

83 (m) This section does not require the Division of Motor Vehicles to determine eligibility for  
84 voter registration and voting.

85 (n) Except for the changes made to subsection (b) of this section during the 2017 regular  
86 legislative session, the changes made to this section during the 2016 regular legislative session  
87 become effective on July 1, 2021, and any costs associated therewith shall be paid by the Division  
88 of Motor Vehicles. The Commissioner of the Division of Motor Vehicles, the Secretary of the  
89 Department of Transportation, and the Secretary of State shall each appear before the Joint

90 Committee on Government and Finance and the Joint Standing Committee on the Judiciary,  
91 during the first interim meetings of such committees occurring after September 1, 2019, to present  
92 written reports containing a full and complete list of any infrastructure each agency requires to  
93 achieve the purposes of this section. Along with the report required by this subsection, the Division  
94 of Motor Vehicles shall submit a written schedule to both committees outlining how the division  
95 will implement the requirements of this section by July 1, 2021.

96 (o) The Secretary of State shall propose rules for legislative approval in accordance with  
97 ~~the provisions of §29A-3-1 et seq.~~ of this code to implement the requirements of this section.

**§3-2-23. Cancellation of registration of deceased or ineligible voters.**

1 The clerk of the county commission shall cancel the registration of a voter:

2 (1) Upon the voter's death as verified by:

3 (A) A death certificate from the Registrar of Vital Statistics or a notice from the Secretary  
4 of State that a comparison of the records of the registrar with the county voter registration records  
5 show the person to be deceased;

6 (B) The publication of an obituary or other writing clearly identifying the deceased person  
7 by name, residence, and age corresponding to the voter record; or

8 (C) An affidavit signed by the parent, legal guardian, child, sibling, or spouse of the voter  
9 giving the name and birth date of the voter, and date and place of death;

10 (2) Upon receipt of an official notice from a state or federal court that the person ~~has been~~:

11 (A) Has been excused from jury duty based on the person's legal residence or citizenship  
12 in a jurisdiction that is not West Virginia;

13 (B) Is deceased; or

14 (C) Has been convicted of a felony, of treason, or bribery in an election;

15 (3) Upon receipt of a notice from the appropriate court of competent jurisdiction of a  
16 determination of a voter's mental incompetence;

17 (4) Upon receipt from the voter of a written request to cancel the voter's registration, upon  
18 confirmation by the voter of a change of address to an address outside the county, upon notice  
19 from a voter registrar of another jurisdiction outside the county or state of the receipt of an  
20 application for voter registration in that jurisdiction, or upon notice from the Secretary of State that  
21 a voter registration application was accepted in another county of the state subsequent to the last  
22 registration date in the first county, as determined from a comparison of voter records; or

23 (5) Upon failure to respond and produce evidence of continued eligibility to register  
24 following the challenge of the voter's registration pursuant to ~~the provisions of~~ §3-2-28 of this  
25 code.

**§3-2-25. Systematic purging program for removal of ineligible voters from active voter  
registration files; comparison of data records; confirmation notices; public  
inspection list.**

1 (a) The systematic purging program provided in this section shall begin no earlier than  
2 October 1 of each odd-numbered year and shall be completed no later than February 1 of the  
3 following year. The clerk of the county commission shall transmit or mail to the Secretary of State  
4 a certification that the systematic purging program has been completed and all voters identified  
5 as no longer eligible to vote have been canceled in the statewide voter registration database in  
6 accordance with the law no later than February 15 in the year in which the purging program is  
7 completed.

8 (b) The Secretary of State shall provide for the comparison of data records of all counties.  
9 The Secretary of State shall, based on the comparison, prepare a list for each county which shall  
10 include the voter registration record for each voter shown on that county's list who appears to  
11 have registered or to have updated a voter registration in another county at a subsequent date.  
12 The resulting lists shall be returned to the appropriate county and the clerk of the county  
13 commission shall proceed with the confirmation procedure for those voters as prescribed in §3-  
14 2-26 of this code.

15 (c) The Secretary of State may provide for the comparison of data records of counties with  
16 the data records of the Division of Motor Vehicles, the registrar of vital statistics, and with the data  
17 records of any other state agency which maintains records of residents of the state, if the  
18 procedure is practical and the agency agrees to participate. Any resulting information regarding  
19 potentially ineligible voters shall be returned to the appropriate county and the clerk of the county  
20 commission shall proceed with the confirmation procedure as prescribed in §3-2-26 of this code.

21 (d) The records of all voters not identified pursuant to the procedures set forth in  
22 subsections (b) and (c) of this section shall be combined for comparison with United States Postal  
23 Service change of address information, as described in section 8(c)(A) of the National Voter  
24 Registration Act of 1993 (42 U.S.C. §1973gg, *et seq.*). The Secretary of State shall contract with  
25 an authorized vendor of the United States Postal Service to perform the comparison. The cost of  
26 the change of address comparison procedure shall be paid for from the combined voter  
27 registration and licensing fund established in §3-2-12 of this code and the cost of the confirmation  
28 notices, labels, and postage shall be paid for by the counties.

29 (e) The Secretary of State shall return to each county the identified matches of the county  
30 voter registration records and the postal service change of address records.

31 (1) When the change of address information indicates the voter has moved to a new  
32 address within the county, the clerk of the county commission shall enter the new address on the  
33 voter record and assign the proper precinct.

34 (2) The clerk of the county commission shall then mail to each voter who appears to have  
35 moved from the residence address shown on the registration records a confirmation notice  
36 pursuant to §3-2-26 of this code and of section 8(d)(2) of the National Voter Registration Act of  
37 1993 (42 U.S.C. §1973gg, *et seq.*). The notice shall be mailed, no later than December 31, to the  
38 new address provided by the postal service records or to the old address if a new address is not  
39 available.

40 (f) The clerk of the county commission shall indicate in the statewide voter registration  
41 database the name and address of each voter to whom a confirmation notice was mailed and the  
42 date on which the notice was mailed.

43 (g) Upon receipt of any response or returned mailing sent pursuant to the provisions of  
44 subsection (e) of this section, the clerk shall immediately enter the date and type of response  
45 received in the statewide voter registration database and shall then proceed in accordance with  
46 ~~the provisions of §3-2-26 of this code.~~

47 (h) For purposes of complying with the recordkeeping and public inspection requirements  
48 of the National Voter Registration Act of 1993 (42 U.S.C. §1973gg, *et seq.*), and with ~~the~~  
49 ~~provisions of §3-2-27 of this code,~~ the public inspection lists shall be maintained either in printed  
50 form kept in a binder prepared for such purpose and available for public inspection during regular  
51 business hours at the office of the clerk of the county commission or in read-only data format  
52 available for public inspection on computer terminals set aside and available for regular use by  
53 the general public. Information concerning whether or not each person has responded to the  
54 notice shall be entered into the statewide voter registration database upon receipt and shall be  
55 available for public inspection as of the date the information is received.

56 (i) Any voter to whom a confirmation notice was mailed pursuant to the provisions of  
57 subsection (e) of this section who fails to respond to the notice or to update his or her voter  
58 registration address by February 1 immediately following the completion of the program, shall be  
59 designated inactive in the statewide voter registration database. Any voter designated inactive  
60 shall be required to affirm his or her current residence address, on a form prescribed by the  
61 Secretary of State, upon appearing at the polls to vote.

62 (j) In addition to the preceding purging procedures, all counties using the change of  
63 address information of the United States Postal Service shall also, ~~once each four years during~~  
64 ~~the period established for systematic purging in the year following a presidential election year~~  
65 each odd-numbered year following a federal election, conduct the same procedure by mailing a

66 confirmation notice to those persons not identified as potentially ineligible through the change of  
67 address comparison procedure but who have not updated their voter registration records and  
68 have not voted in any election during the preceding ~~four~~ two calendar years. The purpose of this  
69 additional systematic confirmation procedure shall be to identify those voters who may have  
70 moved without filing a forwarding address, moved with a forwarding address under another name,  
71 died in another county or state so that the certificate of death was not returned to the clerk of the  
72 county commission, or who otherwise have become ineligible.

### **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 may vote an absentee ballot  
2 during the period of early voting in person.

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

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

7 (A) Disability, illness, injury, or other medical reason;

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

9 (C) Incarceration or home detention: *Provided*, That the underlying conviction is not for a  
10 crime which is a felony or a violation of §3-9-12, §3-9-13, or §3-9-16 of this code involving bribery  
11 in an election;

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

14 (A) Personal or business travel;

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

16 (C) Employment which because of hours worked and distance from the county seat make  
17 voting in person impossible;

18 (3) Any voter absent from the county throughout the period and available hours for voting  
19 in person and who is an absent uniformed services voter or overseas voter, as defined by 42  
20 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986,  
21 including members of the uniformed services on active duty, members of the merchant marine,  
22 spouses and dependents of those members on active duty, and persons who reside outside the  
23 United States and are qualified to vote in the last place in which the person was domiciled before  
24 leaving the United States;

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

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

28 (B) Serving in any other documented employment assignment of specific duration of four  
29 years or less;

30 (5) Any voter for whom the designated area for absentee voting within the county  
31 courthouse or annex of the courthouse and the voter's assigned polling place are inaccessible  
32 because of his or her physical disability; and

33 (6) Any voter who is participating in the Address Confidentiality Program as established  
34 by §48-28A-103 of this code.

35 (c) Registered voters and other qualified voters in the county are authorized to vote an  
36 electronic absentee ballot in the following circumstances:

37 (1) The voter has a physical disability, as defined in §3-3-1a of this code; or

38 (2) The voter is absent from the county throughout the period and available hours for  
39 voting in person and is an absent uniformed services voter or overseas voter, as defined by 42  
40 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986,  
41 including members of the uniformed services on active duty, members of the merchant marine,  
42 spouses and dependents of those members on active duty, and persons who reside outside the

43 United States and are qualified to vote in the last place in which the person was domiciled before  
44 leaving the United States-;

45 (3) The voter becomes eligible to vote an emergency absentee ballot as set forth in §3-3-  
46 1(d) of this code after the deadline to submit an application for an absentee-by-mail ballot; or

47 (4) The voter is a first responder and is called away unexpectedly to respond to an  
48 emergency outside the voter's county of residence which prevents the voter from participating in  
49 the election.

50 (d) Registered voters and other qualified voters in the county may, in the following  
51 circumstances, vote an emergency absentee ballot, subject to the availability of the services as  
52 provided in this article:

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

56 (2) Any voter who resides in a nursing home within the county of residence and would be  
57 otherwise unable to vote in person, providing the county commission has authorized the services  
58 if the voter has resided in the nursing home for a period of less than 30 days;

59 (3) Any voter who becomes confined, on or after the ~~seventh~~ 12th day preceding an  
60 election, to a specific location within the county because of illness, injury, physical disability,  
61 immobility due to advanced age, or another medical reason: *Provided*, That the county clerk may  
62 require a written confirmation by a licensed physician, physician's assistant, or advanced practice  
63 registered nurse that the voter meets the criteria of this subdivision before permitting such voter  
64 to vote an emergency absentee ballot; and

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

**§3-3-3. Early voting in person.**

1 (a) The voting period for early in-person voting is to be conducted during regular business  
2 hours beginning on the ~~thirteenth~~ 17th day before the election and continuing through the ~~third~~  
3 seventh day before the election. Additionally, early in-person voting is to be available from 9:00  
4 a.m. to 5:00 p.m. on Saturdays during the early voting period.

5 (b) Any person desiring to vote during the period of early in-person voting shall, upon  
6 entering the election room, clearly state his or her name and residence to the official or  
7 representative designated to supervise and conduct absentee voting. If that person is found to be  
8 duly registered as a voter in the precinct of his or her residence, he or she is required to sign his  
9 or her name in the space marked "signature of voter" on the pollbook. If the voter is unable to sign  
10 his or her name due to illiteracy or physical disability, the person assisting the voter and witnessing  
11 the mark of the voter shall sign his or her name in the space provided. No ballot may be given to  
12 the person until he or she signs his or her name on the pollbook.

13 (c) When the voter's signature or mark is properly on the pollbook, two qualified  
14 representatives of the official designated to supervise and conduct absentee voting shall sign their  
15 names in the places indicated on the back of the official ballot.

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

19 (e) The official designated to supervise and conduct absentee voting shall provide each  
20 person voting an absentee ballot in person the following items to be printed as prescribed by the  
21 Secretary of State:

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

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

26           ~~(3)~~(2) In counties using optical scan systems, one of each type of official absentee ballot  
27 the voter is eligible to vote, prepared according to law, and a secrecy sleeve; or

28           ~~(4)~~(3) For direct recording election systems, access to the voting equipment in the voting  
29 booth.

30           (f) The voter shall enter the voting booth alone and there mark the ballot: *Provided*, That  
31 the voter may have assistance in voting according to ~~the provisions of §3-4-4 of this code.~~ After  
32 the voter has voted the ballot or ballots, the absentee voter shall: Place the ballot or ballots in the  
33 ~~gray~~ secrecy envelope and return the ballot or ballots to the official designated to supervise and  
34 conduct the absentee voting: *Provided, however*, That in direct recording election systems, once  
35 the voter has cast his or her ballot, the voter shall exit the polling place.

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

38           (1) Remove the ballot stub;

39           (2) Place ~~punch card ballots and~~ the paper ballots into one envelope which ~~shall~~ may not  
40 have any marks except the precinct number and seal the envelope; and

41           (3) Place ballots for all voting systems into a ballot box that is secured by two locks with a  
42 key to one lock kept by the president of the county commission and a key to the other lock kept  
43 by the county clerk.

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

1           (a) Upon oral or written request, the official designated to supervise and conduct absentee  
2 voting shall provide to any voter of the county, in person, by mail, or electronically, the appropriate  
3 application for voting absentee as provided in this article. The voter shall complete and sign the  
4 application in his or her own handwriting or, if the voter is unable to complete the application  
5 because of illiteracy or physical disability:

6           (1) The person assisting the voter and witnessing the mark of the voter shall sign his or  
7 her name in the space provided; or

8 (2) The person, if eligible to vote by electronic absentee ballot due to physical disability,  
9 confinement as provided in §3-3-1(d) of this code after the deadline to submit an application for  
10 an absentee-by-mail ballot, or is a first responder unexpectedly called away to respond to an  
11 emergency outside the voter's county of residence which prevents the voter from participating in  
12 the election, may complete and verify the application by available electronic means prescribed by  
13 the Secretary of State.

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

17 (1) For persons eligible to vote an absentee ballot under the provisions of §3-3-1(b)(3) of  
18 this code, relating to absent uniformed services and overseas voters, not earlier than January 1  
19 of an election year or 84 days preceding the election, whichever is earlier, and not later than the  
20 ~~sixth~~ 11th day preceding the election, which application is to, upon the voter's request, be  
21 accepted as an application for the ballots for all elections in the calendar year; and

22 (2) For all other persons eligible to vote an absentee ballot by mail or electronically, not  
23 earlier than January 1 of an election year or 84 days preceding the election, whichever is earlier,  
24 and not later than the ~~sixth~~ 11th day preceding the election.

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

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

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

30 (3) The applicant is authorized for the reasons given in the application to vote an absentee  
31 ballot by mail or electronically;

32 (4) The address to which a ballot is to be mailed is an address outside the county if the  
33 voter is applying to vote by mail under ~~the provisions of~~ §3-3-1(b)(2)(A), §3-3-1(b)(2)(B), §3-3-  
34 1(b)(3), or §3-3-1(b)(4) of this code;

35 (5) The applicant is not making his or her first vote after having registered by postcard  
36 registration or, if the applicant is making his or her first vote after having registered by postcard  
37 registration, the applicant is subject to one of the exceptions provided in §3-2-10 of this code; and

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

41 (d) (1) If the official designated to supervise and conduct absentee voting determines that  
42 the required conditions have been met for voting an absentee ballot by mail, two representatives  
43 that are registered to vote with different political party affiliations shall sign their names in the  
44 places indicated on the back of the official ballot. If the official designated to supervise and conduct  
45 absentee voting determines the required conditions have not been met or has evidence that any  
46 of the information contained in the application is not true, the official shall give notice to the voter  
47 that the voter's absentee ballot will be challenged as provided in this article and shall enter that  
48 challenge.

49 (2) If the official designated to supervise and conduct electronic voting determines that a  
50 voter is eligible to submit an electronic ballot because the voter is an absent uniformed services  
51 voter or overseas voter or a person with a physical disability, is confined as provided in §3-3-1(d)  
52 of this code after the deadline to submit an application for an absentee-by-mail ballot, or is a first  
53 responder unexpectedly called away to respond to an emergency outside the voter's county of  
54 residence which prevents the voter from participating in the election, the official designated to  
55 supervise absentee voting shall cause the absentee ballot to be transmitted electronically in the  
56 manner required for the electronic ballot marking tool or other electronic means.

57 (e)(1) Beginning on the 46th day prior to election day, within one day after the official  
58 designated to supervise and conduct absentee voting has both the completed application and the  
59 ballot, the official shall provide to the voter at the address given on the application, or by the

60 appropriate electronic delivery method, the following items as required and as prescribed by the  
61 Secretary of State:

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

64 (B) For persons voting absentee ballot by mail, one envelope, unsealed, which may have  
65 no marks except the designation "Absent Voter's Ballot Envelope No. 1" and printed instructions  
66 to the voter;

67 (C) For persons voting absentee ballot by mail, one postage paid envelope, unsealed,  
68 designated "Absent Voter's Ballot Envelope No. 2";

69 (D) Instructions for voting absentee by mail or electronically;

70 (E) For electronic systems or transmission, an electronic means by which eligible voters  
71 with physical disabilities may mark the absentee ballot without assistance, as prescribed by the  
72 Secretary of State; and

73 (F) Notice that a list of write-in candidates is available upon request.

74 (2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42  
75 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, is  
76 confined as provided in §3-3-1(d) of this code, or is a first responder unexpectedly called away to  
77 respond to an emergency outside the voter's county of residence which prevents the voter from  
78 participating in the election, the official designated to supervise and conduct absentee voting shall  
79 transmit the ballot to the voter via mail, or electronically, as requested by the voter: Provided, That  
80 voters confined as provided in §3-3-1(d) of this code may not be provided the option to vote an  
81 electronic absentee ballot if the voter is not confined after the deadline to submit an absentee-by-  
82 mail application. If the voter does not designate a preference for transmittal, the clerk may select  
83 either method of transmittal for the ballot. If the ballot is transmitted electronically pursuant to this  
84 subdivision, the official designated to supervise and conduct absentee voting shall also transmit  
85 electronically:

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

87 (B) Instructions for voting absentee by mail or electronically;

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

89 (D) A statement of the voter affirming the voter's current name and address and whether  
90 or not he or she received assistance in voting.

91 (f) The voter shall mark the ballot alone: *Provided*, That the voter may have assistance in  
92 voting according to the provisions of §3-3-6 of this code.

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

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

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

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

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

99 (2) If the ballot was transmitted electronically as provided in subdivisions (1) or (2),  
100 subsection (e) of this section, the voter shall return the ballot electronically, in the manner  
101 prescribed by the Secretary of State, or the voter may return the ballot by United States mail,  
102 along with a signed privacy waiver form.

103 (g) Except as provided in subsection (h) of this section, absentee ballots returned by  
104 United States mail or other express shipping service are to be accepted if:

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

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

111 (h) Absentee ballots received through the United States mail from persons eligible to vote  
112 an absentee ballot under ~~the provisions of §3-3-1(b)(3)~~ of this code, relating to uniform services  
113 and overseas voters, are to be accepted if the ballot is received by the official designated to  
114 supervise and conduct absentee voting no later than the hour at which the board of canvassers  
115 convenes to begin the canvass.

116 (i) Voted ballots submitted electronically are to be accepted if the ballot is received by the  
117 official designated to supervise and conduct absentee voting no later than the close of polls on  
118 election day: *Provided*, That for uniform services and overseas voters, the Secretary of State's  
119 office shall enter into an agreement with the Federal Voting Assistance Program of the United  
120 States Department of Defense to transmit the ballots to the county clerks at a time when two  
121 individuals of opposite political parties are available to process the received ballots. For persons  
122 casting absentee ballots electronically due to physical disability, confinement as provided in § 3-  
123 3-1(d) of this code, or is a first responder unexpectedly called away which prevents the voter from  
124 participating in the election, the county clerk shall designate two individuals of opposite political  
125 parties to process the received ballots in the manner required by the particular electronic ballot  
126 marking tool or other electronic means of returning the electronic absentee ballot.

127 (j) Ballots received after the proper time which cannot be accepted are to be placed  
128 unopened in an envelope marked for the purpose and kept secure for 22 months following the  
129 election, after which time they are to be destroyed without being opened.

130 (k) Absentee ballots which are hand delivered are to be accepted if they are received by  
131 the official designated to supervise and conduct absentee voting no later than the day preceding  
132 the election: *Provided*, That no person may hand deliver more than two absentee ballots in any  
133 election and any person hand delivering an absentee ballot is required to certify that he or she  
134 has not examined or altered the ballot. Any person who makes a false certification violates ~~the~~  
135 ~~provisions of §3-9-1 et seq.~~ of this code and is subject to those provisions.

136 (l) Upon receipt of the sealed envelope, the official designated to supervise and conduct  
137 absentee voting shall:

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

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

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

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

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

150 (n) All ballots received electronically prior to the close of the polls on election day are to  
151 be tabulated in the manner prescribed for tabulating absentee ballots submitted by mail to the  
152 extent that those procedures are appropriate for the applicable voting system. The clerk of the  
153 county commission shall keep a record of absentee ballots sent and received electronically.

154 (o) The changes made to this section during the regular session of the Legislature, 2021,  
155 shall be effective January 1, 2022.

**§3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.**

1 (a) Notwithstanding any other provision of this chapter, a person qualified to vote an  
2 emergency absentee ballot, as provided in §3-3-1(c) of this code, may vote an emergency  
3 absentee ballot under the procedures established in this section. The county commission may  
4 adopt a policy extending the emergency absentee voting procedures to: (1) Qualified voters in  
5 hospitals or other duly licensed health care facilities within an adjacent county or within 35 miles

6 of the county seat; (2) qualified voters in nursing homes within the county; or (3) qualified voters  
7 who become confined, on or after the ~~seventh~~ 12th day preceding an election, to a specific  
8 location within the county because of illness, injury, physical disability, immobility due to advanced  
9 age, or another medical reason: *Provided*, That the policy is to be adopted by the county  
10 commission at least 90 days prior to the election that will be affected and a copy of the policy is  
11 to be filed with the Secretary of State.

12 (b) On or before the 56th day preceding the date on which any election is to be held, the  
13 official designated to supervise and conduct absentee voting shall notify the county commission  
14 of the number of sets of emergency absentee ballot commissioners which he or she determines  
15 necessary to perform the duties and functions pursuant to this section.

16 (c) A set of emergency absentee ballot commissioners at-large shall consist of two  
17 persons with different political party affiliations appointed by the county commission in accordance  
18 with the procedure prescribed for the appointment of election commissioners under ~~the provisions~~  
19 ~~of~~ §3-1-1 *et seq.* of this code. Emergency absentee ballot commissioners have the same  
20 qualifications and rights and take the same oath required under the provisions of this chapter for  
21 commissioners of elections. Emergency absentee ballot commissioners are to be compensated  
22 for services and expenses in the same manner as commissioners of election or poll clerks  
23 obtaining and delivering election supplies under §3-1-44 of this code.

24 (d) Upon request of the voter or a member of the voter's immediate family or, when the  
25 county commission has adopted a policy to provide emergency absentee voting services to  
26 nursing home residents within the county, upon request of a staff member of the nursing home,  
27 the official designated to supervise and conduct absentee voting, upon receiving a proper request  
28 for voting an emergency absentee ballot no earlier than the ~~seventh~~ 12th day next preceding the  
29 election and no later than noon of election day shall supply to the emergency absentee ballot  
30 commissioners the application for voting an emergency absentee ballot and the balloting  
31 materials. The emergency absentee ballot application is to be prescribed by the Secretary of State

32 and is to include the name, residence address and political party affiliation of the voter, the date,  
33 location, and reason for confinement in the case of an emergency, and the name of the attending  
34 physician.

35 (e) The application for an emergency absentee ballot is to be signed by the person  
36 applying. If the person applying for an emergency absentee ballot is unable to sign his or her  
37 application because of illiteracy or physical disability, he or she is to make his or her mark on the  
38 signature line provided for an illiterate or disabled applicant, the mark is to be witnessed. The  
39 person assisting the voter and witnessing the mark of the voter shall sign his or her name in the  
40 space provided.

41 (f) A declaration is to be completed and signed by each of the emergency absentee ballot  
42 commissioners, stating their names, the date on which they appeared at the place of confinement  
43 of the person applying for an emergency absentee ballot, and the particulars of the confinement.

44 (g) At least one of the emergency absentee ballot commissioners receiving the balloting  
45 materials shall sign a receipt which is to be attached to the application form. Each of the  
46 emergency absentee ballot commissioners shall deliver the materials to the absent voter, await  
47 his or her completion of the application and ballot and return the application and the ballot to the  
48 official designated to supervise and conduct absentee voting. Upon delivering the application and  
49 the voted ballot to the official, the emergency absentee ballot commissioners shall sign an oath  
50 that no person other than the absent voter voted the ballot. The application and the voted ballot  
51 are to be returned to the official designated to supervise and conduct absentee voting prior to the  
52 close of the polls on election day. Any ballots received by the official after the time that delivery  
53 may reasonably be made but before the closing of the polls are to be delivered to the canvassing  
54 board along with the absentee ballots challenged in accordance with the provisions of §3-3-10 of  
55 this code.

56 (h) Upon receiving the application and emergency absentee ballot, the official designated  
57 to supervise and conduct absentee voting shall ascertain whether the application is complete,

58 whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the  
59 voter is properly registered to vote with the office of the clerk of the county commission. If the  
60 voter is found to be properly registered in the precinct shown on the application, the ballot is to be  
61 delivered to the precinct election commissioner pursuant to §3-3-7 of this code. If the voter is  
62 found not to be registered or is otherwise ineligible to vote an emergency ballot, the ballot is to be  
63 challenged for the appropriate reason provided for in §3-3-10 of this code.

64 (i) If either or both of the emergency absentee ballot commissioners refuse to sign any  
65 application for voting an emergency absentee ballot, the voter may vote as an emergency  
66 absentee and the ballot will be challenged in accordance with ~~the provisions of~~ §3-3-10 of this  
67 code, in addition to those absentee ballots subject to challenge as provided in that section.

68 (j) Any voter who receives assistance in voting an emergency absentee ballot shall comply  
69 with ~~the provisions of~~ §3-3-6 of this code. Any other provisions of this chapter relating to absentee  
70 ballots not altered by the provisions of this section are to govern the treatment of emergency  
71 absentee ballots.

72 (k) The changes made to this section during the regular session of the Legislature, 2021,  
73 shall be effective January 1, 2022.

## **ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.**

### **§3-6-9. Canvass of returns; declaration of results; recounts; recordkeeping.**

1 (a) The commissioners of the county commission shall be ex officio a board of canvassers  
2 and, as such, shall keep in a well-bound book, marked "election record", a complete record of all  
3 their proceedings in ascertaining and declaring the results of every election in their respective  
4 counties.

5 (1) They shall convene as the canvassing board at the courthouse on the fifth day  
6 (Sundays excepted) after every election held in their county, or in any district of the county, and  
7 the officers in whose custody the ballots, pollbooks, registration records, tally sheets, and  
8 certificates have been placed shall lay them before the board for examination.

9           (2) They may, if considered necessary, require the attendance of any of the  
10 commissioners, poll clerks or other persons present at the election to appear and testify  
11 respecting the election and make other orders as shall seem proper to procure correct returns  
12 and ascertain the true results of the election in their county; but in this case all the questions to  
13 the witnesses and all the answers to the questions and evidence shall be taken down in writing  
14 and filed and preserved. All orders made shall be entered upon the record.

15           (3) They may adjourn, from time to time, but no longer than absolutely necessary.

16           (4) When a majority of the commissioners are not present, the meeting shall stand  
17 adjourned until the next day and so from day to day, until a quorum is present.

18           (5) All meetings of the commissioners sitting as a board of canvassers shall be open to  
19 the public.

20           (6) The board shall proceed to open each sealed package of ballots laid before them and,  
21 without unfolding them, count the number in each package and enter the number upon their  
22 record.

23           (7) The ballots shall then be again sealed carefully in a new envelope and each member  
24 of the board shall write his or her name across the place where the envelope is sealed.

25           (8) After canvassing the returns of the election, the board shall publicly declare the results  
26 of the election.

27           (A) For a candidate on the ballot in entirely one county, the board shall not enter an order  
28 certifying the election results for a period of 48 hours after the declaration. At the end of the 48-  
29 hour period, an order shall be entered certifying all election results except for those offices in  
30 which a recount has been demanded.

31           (B) For a candidate on the ballot in more than one county, the board may not enter an  
32 order certifying the election results for a period of 48 hours after the final county's board has  
33 publicly declared the results of the election. In such case, each relevant board shall notify the  
34 Secretary of State immediately following each relevant board's public declaration of results and

35 shall transmit electronically, on a form prescribed by the Secretary of State, the total ballots cast,  
36 counted, and rejected. For offices on the ballot in more than one county, the Secretary of State  
37 shall notify the board of each relevant county when the final county has made a public declaration  
38 of the results of the election. At the end of the 48-hour period in this section, an order shall be  
39 entered by each relevant county certifying all election results except for those offices in which a  
40 recount has been demanded.

41 (b) Within the 48-hour period, a candidate on the ballot in entirely one county may demand  
42 the board to open and examine any of the sealed packages of ballots and recount them.

43 (c) If a candidate is on the ballot in more than one county, then within the 48-hour period  
44 after the final county's board has made a public declaration of the results, such candidate may  
45 demand the board to open and examine any of the sealed packages of ballots and recount them.

46 (d) After any recount pursuant to either subsection (b) or (c) of this section the board shall  
47 seal the ballots again, along with the envelope above named, and the clerk of the county  
48 commission and each member of the board shall write his or her name across the places where  
49 it is sealed and endorse in ink, on the outside: "Ballots of the election held at precinct No.\_\_\_\_, in  
50 the district of \_\_\_\_\_, and county of \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_."

51 (e) In computing the 48-hour period as used in this section, Saturdays, Sundays, and legal  
52 holidays shall be excluded. A candidate on the ballot in more than one county shall not be  
53 precluded from demanding a recount in any county in which the candidate is on the ballot until  
54 the final county in which the candidate is on the ballot has certified the election results.

55 (f) If a recount has been demanded, the board shall have 48 hours in which to send notice  
56 to all candidates who filed for the office in which a recount has been demanded of the date, time,  
57 and place where the board will convene to commence the recount. The notice shall be served  
58 under the provisions of subsection (g) of this section. The recount shall be set for no sooner than  
59 three days after the serving of the notice: *Provided*, That after the notice is served, candidates so  
60 served shall have an additional 24 hours in which to notify the board, in writing, of their intention

61 to preserve their right to demand a recount of precincts not requested to be recounted by the  
62 candidate originally requesting a recount of ballots cast: *Provided, however,* That there shall be  
63 only one recount of each precinct, regardless of the number of requests for a recount of any  
64 precinct. A demand for the recount of ballots cast at any precinct may be made during the recount  
65 proceedings only by the candidate originally requesting the recount and those candidates who  
66 notify the board, pursuant to this subsection, of their intention to preserve their right to demand a  
67 recount of additional precincts.

68 (g) Any sheriff of the county in which the recount is to occur shall deliver a copy thereof in  
69 writing to the candidate in person; or if the candidate is not found, by delivering the copy at the  
70 usual place of abode of the candidate and giving information of its purport, to the spouse of the  
71 candidate or any other person found there who is a member of his or her family and above the  
72 age of sixteen years; or if neither the spouse of the candidate nor any other person be found there  
73 and the candidate is not found, by leaving the copy posted at the front door of the place of abode.  
74 Any sheriff, thereto required, shall serve a notice within his or her county and make return of the  
75 manner and time of service; for a failure so to do, he or she shall forfeit \$20. The return shall be  
76 evidence of the manner and time of service.

77 (h) Every candidate who demands a recount shall be required to furnish bond in a  
78 reasonable amount with good sufficient surety to guarantee payment of the costs and the  
79 expenses of the recount in the event the result of the election is not changed by the recount; but  
80 the amount of the bond shall in no case exceed \$300.

81 (i) After the board of canvassers has made their certificates and declared the results as  
82 hereinafter provided, they shall deposit the sealed packages of ballots, absent voter ballots,  
83 registration records, pollbooks, tally sheets, and precinct certificates with the clerk of the county  
84 commission from whom they were received, who shall carefully preserve them for 22 months:  
85 *Provided,* That the clerk may use these records to update the voter registration records in  
86 accordance with §3-2-18(d) of this code. If there is no contest pending as to any election and their

87 further preservation is not required by any order of a court, the ballots, pollbooks, tally sheets,  
88 and certificates shall be destroyed by fire or otherwise, without opening the sealed packages of  
89 ballots. If there is a contest pending, they shall be destroyed as soon as the contest is ended.

90 (j) If the result of the election is not changed by the recount, the costs and expenses of  
91 the recount shall be paid by the party at whose instance the recount was made.

## **ARTICLE 7. CONTESTED ELECTIONS.**

### **§3-7-3. Contests before special court; procedure; enforcement.**

1 Where the election of Secretary of State, Auditor, Treasurer, Attorney General,  
2 Commissioner of Agriculture, ~~or of a judge~~ a justice of the Supreme Court of Appeals, a judge of  
3 the Intermediate Court of Appeals, ~~or a judge~~ of a circuit court, or a judge of a family court is  
4 contested, the case shall be heard and decided by a special court constituted as follows: The  
5 contestee shall select one, the contestant another, and the Governor a third person, who shall  
6 preside in said court; and the three, or any two of them, shall meet at a time and place within the  
7 state to be appointed by the Governor, and, being first duly sworn impartially to decide according  
8 to law and the truth upon the petition, returns and evidence to be submitted to them, shall proceed  
9 to hear and determine the case and certify their decision thereon to the Governor. They shall be  
10 entitled to \$10 a day each, and the same mileage as members of the Legislature, to be paid out  
11 of the treasury of the state, and such special court is hereby given authority to employ a  
12 stenographer at a reasonable compensation, to be also paid out of the treasury of the state. In all  
13 hearings or proceedings before such special court, the evidence of witnesses and the production  
14 of documentary evidence may be required at any designated place of hearing by such special  
15 court, or any member thereof; and in case of disobedience to a subpoena or other process of  
16 such special court, or any member thereof, such special court, or any member thereof, or either  
17 of the parties to such contest, may invoke the aid of any circuit court in requiring the evidence and  
18 testimony of witnesses and the production of papers, books and documents. And such circuit  
19 court, in case of a refusal to obey the subpoena issued to any person, shall issue an order

20 requiring such person to appear before such special court and produce all books and papers, if  
21 so ordered, and give evidence touching the matter in question. Any failure to obey such order of  
22 the circuit court may be punished by such court as a contempt thereof. A written record shall be  
23 kept of all testimony and other proceedings before such special court.

24         Either party to such contest feeling aggrieved by the final decision of such special court  
25 may present his or her petition in writing to the Supreme Court of Appeals, or a judge thereof in  
26 vacation, within 30 days after such final decision is certified to the Governor, as hereinbefore  
27 provided, praying for the suspension, setting aside, or vacation of such final decision. The  
28 applicant shall deliver, or cause to be delivered, a copy of such petition to the other party to such  
29 contest, or, in case of his or her absence from the state or from his or her usual place of abode,  
30 ~~he~~ the applicant shall mail, or cause to be mailed a copy of such petition addressed to his or her  
31 last known post-office address, before presenting the same to the court, or the judge. The court,  
32 or the judge, shall fix a time for the hearing on the application, but such hearing shall not be held  
33 sooner than five days, unless by agreement of the parties, after the presentation of such petition,  
34 and notice of the time and place of such hearing shall be forthwith delivered to the other party to  
35 such contest, or, in case of absence from the state or from his or her usual place of abode, such  
36 notice may be given by mailing, or causing to be mailed, the same, or a copy thereof, addressed  
37 to him or her at his or her last known post-office address. If the court, or the judge, after such  
38 hearing, be of the opinion that a suspending order should issue, the court in its, or the judge in  
39 his or her, discretion, may suspend such final decision and may require bond upon such  
40 conditions and in such penalty, and impose such terms and conditions upon the petitioner, as are  
41 just and reasonable; and the court, or the judge, shall fix a time for the final hearing on the  
42 application. The hearing of the matter shall take precedence over all other matters before the  
43 court. For such final hearing, and before the day fixed therefor, the special court shall file with the  
44 clerk of the Supreme Court of Appeals all papers, documents, testimony, evidence, and records,  
45 or certified copies thereof, which were before it at the hearing resulting in the final decision from

46 which the petitioner appeals, together with a copy in writing of its final decision; and, after  
47 argument by counsel, the court shall decide the matter in controversy, both as to the law and the  
48 evidence, as may seem to it to be just and right. The Supreme Court of Appeals is hereby given  
49 jurisdiction to enforce the provisions of this section by writ of prohibition, mandamus, and  
50 certiorari, as may be appropriate.

**§3-7-6. County and district contests; notices; time.**

1       (a) In all cases of contested elections, the ~~county commission~~ circuit court shall be the  
2 judge of the election, qualifications, and returns ~~of their own members and of all county, and~~  
3 ~~district, and municipal~~ officers. ~~Provided, That a member of the county commission whose election~~  
4 ~~is being contested may not participate in judging the election, qualifications and returns~~

5       (b) A person intending to contest the election of another to any county, ~~or~~ district, or  
6 municipal office, including a judge of any magistrate court or any office that shall hereafter be  
7 created to be filled by the voters of the county or of any magisterial or other district therein, shall,  
8 within ~~ten~~ seven days after the result of the election is certified, ~~give the contestee notice in writing~~  
9 ~~of such intention and a list of the votes he will dispute, with the objections to each, and of the~~  
10 ~~votes rejected for which he will contend. If the contestant objects to the legality of the election or~~  
11 ~~the qualification of the person returned as elected, the notice shall set forth the facts on which~~  
12 ~~such objection is founded. The person whose election is so contested shall, within ten days after~~  
13 ~~receiving such notice, deliver to the contestant a like list of the votes he will dispute, with the~~  
14 ~~objections to each, and of the rejected votes for which he will contend; and, if he has any objection~~  
15 ~~to the qualification of the contestant, he shall specify in writing the facts on which the objection is~~  
16 ~~founded. Each party shall append to his notice an affidavit that he verily believes the matters and~~  
17 ~~things set forth to be true. If new facts be discovered by either party after he has given notice as~~  
18 ~~aforesaid, he may, within ten days after such discovery, give an additional notice to his adversary,~~  
19 ~~with the specifications and affidavit prescribed in this section.~~

20           ~~The provisions of this section apply to all elections, including municipal elections, except~~  
21 ~~that the governing body of the municipality is the judge of any contest of a municipal election~~  
22 ~~initiate a civil action in the circuit court of a county wherein the election or any part thereof was~~  
23 ~~held.~~

24           (c) For an election contest challenging specific votes cast, votes rejected, or voters who  
25 participated in the election, a recount proceeding as set forth in §3-6-9 of this code is first required  
26 and shall be complete prior to the filing of an election contest on those grounds.

**§3-7-7. County Circuit court to hear county, ~~and district, and municipal~~ contests;  
procedure; review.**

1           (a) The county circuit court shall hear and decide election contests initiated pursuant to  
2 ~~the provisions of the preceding section §3-7-6 of this code. Subpoenas for witnesses for either~~  
3 ~~party shall be issued by the clerk of the county court, and served as in other cases, and the~~  
4 ~~witnesses shall be entitled to the same allowances and privileges, and be subject to the same~~  
5 ~~penalties, as witnesses attending a circuit court in a civil suit. The notice of contest shall be~~  
6 ~~presented to the county court at its first term after the same is delivered to the person whose~~  
7 ~~election is contested, and the same shall be docketed for trial in such court.~~

8           (b) At the trial of such the contest, the circuit court shall hear all such legal and proper  
9 evidence that may be brought before it by either party, and may, if deemed considered necessary,  
10 require the production of the poll books, certificates, and ballots deposited with its the county clerk  
11 or municipal recorder or clerk, and examine the same. The hearing may be continued by the court  
12 from time to time, if it be shown that justice and right require it, but not beyond three months from  
13 the day of election.

14           (c) A contestant has the burden of proof in an elections contest.

15           (d) At the final conclusion of the trial of such contest, the circuit court shall declare the true  
16 result of such election, and cause the same to be entered on the records of the court. When the  
17 result of the election is declared, as aforesaid, direct that a certified copy of the order declaring

18 ~~such the result shall, if required, be delivered by the clerk of the circuit court wherein the contest~~  
19 ~~was held to the person declared elected, if such be the result of the trial, and such copy shall be~~  
20 ~~received in all courts and places as legal evidence of the result of the election therein declared~~  
21 ~~parties. Either the contestant or contestee shall have the right of appeal to the circuit court of the~~  
22 ~~county from the final order or decision of the county court in such proceeding, upon the filing of a~~  
23 ~~bond with good personal security, by the party desiring the appeal, to be approved by the county~~  
24 ~~court, in a sum deemed sufficient by such court, with condition to the effect that the person~~  
25 ~~proposing to appeal will perform and satisfy any judgment which may be rendered against him by~~  
26 ~~the circuit court on such appeal. But such appeal shall not be granted unless the party desiring~~  
27 ~~the appeal shall make application for such appeal, and file such bond, within thirty days from the~~  
28 ~~entering of the final order in such proceeding; and the circuit court may at any time require a new~~  
29 ~~bond or increase the penalty thereof when the court deems it necessary. When such appeal is~~  
30 ~~taken to the circuit court, as hereinbefore provided, it shall be heard and determined upon the~~  
31 ~~original papers, evidence, depositions and records filed before and considered by the county~~  
32 ~~court, and the circuit court shall decide the contest upon the merits. From the decision of the~~  
33 ~~circuit court, an~~

34 (e) An appeal of the decision of the circuit court shall lie to the Supreme Court of Appeals;  
35 as in other cases, but such appeal shall be heard upon the original papers and copies of all orders  
36 made, without requiring the same to be printed.

37 (f) The Supreme Court of Appeals, through its rule-making power in §51-1-4 of this code,  
38 may promulgate rules and regulations consistent with this article which governing the pleadings,  
39 practice, and procedure for the conduct of county, district, and municipal election contests in the  
40 courts of this state.

## **ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

### **§3-8-2b. Disclosure of electioneering communications; disclaimers on telephone political messaging and polling.**

1 (a) Every person who has spent:

2 (1) A total of \$5,000 or more for the direct costs of purchasing, producing, or disseminating  
3 electioneering communications during any calendar year; or

4 (2) A total of \$1,000 or more on or after the 15th day but more than 12 hours before the  
5 day of any election for the direct costs of purchasing, producing, or disseminating electioneering  
6 communications during any calendar year shall, within 24 hours of each disclosure date, file with  
7 the Secretary of State a statement which contains all of the information listed in subsection (b) of  
8 this section.

9 (b)(1) The name of the person making the expenditure, the name of any person sharing  
10 or exercising direction or control over the activities of the person making the expenditure and the  
11 name of the custodian of the books and accounts of the person making the expenditure;

12 (2) If the person making the expenditure is not an individual, the principal place of business  
13 of the partnership, committee, association, organization, or group which made the expenditure;

14 (3) The amount of each expenditure of more than \$1,000 made for electioneering  
15 communications during the period covered by the statement and the name of the person to whom  
16 the expenditure was made;

17 (4) The elections to which the electioneering communications pertain, the names, if  
18 known, of the candidates referred to or to be referred to therein, whether the electioneering  
19 communication is intended to support or oppose the identified candidates and the amount of the  
20 total expenditure reported in subdivision (3) of this subsection spent to support or oppose each of  
21 the identified candidates; and

22 (5) The names and addresses of any contributors who contributed a total of more than  
23 \$1,000 between the first day of the preceding calendar year and the disclosure date and whose  
24 contributions were used to pay for electioneering communications.

25 (c) With regard to the contributors required to be listed pursuant to subdivision (5),  
26 subsection (b) of this section, the statement shall also include:

27 (1) The month, day, and year that the contributions of any single contributor exceeded  
28 \$250;

29 (2) If the contributor is a political action committee, the name and address the political  
30 action committee registered with the State Election Commission;

31 (3) If the contributor is an individual, the name and address of the individual, his or her  
32 occupation, the name and address of the individual's current employer, if any, or, if the individual  
33 is self-employed, the name and address of the individual's business, if any;

34 (4) A description of the contribution, if other than money;

35 (5) The value in dollars and cents of the contribution.

36 (d) (1) Any person who makes a contribution for the purpose of funding the direct costs of  
37 purchasing, producing, or disseminating an electioneering communication under this section  
38 shall, at the time the contribution is made, provide his or her name and address to the recipient  
39 of the contribution;

40 (2) Any individual who makes contributions totaling \$250 or more between the first day of  
41 the preceding calendar year and the disclosure date for the purpose of funding the direct costs of  
42 purchasing, producing or disseminating electioneering communications shall, at the time the  
43 contribution is made, provide the name of his or her occupation and of his or her current employer,  
44 if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient  
45 of the contribution.

46 (e) In each electioneering communication, a statement shall appear or be presented in a  
47 clear and conspicuous manner that:

48 (1) Clearly indicates that the electioneering communication is not authorized by the  
49 candidate or the candidate's committee; and

50 (2) Clearly identifies the person making the expenditure for the electioneering  
51 communication: *Provided*, That if the electioneering communication appears on or is  
52 disseminated by broadcast, cable or satellite transmission, the statement required by this

53 subsection ~~must~~ shall be both spoken clearly and appear in clearly readable writing at the end of  
54 the communication.

55 (f) Within five business days after receiving a disclosure of electioneering communications  
56 statement pursuant to this section, the Secretary of State shall make information in the statement  
57 available to the public through the Internet.

58 (g) For the purposes of this section, a person is considered to have made an expenditure  
59 when the person has entered into a contract to make the expenditure at a future time.

60 (h) The Secretary of State ~~is hereby directed to~~ shall propose legislative rules and  
61 emergency rules implementing this section for legislative approval in accordance with ~~the~~  
62 ~~provisions of~~ §29A-3-1 *et seq.* of this code.

63 (i) If any person, including, but not limited to, a political organization (as defined in Section  
64 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any expenditure  
65 for electioneering communications which is coordinated with and made with the cooperation,  
66 consent or prior knowledge of a candidate, candidate's committee or agent of a candidate, the  
67 expenditure shall be treated as a contribution and expenditure by the candidate. If the expenditure  
68 is coordinated with and made with the cooperation or consent of a state or local political party or  
69 committee, agent or official of that party, the expenditure shall be treated as a contribution to and  
70 expenditure by the candidate's party.

71 (j) Except for bona fide survey and opinion research as defined in subsection (p) of this  
72 section, all prerecorded political audio messages, which content falls under the definition of  
73 "electioneering communications" and which messages are delivered via telephone at the direction  
74 of a candidate committee, political committee, or any other person or organization, shall contain,  
75 or a live operator shall orally provide, before any other information, the following information:

76 (1) The name of the candidate or of any organization or organizations the person is calling  
77 on behalf of;

78 (2) The name of the person or organization paying for the delivery of the message and the  
79 name of the fiscal agent, if applicable; and

80 (3) Affirmatively state if any actors, events, or other content depicted in the message are  
81 fictional.

82 (k) No person may deliver or knowingly cause to be delivered a prerecorded political  
83 message to any telephone number on any federal do not call list.

84 (l) (1) A violation of subsection (j) of this section shall result in a civil penalty of \$5,000 per  
85 violation.

86 (2) Any person injured by another's violation of this section may bring an action for  
87 equitable relief, including an injunction. In addition, a prevailing plaintiff shall be awarded the costs  
88 of the suit and reasonable attorney's fees.

89 (m) Except for bona fide survey and opinion research, any person who engages in push-  
90 polling by calling voters on behalf, in support, or in opposition of any candidate for public office by  
91 telephone, which telephone message is an electioneering communication and asks questions  
92 relating to any candidate for public office which implies, conveys, or states information about the  
93 candidate's character, status, or political stance, and which is likely to be construed by a voter to  
94 be a survey or poll, shall prior to asking any person contacted a question relating to a candidate:

95 (1) Inform the person that the telephone call is a "paid political telephone call";

96 (2) Identify the organization making the call and the organization paying for the call;

97 (3) Provide a valid, working, current telephone number for the organization making the  
98 call;

99 (4) Identify whether the telephone call is being made on in support of or in opposition to a  
100 particular candidate or candidates for public office and identify that candidate or candidates by  
101 name; and

102 (5) Affirmatively state if any events depicted in the questions are fictional.

103 (n)(1) A violation of subsection (m) of this section shall result in a civil penalty of \$5,000  
104 per violation.

105 (2) Any person injured by another's violation of this section may bring an action for  
106 equitable relief, including an injunction. In addition, a prevailing plaintiff shall be awarded the costs  
107 of the suit and reasonable attorney's fees.

108 (j)(o) This section does not apply to candidates for federal office. This section is not  
109 intended to restrict or to expand any limitations on, obligations of, or prohibitions against any  
110 candidate, committee, agent, contributor, or contribution contained in any other provision of this  
111 chapter.

112 (p) For purposes of this section, "bona fide survey and opinion research" means the  
113 collection and analysis of data regarding opinions, needs, awareness, knowledge, views,  
114 experiences, and behaviors of a population, through the development and administration of  
115 surveys, interviews, focus groups, polls, observation, or other research methodologies, in which  
116 no sales, promotional, or marketing efforts are involved and through which there is no attempt to  
117 influence a participant's attitudes or behavior. This definition includes a study for research  
118 purposes of how individuals reach to positive or negative information on a candidate, elected  
119 public official, or ballot proposition.

## **ARTICLE 9. OFFENSES AND PENALTIES.**

### **§3-9-21. Improper interference with voters' travel to and from the polls.**

1 (a) During the hours that polls are open for in-person voting in an election, no person may  
2 obstruct or interfere with a voter with the intention to delay, hinder, interrupt, harass, or intimidate  
3 a voter traveling to or from the polls: *Provided*, That properly conducted exit polls, as provided by  
4 the Secretary of State's administrative rules, are not prohibited by this section.

5 (b) Any person who violates the provisions of this section is guilty of a misdemeanor, and,  
6 upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000, or confined in  
7 jail not more than one year, or both fined and confined.